

**EMBARK EDUCATION GROUP LIMITED**

# Notice of Meeting

(including Scheme Booklet)

19 May 2023

PROPOSED RE-DOMICILING, NZX DELISTING AND CHANGE IN THE SHAREHOLDING OF EMBARK BY WAY OF A SWAP OF SHARES ON A ONE-FOR-ONE BASIS FOR NEW SHARES IN A NEW ASX PRIMARY LISTED AUSTRALIAN DOMICILED PARENT COMPANY FOR THE EMBARK GROUP

## **IMPORTANT**

This document is important and requires your prompt attention. You should read it carefully.

If you are in doubt as to any aspect of the Scheme, you should consult your financial, taxation or legal adviser.

**THE BOARD RECOMMENDS YOU VOTE IN FAVOUR OF ALL RESOLUTIONS**

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## NOTICE OF MEETING

Embark Education Group Limited (*Embark*) gives notice that its Annual Meeting will be held at the offices of Link Market Services, Level 30, PwC Tower, 15 Customs Street West, Auckland, New Zealand and online via the Link Market Services Virtual Annual Meeting platform at [www.virtualmeeting.co.nz/evo23](http://www.virtualmeeting.co.nz/evo23) on **Tuesday, 6 June 2023 at 11:00am**.

All capitalised terms used in this Notice of Meeting are defined in the Glossary to the Scheme Booklet that accompanies and forms part of this Notice of Meeting.

### AGENDA

- Chairperson's Address
- Resolutions
- Shareholder discussion

### BUSINESS AND RESOLUTIONS

The business of the Annual Meeting will be to consider, and if thought fit pass, the following resolutions. Each resolution will be voted on in accordance with the voting thresholds detailed below.

#### Auditor Remuneration

*Resolution 1:* That the Board be authorised to fix the fees and expenses of the auditor of Embark for the ensuing year.

#### Director Appointments

*Resolution 2:* That Renita Garard be elected as a Director of Embark.

*Resolution 3:* That Kim Campbell be re-elected as a Director of Embark.

*Resolution 4:* That Michelle Thomsen be elected as a Director of Embark.

#### Scheme and Delisting

These resolutions will effect a re-domiciling of Embark such that the parent company of Embark (the *New Listed Parent*) in which Shareholders will hold shares will be an Australian incorporated company listed on the ASX.

*Resolution 5:* That the scheme of arrangement relating to the re-domicile of Embark, as set out in the Scheme Plan accompanying the Notice of Meeting, be and is approved.

*Resolution 6:* That Embark be delisted from the NZX Main Board and ASX.

Resolution 6 is conditional on Resolution 5 being passed, but Resolution 5 is not conditional on Resolution 6 being passed.

## ATTENDANCE AND VOTING

Your rights to vote may be exercised by:

- (a) attending and voting in person or online at [www.virtualmeeting.co.nz/evo23](http://www.virtualmeeting.co.nz/evo23) in accordance with the instructions given at the Annual Meeting;
- (b) casting a postal or online vote; or
- (c) appointing a proxy (or representative) to attend the Annual Meeting and vote in your place.

You can appoint a proxy or cast a postal vote online at [vote.linkmarketservices.com/EVO](http://vote.linkmarketservices.com/EVO) or by completing and returning the Proxy Voting Form (which is enclosed with this Notice of Meeting) no later than **11:00am** on **Sunday, 4 June 2023**. Please refer to the Procedural Notes on the following pages for further details on how to vote.

By order of the Board

Edmund Mah  
Chief Financial Officer

19 May 2023

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## PROCEDURAL NOTES

### Voting

Voting on the resolutions put before the Annual Meeting shall be by way of poll. Shareholders are encouraged to cast a postal or online vote or appoint a proxy to exercise their vote on their behalf if they cannot attend the Annual Meeting.

If you do not attend the Annual Meeting (whether in person or online), cast a postal or online vote, or appoint a proxy to vote at the Annual Meeting then no vote will be exercised in respect of your shareholding.

Results of the voting will be available after the conclusion of the Annual Meeting, and will be notified on NZX and ASX.

The voting thresholds for the Resolutions are as follows:

- *Resolutions 1 to 4:* an ordinary resolution requiring a majority (being more than 50%) of the votes entitled to vote and voting on the resolution;
- *Resolution 5:* approval by:
  - a majority of 75% or more of the votes entitled to vote and voting on Resolution 5; and
  - a majority (being more than 50%) of all votes entitled to be cast on Resolution 5 (regardless of whether they are cast); and
- *Resolution 6:* an ordinary resolution requiring a majority (being more than 50%) of the votes entitled to vote and voting on Resolution 6, subject to the voting restrictions outlined below.

### Voting restrictions

Only Shareholders who are “Non-Affiliated Holders”<sup>1</sup> are entitled to vote on Resolution 6. Accordingly, none of J 47 Pty Limited, the directors of Embark or any of their respective Associated Persons (as that term is defined in the NZX Listing Rules), is entitled to vote, appoint a proxy or exercise discretionary proxies in respect of Resolution 6.

### Postal and online voting

Shareholders entitled to attend and vote at the Annual Meeting may cast a postal or online vote instead of attending the Annual Meeting or appointing a proxy to attend. Link Market Services has been authorised by the Board to receive and count postal and online votes at the Annual Meeting.

You can cast a postal vote by completing and sending the Proxy and Postal Voting Form (enclosed with this Notice of Meeting) by post, email (as a scanned attachment), or deliver it by hand so that,

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<sup>1</sup> “Non-Affiliated Holders” is defined in Part A of the NZX Listing Rules as “any person other than: (a) a person who holds, or is one of a group of Associated Persons who together hold, 10% or more of a Class of Financial Products, or (b) a person who has, or is one of a group of Associated Persons who together have, the power (whether contingent or not) to appoint one or more Directors of the Issuer, or (c) any other person or group of persons whom NZX in its discretion declares not to be a Non-Affiliated Holder for the purposes of the Rules.”

in each case, the form is received by Link Market Services no later than **11:00am on Sunday, 4 June 2023**.

Online votes can be made at [vote.linkmarketservices.com/EVO](http://vote.linkmarketservices.com/EVO). Online votes must be made by **11:00am on Sunday, 4 June 2023**.

### **Voting by proxy**

You can appoint a proxy to attend the Annual Meeting and vote in your place.

You can appoint a proxy online at [vote.linkmarketservices.com/EVO](http://vote.linkmarketservices.com/EVO) or by completing and returning the Proxy Voting Form (enclosed with this Notice of Meeting) in the manners specified on the Proxy Voting Form so that the form is received by Link Market Services no later than **11:00am on Sunday, 4 June 2023**.

The proxy need not be a Shareholder of Embark. The Chairperson of the Annual Meeting is willing to act as proxy for any Shareholder who may wish to appoint him for that purpose.

If you select a proxy to vote on your behalf (including the Chairperson of the Annual Meeting), and you confer on the proxy a discretion on the Proxy Voting Form, you acknowledge that the proxy may exercise your right to vote at his or her discretion and may vote as he or she thinks fit or abstain from voting. If you do not tick any boxes or your direction on how the proxy is to vote is unclear (in the Proxy's sole opinion) in respect of a resolution, then the direction is to abstain. Any person not entitled to vote on the resolution cannot act as a proxy unless they are given express direction on how to vote.

The Chairperson intends to vote all discretionary proxies in favour of the resolutions, other than Resolution 6 in respect of which the Chairperson shall abstain from voting any discretionary proxies.

### **Presentation materials**

If you are not able to attend the Annual Meeting, copies of any materials presented at the Annual Meeting by the Chairperson will be available on the NZX website ([www.nzx.com](http://www.nzx.com)), ASX's Website ([www.asx.com.au](http://www.asx.com.au)) and on Embark's website ([www.embarkeducation.com.au](http://www.embarkeducation.com.au)) shortly after the Annual Meeting commences.

## EXPLANATORY NOTES

The purpose of these explanatory notes is to provide Shareholders with further information on the business to be considered at the Annual Meeting of Embark to be held on **Tuesday, 6 June 2023** at **11:00am**.

### Resolution 1 – Auditor remuneration

Embark's current auditors, Grant Thornton New Zealand, will be automatically reappointed as the auditor of Embark under section 207T of the Companies Act. Under section 207S of the Companies Act, auditors' fees and expenses must be fixed in the manner determined at the 2023 Annual Meeting. Accordingly, Resolution 1 authorises the Board to fix the fees and expenses of Grant Thornton New Zealand as auditor of Embark for the following year.

### Resolution 2, 3 & 4 – Director Appointments

Renita Garard was appointed as a Director of Embark by the Board on 1 January 2023. Under NZX Listing Rule 2.7.1, Renita Garard must retire from office at the 2023 Annual Meeting. Kim Campbell was appointed by Shareholders on 18 September 2019, and is now required to retire in accordance with NZX Listing Rule 2.7.1, which prohibits a director from holding office (without re-election) for longer than 3 years or 3 annual meetings, whichever is longer. Being eligible, each of Renita Garard and Kim Campbell offer themselves for re-election. Michelle Thomsen was nominated for appointment by an Embark Shareholder under NZX Listing Rule 2.3. A majority of the Board supports the re-elections of Renita Garard and Kim Campbell, and the election of Michelle Thomsen, and recommends that Shareholders vote in favour of Resolutions 2, 3 and 4.

A biography of each of Renita Garard, Kim Campbell and Michelle Thomsen is set out in the accompanying Scheme Booklet.

### Resolution 5 & 6 – Scheme and Delisting

Full details of these resolutions are set out in the accompanying Scheme Booklet.

NZ RegCo has approved the Delisting on the conditions that:

- NZ RegCo reviews Embark's market announcement about the Delisting prior to publication.
- Embark pays all outstanding fees to NZX and NZ RegCo prior to the Delisting.
- Embark provides at least one month's notice to the market of the intended Delisting; and
- Embark obtains shareholder approval by Non-Affiliated Shareholders for the Delisting – as proposed by Embark (on the basis that if the Scheme is approved but Non-Affiliated Shareholders do not approve the Delisting, then the New Listed Parent will apply to NZX for listing and quotation as an NZX Foreign Exempt Listing, and Embark will still be delisted from NZX given it will have a single shareholder only).

Assuming Shareholders vote in favour of the Delisting, Embark expects all of the other conditions above will be satisfied.

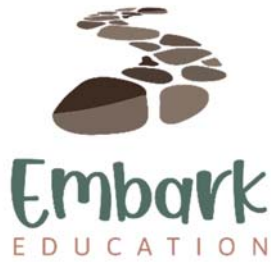
### **Recommendation of the Board**

The Board unanimously recommends the Scheme and associated matters to Shareholders for approval and encourages all Shareholders to vote in favour of the Resolutions. In the Board's view, the Scheme and the Delisting are in the best interests of Embark and its Shareholders. The Directors intend to vote all shares in Embark held or controlled by them in favour of the Resolutions, other than Resolution 6 for the Delisting in respect of which voting restrictions apply.

### **No minority buy out rights**

The Scheme is being implemented as a Court approved scheme of arrangement under part 15 of the New Zealand Companies Act 1993 pursuant to orders to be made by the New Zealand High Court and will not be a major transaction for Embark under section 129 of the Companies Act. Accordingly, Shareholders who vote against the Resolution 5 will not have the right to require Embark to purchase their shares in accordance with sections 110 to 115 of the Companies Act.

However, as outlined in section 4 of the Scheme Booklet, Shareholders have the right to object to the Scheme by applying to the New Zealand High Court.



**EMBARK EDUCATION GROUP LIMITED**

# Scheme Booklet

19 May 2023

PROPOSED SWAP OF SHARES ON A ONE-FOR-ONE BASIS FOR NEW SHARES IN A NEW AUSTRALIAN PARENT COMPANY FOR THE EMBARK GROUP

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## IMPORTANT INFORMATION

### General

This is an important document. You should carefully read this document in its entirety before making a decision as to how to vote on the Resolutions to be considered at the Annual Meeting. If you are in doubt as to any aspect of the Scheme, you should consult your financial, taxation or legal adviser.

If you have sold all your shares in Embark, you should immediately hand this Notice of Meeting and the accompanying Proxy / Corporate Representative form to the purchaser or the agent (e.g. the broker) through whom the sale was made, to be passed on to the purchaser.

### Purpose of this Scheme Booklet

The purpose of this Scheme Booklet is to provide you with the information that could reasonably be expected to be material to your decision whether to vote for or against the Resolutions relating to the Scheme and the Delisting, including:

- an outline of the background to, and rationale for, the Scheme;
- the procedural steps required to effect the Scheme, including why you are being asked to vote;
- an explanation as to why the Board believes the Scheme is in the best interests of all Shareholders; and
- a recommendation from the Board that you vote in favour of the Resolutions.

This Scheme Booklet has been prepared in reliance upon the Financial Markets Conduct (Embark Early Education Limited) Exemption Notice 2023 and ASIC Corporations (Compromises or Arrangements) Instrument 2015/358, and is not a prospectus or product disclosure statement.

A copy of this Scheme Booklet will be provided to ASX together with an information memorandum required under condition 3 of ASX Listing Rule 1.1 in connection with the proposed admission of the New Listed Parent to the official list of, and corresponding quotation of New Listed Parent Shares on, ASX (*Information Memorandum*). ASX does not take any responsibility for the contents of this Scheme Booklet.

NZ RegCo has confirmed it has no objection to the Notice of Meeting (including this Scheme Booklet), but takes no responsibility for any statement made in the Notice of Meeting (including the Scheme Booklet).

### Responsibility for information

This Scheme Booklet has been prepared by, and is the responsibility of, Embark.

### No warranty as to performance

Except to the extent set out in this Scheme Booklet or as required by law (and then only to the minimum extent so required), no member of the Group (nor any of their respective associates, advisers, employees or current or proposed directors) warrants the performance of any member of the Group.

## **Your decision**

This Scheme Booklet does not take into account your individual investment objectives, financial situation or needs. You must make your own decisions and take your own advice in this regard.

The information and recommendations contained in this Scheme Booklet do not constitute, and should not be taken as constituting, financial advice. If you are in any doubt as to what you should do, you should seek advice from your financial, taxation, or legal adviser before making any decision regarding the Scheme.

## **Laws of New Zealand**

This Scheme Booklet has been prepared in accordance with the laws of New Zealand. Accordingly, the information contained in this Scheme Booklet may not be the same as that which would have been disclosed in this Scheme Booklet if it had been prepared in accordance with the laws and regulations of another jurisdiction.

## **Information for Shareholders in other jurisdictions**

This Scheme Booklet does not constitute an offer of New Listed Parent Shares in any jurisdiction in which it would be unlawful. The distribution of this Scheme Booklet outside of New Zealand and Australia may be restricted by law and persons who come into possession of it should observe any such restrictions. Any failure to comply with such restrictions may contravene applicable securities laws.

Nominees, custodians and other Shareholders who hold Embark Shares on behalf of a beneficial owner resident outside New Zealand, Australia, Canada, Hong Kong, Singapore, the United Kingdom and the United States of America may not forward this Scheme Booklet (or accompanying documents) to anyone outside these countries without the consent of Embark, except nominees and custodians may forward the Scheme Booklet to any beneficial shareholder in the European Union (excluding Austria) who is a "qualified investor" (as defined in Article 2(e) of the Regulation (EU) 2017/1129 of the European Parliament and the Council of the European Union).

For more information specific to your jurisdiction, you should refer to Section 9 (Information for Shareholders Outside New Zealand).

## **Shareholder warranties**

Each Shareholder is deemed to have warranted to the New Listed Parent that all their Embark Shares (including any rights and entitlements attaching to those Embark Shares) which are transferred to the New Listed Parent under the Scheme will, at the time of transfer, vest in the New Listed Parent free from all encumbrances and interests of third parties of any kind.

## **Forward-looking statements**

Certain statements contained in this Scheme Booklet constitute "forward-looking statements". Forward-looking statements can generally be identified by the use of forward-looking words such as 'may', 'could', 'anticipate', 'estimate', 'expect', 'opportunity', 'plan', 'continue', 'objectives', 'outlook', 'guidance', 'intend', 'aim', 'seek', 'believe', 'should', 'will' and similar expressions. Such forward-looking statements are not guarantees of future performance and involve known and unknown risks, uncertainties and other factors, many of which are beyond the control of Embark and the New Listed Parent, which may cause actual results to differ materially from those expressed in or implied by the statements contained in this Scheme Booklet.

You are cautioned against relying on any such forward-looking statements. None of Embark nor the New Listed Parent (or their respective associates, advisers, employees or current or proposed directors) gives any representation, assurance or guarantee that the occurrence of the events expressed or implied in any forward-looking statements in this Scheme Booklet will actually occur. Other than as required by law or by the rules of any applicable stock exchange, none of Embark or the New Listed Parent (or their respective associates, advisers, employees or current or proposed directors) is under any obligation to publicly release the result of any revisions to these forward-looking statements to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events.

### **No internet site forms part of this Notice of Meeting**

Any references in this Scheme Booklet to any website are for informational purposes only. No information contained on any website forms part of this Scheme Booklet.

### **Privacy**

Any personal information you have provided to Embark in connection with your shareholding will be held by Embark, the New Listed Parent and/or Link Market Services at the addresses set out in the Directory. This information will be used for the purposes of administering your investment in Embark and/or the New Listed Parent. This information will only be disclosed to third parties with your consent or if otherwise required by law. Under the Privacy Act 2020 and the Australian Privacy Act 1988 (Cth), you have the right to access and correct any personal information held about you.

### **Effect of rounding**

Any figures, amounts, percentages, prices, estimates, calculations of value and fractions in this Scheme Booklet may be subject to the effect of rounding. Accordingly, actual calculations may differ from amounts set out in this Scheme Booklet.

### **Defined terms and interpretation**

Capitalised terms set out in this Scheme Booklet have the meanings given to them in the Glossary. Unless the context otherwise requires:

- (a) singular words include the plural and vice versa;
- (b) references to times and dates are to times and dates in New Zealand; and
- (c) references to amounts of currency are to Australian dollars, except where the term "NZ\$" is used where the reference is to New Zealand dollars.

### **Date of this Scheme Booklet**

This Scheme Booklet is dated 19 May 2023.

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## SECTION 1: LETTER FROM THE CHAIR

Dear Shareholders,

The directors of Embark are proposing to shift our listing to the ASX under a newly incorporated Australian parent company. On behalf of the Board, I am pleased to outline the merits of this proposition and to recommend that all Shareholders vote in favour of the Scheme, the Delisting and associated matters.

### Strategic rationale

Since 2014, Embark operated a range of early childhood education centres in New Zealand. Embark subsequently expanded into Australia. In September 2022, Embark divested its New Zealand operations to enable it to focus on growing its more profitable Australian business.

Embark now operates 24 centres across Australia, with conditional contracts in place to acquire a further three centres.

Embark no longer has any operations in New Zealand and operates only in Australia. There is therefore a more natural alignment in having an Australian domiciled listed entity above the Australian operating company, including to reduce tax complexities that arise in paying returns to shareholders from a New Zealand listed entity.

In August 2022, I wrote to you and outlined highlights of Embark's Australian business. Since then, we have continued to pursue the two aspects of the Australian growth strategy – organic growth within existing centres, and growth by acquisitions of existing childcare businesses. Embark is not intending to undertake greenfield developments.

**Acquisitions** – Embark currently has legal documentation in place for the purchase of three childcare centres. In aggregate, these three centres offer 325 places with estimated annual, centre based EBITDA at \$2.1m for a total purchase price of \$7.2m. All contracts are subject to customary conditions with respect to licensing, lease assignment and due diligence.

Other acquisition opportunities are being actively pursued.

**Organic Growth** – Much was achieved in 2022 in this area, and more is expected to be achieved in 2023. Achieving organic growth follows from a disciplined approach to wage efficiencies; minimising discounting; reducing bad debts; increasing occupancy levels and the use of technology to minimise the growth of support office as the number of centres increases.

The Board believes that shifting to be a solely ASX listed Australian domiciled entity will allow Embark to focus on continuing to progress these initiatives in a more focused and tax efficient manner for all Shareholders.

### Shareholder Approval Required

Embark will hold its Annual Meeting at **11:00am** (NZST) on **6 June 2023** to approve the Scheme. The Annual Meeting will be held in person at the offices of Link Market Services, Level 30, PwC Tower, 15 Customs Street West, Auckland, and via the Link Market Services Virtual Meeting platform at [www.virtualmeeting.co.nz/evo23](http://www.virtualmeeting.co.nz/evo23).

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Ahead of the Annual Meeting, the Board encourages you to carefully read the Scheme Booklet and Notice of Meeting. On behalf of the Board, I encourage you to cast your **VOTE IN FAVOUR OF ALL RESOLUTIONS**.

If you are not able to attend and vote at the Annual Meeting you can cast a proxy or postal vote in advance of the Annual Meeting. Further details on how to vote or to appoint a proxy are included on the proxy and postal voting form itself, as well as in the Notice of Meeting that accompanies this Scheme Booklet.

If you wish to vote in advance of the Annual Meeting, your vote must be received by 11:00am (NZST) on Sunday, 4 June 2023 to ensure your voice is heard. I am pleased to confirm that all Embark Directors intend to vote all shares held or controlled by them in favour of all resolutions to be considered at the Annual Meeting.

On behalf of the Board, I welcome your consideration of this next stage in Embark's future and encourage you to have your say by casting your vote.

Thank you for your continued support.

Yours sincerely,

Hamish Stevens  
Chairman

## SECTION 2: KEY DATES

### Indicative timetable

A summary of the key dates in relation to the Scheme are set out below. All dates listed as following the date of the Annual Meeting are indicative only and, among other things, are subject to all necessary approvals from the Court and other regulatory authorities. The actual timetable will depend on many factors outside the control of Embark, including the Court approval process and satisfaction of other conditions precedent. Embark also reserves the right to vary the times and dates set out at its discretion. Any changes to the timetable will be announced through NZX and ASX.

### Before the Annual Meeting

Event	Due date
Announcement of the Scheme	2 May 2023
Date of this Scheme Booklet and Notice of Meeting	19 May 2023
Date and time for determining eligibility to attend and vote at the Annual Meeting	7:00pm, 2 June 2023
Latest time and date for receipt of proxies for Annual Meeting	11:00am, 4 June 2023
Annual Meeting	11:00am, 6 June 2023
If the Scheme is approved by Shareholders and the other conditions precedent to the Scheme Implementation Agreement are satisfied, the expected timetable is set out below.	

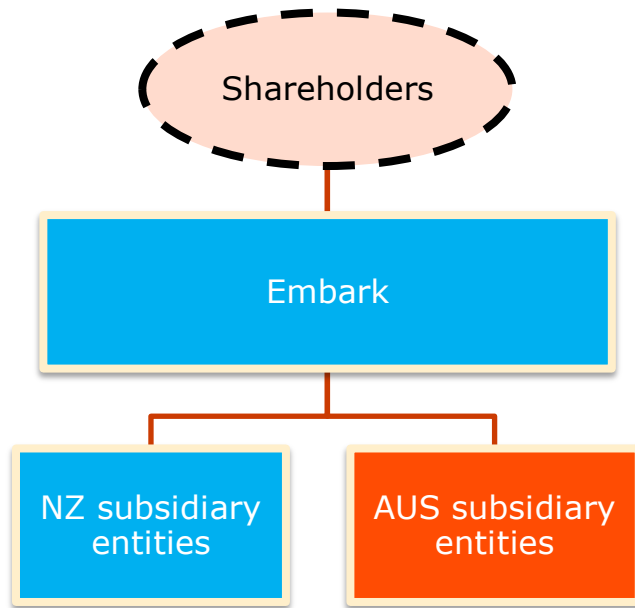
### After the Annual Meeting

Event	Due date
Second Court Date – to approve the Scheme	21 June 2023
Last day of trading of Company Shares on the NZX Main Board and ASX	27 June 2023
Record Date for determining entitlements to Scheme Consideration	28 June 2023
Implementation Date – date of issue and allotment of New Listed Parent Shares	5 July 2023
Delisting of Embark from NZX Main Board and ASX following Implementation	6 July 2023
Listing of the New Listed Parent on ASX	6 July 2023

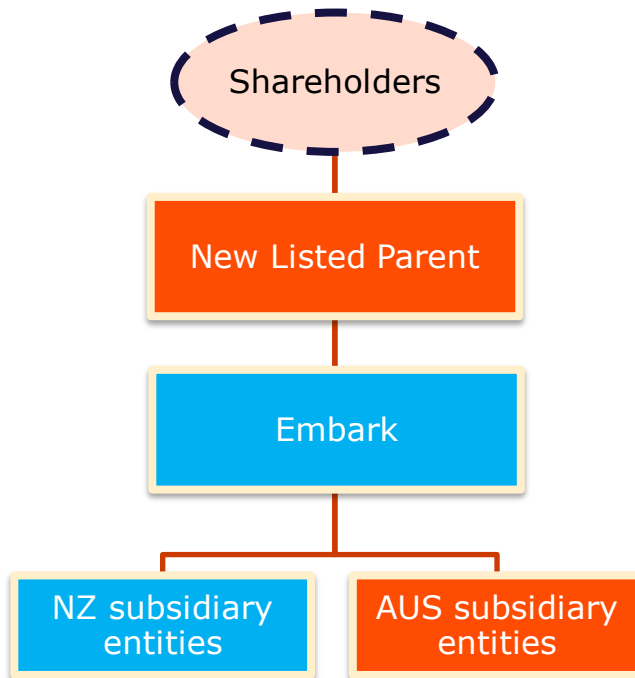
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**SECTION 3: OVERVIEW OF THE SCHEME**

**CURRENT GROUP STRUCTURE (SIMPLIFIED)**



**GROUP STRUCTURE ON COMPLETION OF THE SCHEME (SIMPLIFIED)<sup>2</sup>**



Colour	Jurisdiction of incorporation
	New Zealand
	Australia

<sup>2</sup> Following completion of the Scheme, the New Listed Parent will continue to review the optimum structure for the Group (which may lead to a further consolidation or change in Group structure), although no decision has been made to change the structure of the Group following completion of the Scheme.

## **Scheme Steps**

Under the Scheme:

- All of the Shares in Embark will be transferred by Shareholders to the New Listed Parent. In exchange, Shareholders, other than Ineligible Shareholders (see section 4) will receive one New Listed Parent Share for each Embark Share they hold on the Record Date. This results in Embark becoming a wholly owned subsidiary of the New Listed Parent, and Shareholders becoming Shareholders in the New Listed Parent.
- All of the Options on issue in Embark will be cancelled and new options in the New Listed Parent will be issued on equivalent terms.

It is a term of the Scheme that the Shares in Embark transferred to the New Listed Parent under the Scheme will, except to the extent prohibited by law, be transferred free from all mortgages, charges, liens, encumbrances, or demands of any nature and interests of third parties of any kind, whether legal or otherwise. The Scheme Plan, which sets out in more detail the terms of the Scheme, is set out in Schedule 1.

## **ASX Listing**

The New Listed Parent is seeking a primary listing on the ASX, and intends for this to occur at the same time as the Scheme takes effect. The Scheme is conditional on ASX approving the admission of the New Listed Parent to the official list of the ASX and the New Listed Parent Shares for official quotation by the ASX (subject only to any conditions which ASX may reasonably require).

## **Board Recommendation**

The Board unanimously supports the Scheme and believes it is in the best interests of all Shareholders because there is therefore a more natural alignment in having an Australian domiciled listed entity above the Australian operating company, including to reduce tax complexities that arise in paying returns to shareholders from a New Zealand listed entity. The Board unanimously recommends that you vote in favour of the Scheme. Each director intends to vote any shares he or she holds or controls in favour of the Scheme.

## SECTION 4: OTHER IMPORTANT QUESTIONS

This Section answers other important questions about the Scheme. It is not intended to address all relevant issues. This Section should be read together with all other parts of the Notice of Meeting.

Question	Answer
<b>Scheme</b>	
How will the Scheme impact Shareholders?	<p>If the Scheme Resolution is passed, Eligible Shareholders will hold shares in the New Listed Parent, instead of holding shares in Embark. Eligible Shareholders will receive one share in the New Listed Parent for each share they hold in Embark on the Record Date.</p> <p>Eligible Shareholders will continue to have the same proportionate interest in the business as they do now – they will indirectly own Embark and the current Group through their shareholding in the New Listed Parent.</p> <p>Shareholders that are New Zealand tax residents and hold their shares on capital account for New Zealand tax purposes should not be subject to tax on any gains derived on the disposal of the Shares as part of the Scheme.</p> <p>For Shareholders that are Australian tax residents and hold their shares on capital account, the Scheme should not result in any Australian tax being payable by the Shareholder, due to the expected availability of rollover relief.</p> <p>All Shareholders are advised to obtain their own professional advice on the tax implications of the Scheme for them based on their own specific circumstances.</p> <p>Further details as to the New Zealand and Australian tax consequences for Shareholders in relation to the Scheme are contained in Section 7 (Taxation Implications for Shareholders).</p>
What happens if the Scheme does not proceed?	<p>If the Scheme does not proceed:</p> <ul style="list-style-type: none"> <li>• you will retain your current holding of Embark Shares which will continue to trade on the NZX Main Board and ASX; and</li> <li>• the Board and management may consider other alternatives to the Scheme.</li> </ul>
What happens if the Scheme is approved, but the Delisting is not?	<p>In this event, the Scheme will proceed and you will hold shares in the New Listed Parent, which is expected to be listed on the ASX with a primary listing. The New Listed Parent will apply to NZX to be listed as an NZX Foreign Exempt Listing so that Shareholders will be able to trade the New Listed Parent Shares on the NZX Main Board.</p> <p>If the Scheme is implemented, as Embark will have a single shareholder (the New Listed Parent), it is expected that Embark will be delisted even where Shareholders have not approved the Delisting (on the basis that the New Listed Parent applying for an NZX Foreign Exempt Listing will give effect to the intent of Shareholders in this respect).</p>

Question	Answer
Who is an Eligible Shareholder?	<p>All Shareholders with an address in New Zealand or Australia recorded in Embark’s share register at 7:00pm on the Record Date will be Eligible Shareholders.</p> <p>In addition, based on the information available to Embark, you will be an Eligible Shareholder if you have an address recorded in Embark’s share register in one of the following jurisdictions at 7:00pm on the Record Date (subject to the qualifications described in Section 9):</p> <ul style="list-style-type: none"> <li>• Canada;</li> <li>• the European Union (excluding Austria) where (i) the Embark shareholder is a “qualified investor” (as defined in Article 2(e) of the Prospectus Regulation) or (ii) the number of other Embark shareholders is less than 150;</li> <li>• Hong Kong;</li> <li>• Singapore;</li> <li>• the United Kingdom; and</li> <li>• the United States of America.</li> </ul> <p>If you have an address recorded in Embark’s share register in one of the above jurisdictions (other than New Zealand) you should read Section 9 (Information for Shareholders Outside New Zealand) for more information specific to your jurisdiction.</p> <p>At Embark’s discretion, it may deem persons with an address recorded in Embark’s share register in other jurisdictions to be Eligible Shareholders.</p>
Can I choose to receive cash instead of New Listed Parent Shares?	<p>No, there is no option to choose to receive cash instead of New Listed Parent Shares.</p> <p>Shareholders who do not wish to receive New Listed Parent Shares may either:</p> <ul style="list-style-type: none"> <li>• sell their Embark Shares at any time prior to trading in Embark Shares being halted on the NZX Main Board and ASX in anticipation of the Implementation Date; or</li> <li>• sell their New Listed Parent Shares once they have commenced trading.</li> </ul> <p>You may incur brokerage in respect of any such sale.</p>
What if I am not an Eligible Shareholder?	<p>If you are not an Eligible Shareholder as at 7:00pm on the Record Date, you will not receive any New Listed Parent Shares, as it may be unlawful to issue Shares to you.</p> <p>Instead of New Listed Parent Shares, you will receive cash. The cash you receive will be the proceeds from the sale of New Listed Parent Shares you would have been entitled to receive had you been an Eligible Shareholder. Those shares will be held on trust for you by Pacific Custodians, a wholly owned subsidiary of Link Market Services, and sold on-market once New Listed Parent Shares have commenced trading (any brokerage costs and/or transaction fees associated with this sale will be paid by the New Listed Parent).</p>

Question	Answer
	<p>Pacific Custodians will appoint an Australian broking firm (as chosen by the New Listed Parent) to sell the relevant New Listed Parent Shares on-market and will liaise with Link Market Services to ensure that the proceeds of the sale are returned to the original Shareholder as soon as practicable following the Implementation Date.</p> <p>As New Listed Parent Shares of Ineligible Shareholders will be sold on-market (rather than those shares being purchased by the New Listed Parent), the purchase of these shares will not represent a cost to the New Listed Parent (other than any brokerage costs and/or transaction fees incurred in relation to the sale, which will be paid by the New Listed Parent but are not expected to be material).</p>
Will I need to make any payments to participate in the Scheme?	No.
What if I don't support the Scheme?	<p>A Shareholder who does not support the Scheme may:</p> <ul style="list-style-type: none"> <li>• sell their Embark Shares at any time prior to trading in Embark Shares being halted on the NZX Main Board and ASX;</li> <li>• vote against the Scheme at the Annual Meeting (although there are no other dissent or buy-out rights for Shareholders who do not support the Scheme); or</li> <li>• if they wish to do so, appear and be heard at the Application for Final Orders after filing in Court and serving upon Embark a notice of opposition and supporting documents (see Section 5 (Further Details of the Scheme)).</li> </ul>
Will other stakeholders be affected?	No.
What will the Embark Group look like after the Scheme and Delisting?	
What are the key differences between New Zealand and Australian law affecting Embark and the New Listed Parent?	Schedule 2 sets out a brief summary of the key differences between the laws relating to Embark as a New Zealand incorporated company listed on the NZX Main Board and the New Listed Parent as an Australian incorporated company listed on the ASX.
How will the Scheme affect the Board and governance arrangements?	<p>The current directors of Embark will sit on the board of the New Listed Parent on completion of the Scheme.</p> <p>More details, including profiles of the members of the New Listed Parent Board, are set out in Section 6 (What Will the Group Look Like After the Scheme and Delisting?).</p>
What will the New Listed Parent's share price be after the Scheme?	There is no certainty as to the price of the New Listed Parent's Shares after the Scheme.
What will be the New Listed Parent's dividend policy?	The New Listed Parent's dividend policy will, in all material respects, be the same as Embark's current dividend policy, which is available at <a href="https://embarkeducation.com.au/investor-relations/investor-information/">https://embarkeducation.com.au/investor-relations/investor-information/</a> .

Question	Answer
<b>Voting on the Scheme and Delisting</b>	
What are the voting thresholds?	<p>For the Scheme to proceed, the Scheme must be approved by:</p> <ul style="list-style-type: none"> <li>• a majority of 75% of the votes of Shareholders entitled to vote and voting on the Scheme Resolution; and</li> <li>• a majority (being more than 50%) of the votes of those Shareholders entitled to vote on the Scheme Resolution.</li> </ul> <p>Both of the above voting thresholds must be met for the Scheme Resolution to be approved.</p> <p>Embark considers it appropriate that shareholders form part of a single interest class, because each Eligible Shareholder (including any directors or their associates who hold Embark Shares) is treated in the same way under the Scheme and the arrangements in relation to Ineligible Shareholders are intended to put those persons into the same economic position as Eligible Shareholders.</p> <p>For the Delisting to proceed, the Delisting must be approved by a majority (being more than 50%) of the votes of those Shareholders entitled to vote on the resolution to approve the Delisting (regardless of whether they are cast).</p>
Who is entitled to vote on the Scheme and Delisting?	Shareholders as at 7:00pm on 2 June 2023 are entitled to vote on the Scheme and Delisting at the Annual Meeting.
When and where is the Annual Meeting?	The Annual Meeting will be held at 11:00am on Tuesday, 6 June 2023 at Link Market Services, Level 30, PwC Tower, 15 Customs Street West, Auckland, and via the Link Market Services Virtual Annual Meeting platform. Refer to the Notice of Meeting for further details.
What if I cannot attend the Annual Meeting in person?	Shareholders who cannot attend the Annual Meeting are strongly encouraged to submit a postal vote or appoint a proxy to attend and vote at the Annual Meeting on their behalf. Refer to the Notice of Meeting for further details.
If you have any further questions, it is recommended that you consult your financial, taxation or legal adviser before voting on the Scheme.	

## SECTION 5: FURTHER DETAILS OF THE SCHEME AND DELISTING

### How the Scheme will be effected

The process for giving effect to the Scheme is as follows:

- The New Listed Parent was incorporated as an Australian company, with a single ordinary share held by J47 Pty Ltd, a company associated with Chris Scott, the Managing Director of Embark.
- In exchange for each Embark Share held by each Eligible Shareholder on the Record Date, the New Listed Parent will issue to each Eligible Shareholder the same number of New Listed Parent Shares.
- At the same time as the exchange of shares, J47 Pty Ltd's ordinary share in the New Listed Parent will be bought back by the New Listed Parent for nil consideration and cancelled.
- Following the exchange of shares and the cancellation of J47 Pty Ltd's ordinary share, Eligible Shareholders will own New Listed Parent Shares, and the New Listed Parent will own all Embark Shares.
- New Listed Parent Shares will be quoted on the ASX, and Embark Shares will cease to be quoted on the NZX and ASX (as they will all be owned by the New Listed Parent).

J47 Pty Ltd is the sole shareholder of the New Listed Parent for administrative efficiency only and neither J 47 Pty Ltd nor Chris Scott will receive any consideration or benefit in connection with the Scheme or acting as the sole shareholder of the New Listed Parent, other than participating in the Scheme in the exact same manner as every other Eligible Shareholder of Embark.

Further detail is set out in Schedule 1, including the treatment of certain options on issue in relation to Embark. For the Scheme to proceed, the Scheme Resolution must first be approved by the requisite majority of Shareholders at the Annual Meeting. The Court must then grant the Final Court Orders. If the requisite majority of Shareholders vote in favour of the Scheme Resolution and the Final Court Orders are granted, the Scheme will be implemented and binding on all Shareholders, including those who did not vote or who voted against the Scheme Resolution.

There is a risk that the Court will refuse to grant the Final Court Orders or that the granting of the Final Court Orders is delayed, despite Shareholder approval. The Scheme cannot be implemented unless and until the Final Court Orders are granted.

### Costs of the Scheme

Embark and the New Listed Parent are expected to incur one-off direct costs of \$500,000 in relation to the Scheme, much of which has been necessary to incur prior to the time Shareholders vote at the Annual Meeting.

Assuming the Delisting is approved, the New Listed Parent expects that it will benefit from reduced ongoing overhead costs primarily as a result of shifting from being listed on two exchanges to a single exchange. The ongoing direct savings are not definitely known, but are expected to be

around \$50,000 per year (net of any expected increased costs). There is a risk that the ongoing costs to the New Listed Parent are higher than expected or the expected savings are not realised.

Embark is currently required to deduct New Zealand withholding tax at a rate of 5% to 15% on dividends paid to Australian tax resident Shareholders (depending on that Shareholder's interest in Embark), who hold the majority of Embark Shares, to the extent that these dividends are not fully imputed. This will be an issue for the Group's Australian sourced profits, which will not generate any imputation credits. While not a direct saving to the New Listed Parent, Australian tax resident holders of New Listed Parent Shares will benefit from New Zealand withholding tax not being required to be deducted from dividends paid by the New Listed Parent.

You can find further information about taxation in Section 7 (Taxation Implications For Shareholders), including a description of the circumstances in which Australian withholding tax will be deducted from dividends for New Zealand tax resident holders of New Listed Parent Shares.

### **Key conditions**

The key conditions for the Scheme to be implemented are:

- approval of the Scheme Resolution by Shareholders at the Annual Meeting;
- the provision of a "no objection" statement by the Takeovers Panel;
- ASX approving the admission of the New Listed Parent to the official list of the ASX and the New Listed Parent Shares for official quotation by the ASX (subject only to any conditions which ASX may reasonably require);
- the Australian Securities and Investments Commission granting relief to, in effect, deem the New Listed Parent to have been continuously quoted so that it can issue securities in reliance upon certain provisions of Australian law that enable reduced disclosure for the issuance of quoted securities; and
- New Zealand High Court approval of the Scheme through the granting of the Final Court Orders under the New Zealand Companies Act 1993;
- that the Scheme Implementation Agreement is not terminated prior to the Second Court Date.

All of these conditions must be satisfied for the Scheme to proceed.

### **Change in jurisdiction of the entity in which investors hold Shares**

As an Australian incorporated company, the New Listed Parent will not be subject to the Companies Act that Embark is currently subject to, and with which Shareholders are familiar.

This means that Shareholders wishing to take action to enforce the provisions of the New Listed Parent's Constitution, or Australian corporations or securities law as they relate to the New Listed Parent, will need to take action in the Australian courts, applying Australian law. Currently, Shareholders wishing to take action in relation to Embark need to bring that action before the New Zealand courts and under New Zealand law.

Schedule 2 sets out a summary of the key differences between the laws applying to Embark as a New Zealand incorporated company listed on the NZX Main Board and the laws applying to New Listed Parent as an Australian incorporated company listed on the ASX.

### **Delisting and NZX / ASX listings of the New Listed Parent**

Presently, Embark is listed on the NZX Main Board and on the ASX as a foreign exempt listing (which means that Embark need not separately comply with the majority of the ASX Listing Rules on the principle that it instead complies with the NZX Listing Rules).

If the Delisting is approved, Embark will be delisted from the NZX Main Board and ASX. In the event the Scheme is approved but the Delisting is not, the Scheme will proceed and Eligible Shareholders will hold shares in the New Listed Parent, which is expected to be listed on the ASX with a primary listing. The New Listed Parent will apply to NZX to be listed as an NZX Foreign Exempt Listing, enabling Shareholders to trade the New Listed Parent Shares on the NZX Main Board. If the New Listed Parent is admitted as an NZX Foreign Exempt listing, it will need to comply with the ASX Listing Rules, but will not need to separately comply with the majority of the NZX Listing Rules.

If the Scheme is implemented, as Embark will have a single shareholder (the New Listed Parent), it is expected that Embark will be delisted even where Shareholders have not approved the Delisting (on the basis that the New Listed Parent applying for an NZX Foreign Exempt Listing will give effect to the intent of Shareholders in this respect).

If the Scheme proceeds, it is intended that the New Listed Parent will apply to be listed on the ASX and trade under the ticker code "EVO" and its Shares will be listed and tradable on ASX on the Business Day following the Implementation Date.

An application will be made to ASX for the New Listed Parent to be admitted to the official list of ASX issuers and for New Listed Parent Shares to be granted official quotation on the financial market operated by ASX. ASX is not a registered market under the New Zealand Financial Markets Conduct Act 2013.

ASX takes no responsibility for the contents of this Notice of Meeting or for the merits of the Scheme to which this Notice of Meeting relates. Admission to the official list of ASX and quotation of New Listed Parent Shares on the ASX are not guaranteed and are not to be taken as an indication of the merits, or as an endorsement by ASX, of the Scheme, the New Listed Parent or New Listed Parent Shares.

The key conditions for the ASX listing to be implemented are:

- approval of the Scheme Resolution by Shareholders at the Annual Meeting; and
- following the lodgment of the ASX Appendix 1A (listing application), the ASX:
  - granting the following key confirmations and waivers, noting that on 28 April 2023, the ASX indicated that such waivers and confirmations are likely to be granted in response to an application for in-principle advice:
    - confirmation that the ASX will agree to accept an information memorandum for the purposes of satisfying Listing Rule 1.1 condition 3, on condition that the information memorandum complies with the requirements of Listing Rule 1.4 (other than Listing Rule 1.4.1);

- a waiver from Listing Rule 1.4.1 to the extent necessary to permit the New Listed Parent information memorandum (**Information Memorandum**) not to state that it contains all the information required under section 710 of the Corporations Act subject to the following conditions:
  - the Information Memorandum incorporates by reference the relevant sections of this Scheme Booklet.
  - New Listed Parent releases all of the documents incorporated into this Scheme Booklet by reference to the ASX as pre-quotations disclosure; and
  - New Listed Parent provides a statement to the ASX that Embark has confirmed to it that Embark was in compliance with the listings rules of the NZX Main Board at the time Embark ceased trading on ASX; and
- approving the admission of the New Listed Parent to the official list of the ASX and the New Listed Parent Shares for official quotation by the ASX (subject only to any customary conditions which ASX may reasonably require, including as related to pre-quotations disclosure).

All of these conditions must be satisfied for the ASX listing to proceed.

### **Holding statements**

Holding statements for New Listed Parent Shares issued to Eligible Shareholders under the Scheme will be sent as soon as practicable after the Implementation Date. Eligible Shareholders can confirm their shareholdings by contacting Link Market Services, whose contact details are set out in the Directory.

### **Selling New Listed Parent Shares on ASX and CHESS**

The New Listed Parent will apply to participate in CHESS in accordance with the ASX Settlement Operating Rules. CHESS is an automated transfer and settlement system for transactions in securities quoted on ASX under which transfers are effected in an electronic (i.e. paperless) form.

### **Court approved Scheme of Arrangement**

The Scheme is to be implemented by way of a Court approved scheme of arrangement under Part 15 of the Companies Act. Under Part 15, the High Court is empowered to make orders binding on Embark, Shareholders, the New Listed Parent and other affected parties. In accordance with the Initial Court Orders made by the High Court on 11 May 2023, Embark is required to convene a special meeting of Shareholders to consider the Scheme.

Embark has already commenced the Court process to obtain Final Court Orders. Provided the Scheme Resolution is passed by the requisite majority at the Annual Meeting and the other conditions required to implement the Scheme as set out in this Scheme Booklet are satisfied, Embark can seek the Final Court Orders.

The Final Court Orders will make the Scheme binding on Embark, the New Listed Parent, and Shareholders subject to its terms. A copy of the Initial Court Orders and Embark's application for Final Court Orders is available at <https://embarkeducation.com.au/investor-relations/>.

If you are a Shareholder or the holder of Options, you have the right to appear and be heard at the Final Court Hearing on the Scheme (proceeding CIV-2023-404-846), which is expected to occur at 10.00 am on 21 June 2023 at the High Court at Auckland.

To do so, you must file a notice of appearance or a notice of opposition in proceeding CIV-2023-404-846 (in either case containing an address for service), and any affidavits or memoranda of submissions on which you intend to rely, by 14 June 2023 and serve a copy on Embark at the offices of Chapman Tripp, Level 34, PwC Tower, 15 Customs Street West, Auckland 1010, New Zealand.

### **Takeovers Panel no objection statement**

Under the Companies Act, when exercising its discretion to approve a scheme of arrangement in relation to a code company, the Court must either be provided a statement from the Takeovers Panel indicating that the Takeovers Panel has no objection to the High Court making orders to approve the scheme or the Court must otherwise be satisfied that shareholders will not be adversely effected by the use of a scheme rather than the Takeovers Code to effect the transaction. Such a statement from the Takeovers Panel is commonly referred to as a “no objection statement”.

Embark has applied for a no objection statement. The Takeovers Panel will not issue a no objection statement until just before documents are filed for the Final Court Hearing in respect of the Scheme. This will be after the Annual Meeting.

In the meantime, the Takeovers Panel has provided Embark with a preliminary statement, called a “letter of intention”, of its views on the Scheme. In its letter of intention, the Takeovers Panel has indicated that it has formed an initial view, based on the information that has been provided to it, that it intends at this stage to issue a no objection statement in respect of the Scheme prior to the Final Court Hearing. The letter of intention was presented to the High Court before it made the Initial Court Orders.

The Takeovers Panel may consider an objection by a Shareholder or other interested party to the Scheme when determining whether to provide its “no objection statement”. Written objections can be submitted directly to the Takeovers Panel by email ([takeovers.panel@takeovers.govt.nz](mailto:takeovers.panel@takeovers.govt.nz)).

### **Role of the Takeovers Panel and High Court**

The fact that the Takeovers Panel has provided a letter of intention indicating that it does not intend to object to the scheme (or subsequently issues a no objection statement in respect of the Scheme), or that the High Court has ordered that a meeting of Shareholders be convened, does not mean that the Panel or the Court:

- has formed any view as to the merits of the Scheme or as to how Shareholders should vote (on this matter Shareholders must reach their own decision); or
- has prepared, or is responsible for the content of, the Scheme Booklet or any other material prepared in relation to the Scheme or the Delisting.

## SECTION 6: WHAT WILL THE GROUP LOOK LIKE AFTER THE SCHEME IS IMPLEMENTED?

### Board of Directors

Following implementation of the Scheme, and assuming Shareholders approve the appointment of all directors of Embark who are standing for election or re-election at the Annual Meeting, the New Listed Parent Board will comprise Hamish Stevens (Chair), Chris Scott (Managing Director), Kim Campbell and Renita Garard, all of whom are current members of the Board of Embark, as well as Michelle Thomsen, a new director nominee for Embark.

Biographies for these directors are set out below.



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#### **Hamish Stevens** – Independent Director and Chair of the Board

Hamish has held independent directorships on several boards since 2010 and is currently Chair of Pharmaco NZ and East Health Services, a director of Marsden Maritime Holdings, Northport, Radius Residential Care and Counties Energy. Prior to his governance career Hamish held senior finance positions with Heinz Watties, Tip Top Ice Cream and DB Breweries. Hamish is a qualified Chartered Accountant and is a Chartered Fellow of the Institute of Directors.

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#### **Chris Scott** – Managing Director and Executive Director (Non-Independent)

Chris Scott has over 39 years' experience in senior management positions. He has spent over 35 years in business in Singapore where he founded a number of successful businesses. Chris founded S8 Limited which listed on the ASX in 2001. S8 was an integrated travel Company that acquired 36 businesses over a 5 year period and was capitalised at \$700 million. S8 Limited was the subject of a successful takeover bid in late 2006. Chris was the Founder and, from 2010 to 2016, the Managing Director of ASX listed G8 Education which evolved into Australia's largest listed early education and child care provider. During this period, the G8 Education Limited portfolio grew from 38 to over 500 pre-school education centres in Australia (plus 20 in Singapore). Chris was also instrumental in raising over \$500 million in equity capital and more than \$500 million in debt (including Singapore dollar bonds). G8 Education's market capitalisation grew from \$4 million in 2010 to a peak of approximately \$1.9 billion.

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#### **Kim Campbell** – Independent Director, Chair of Remuneration and People Committee

Kim Campbell attended the University of Canterbury completing a Bachelor of Arts majoring in Geography. Kim was the CEO of the Employers & Manufacturers Association. Kim is currently a Director of Douglas Pharmaceuticals, Chair of Auckland Manufacturers Association and a Director of New Image International Limited and Novalab Systems Limited.

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**Renita Garard** – Non-Executive Director (Independent)

Renita has significant experience in financial governance, risk management and stakeholder engagement across various sectors including transport and infrastructure, financial services, health, education and training, and sport and events. Based in Queensland, Australia, Renita is currently the Managing Director of Aspire 2 Thrive Pty Ltd and a Director of Queensland Rugby Football League Limited, The Energy Collective Limited, Queensland Academy of Sport and 4 Aussie Heroes Foundation Limited. Renita is also the Chair of the Audit Committee of Townsville City Council. Renita is a Fellow of the Institute of Chartered Accountants of Australia and New Zealand (FCA) and received the Order of Australia medal in 1996. In addition to her accomplishments in business and governance, Renita is a successful athlete, captaining the Australian women's hockey team to the Olympic gold medal in 2000. Renita currently is a member of Embark's Audit and Risk Committee.

**Michelle Thomsen** – Non-Executive Director Nominee (Independent)

Michelle has significant experience as a legal counsel and practitioner.

An Australian citizen, Michelle has been the Group Executive, General Counsel of QIC since August 2018. In addition, Michelle was the Interim Chief Risk Officer of QIC from August 2020 to February 2021. Created in 1991 by the Queensland Government to serve its long-term investment responsibilities, QIC has grown into a leading long-term specialist manager in alternative investments. Immediately prior to her current role, Michelle was the Group Executive, Group General Counsel and Company Secretary of Bank of Queensland. Before that, Michelle was Executive General Manager, Associate General Counsel – Group Services at Suncorp Group and the Head of Legal, Australia/ New Zealand at Transpacific Industries Group Ltd. Michelle also has extensive experience as a legal practitioner in Australia and the United Kingdom.

Michelle graduated from Griffith University with Bachelor of Laws/ Bachelor of Commerce and is admitted as a solicitor in England, Wales, Queensland and New South Wales. She holds a current practising certificate in England and Wales and Queensland.

Michelle is an Audit and Risk Committee member of Queensland Rugby League and a Non-Executive Director of Engeny Water Management Pty Ltd and Chair of the HR and Remuneration Committee. Michelle was a Non-Executive Director of Queensland Rugby Union from July 2016 to July 2018.

**Employees**

On completion of the Scheme, all Group employees will remain employed by the Group under their existing employment arrangements.

**Group senior management team**

The Group senior management team comprises:

- the Managing Director, Chris Scott; and
- the Group Chief Financial Officer, Edmund Mah.

This senior management team will continue to oversee the operations of the Group following implementation of the Scheme.

## **Corporate Governance**

The New Listed Parent will have governance arrangements similar to those existing for Embark prior to the Scheme and Delisting, which are consistent with those required and expected of listed companies, including the ASX Listing Rules and the ASX Corporate Governance Principles and Recommendations. Information on Embark's current corporate governance arrangements and key policies can be found at <https://embarkededucation.com.au/investor-relations/investor-information/>. New Listed Parent will release a new corporate governance statement as part of pre-quotations disclosure on the ASX.

## **Board Remuneration**

The base fees payable to non-executive directors and executive directors of the Group will not change as a result of the Scheme.

## **Constitution**

The New Listed Parent has adopted a constitution that is appropriate for a company listed on the ASX.

The constitution of the New Listed Parent incorporates by reference the requirements of the ASX Listing Rules and requires the New Listed Parent to comply with the ASX Listing Rules for so long as the New Listed Parent Shares are quoted on the ASX.

A copy of the New Listed Parent's constitution can be found at <https://embarkededucation.com.au/investor-relations/investor-information/>

## SECTION 7: TAXATION IMPLICATIONS FOR SHAREHOLDERS

This Section comments, in summary, on the general taxation position of Shareholders in relation to the Scheme and Delisting. The information contained within this summary is of a general nature only. It does not constitute specific tax advice and should not be relied upon as such. Tax effects for Embark Shareholders may vary according to the taxpayer's own circumstances. We therefore strongly recommend that Embark Shareholders obtain their own independent taxation advice and assurance as to whether the comments in this summary are appropriate for their own particular circumstances and whether the views in this summary are current law at the time of participation in the Scheme.

These summary comments on the general Australian and New Zealand taxation positions of individual and corporate resident and non-resident Shareholders of Embark in relation to the Scheme. This Section does not purport to be a complete analysis, and is intended as a general guide to the New Zealand and Australian tax implications only. No information is specifically provided in relation to Shareholders in other jurisdictions. A Shareholder's tax residence status will affect how tax laws apply to the disposal of Shares under the Scheme and to the subsequent treatment of distributions from the New Listed Parent. Shareholders are advised to consult their own independent tax advisor regarding their residency status if there is any uncertainty.

The New Zealand tax comments included in this summary are based on provisions of the *Income Tax Act 2007*, the *Goods and Services Tax Act 1985* and the *Tax Administration Act 1994*. It also takes into account current tax rulings issued by Inland Revenue (**IR**) and current administrative practice in New Zealand. This outline does not otherwise take into account or anticipate changes in the law, whether by way of judicial decision or legislative action.

The Australian tax comments included in this summary are based on provisions of the *Income Tax Assessment Act 1936* (Cth) (**ITAA36**) and the *Income Tax Assessment Act 1997* (Cth) (**ITAA97**) (together, the **Tax Acts**) public taxation rulings and available case law current as at the date of this Scheme Booklet. Embark Shareholders should be aware that any changes (with either prospective or retrospective effect) to the Tax Acts, the interpretation thereof and public taxation rulings may affect the tax treatment of the Scheme as described in this summary. The law is complex and subject to change periodically as is its interpretation by the courts and the Australian Taxation Office (**ATO**).

Embark Shareholders should obtain their own independent taxation advice and assurance in respect of the availability of rollover relief pursuant to Division 615 of the ITAA97.

### New Zealand

This outline is relevant to persons who hold Embark Shares at the Record Date as capital assets for New Zealand income tax purposes. It does not apply to persons who:

- hold Embark Shares as trading stock;
- hold Embark Shares subject to special tax rules, such as banks, insurance companies, tax exempt organisations, dealers in securities, managed investment trusts or Portfolio Investment Entities (PIEs); or
- change their tax residency while holding Embark Shares.

## New Zealand tax resident Embark Shareholders

### (a) *Disposal of Embark Shares under the Scheme*

If the Scheme is approved, Shareholders will be treated as disposing of their Embark Shares as a result of the implementation of the Scheme.

New Zealand does not have a comprehensive capital gains tax. Provided that their Embark Shares are held on capital account for New Zealand tax purposes, New Zealand tax resident Shareholders should not be subject to tax on any gains derived on the disposal of their Embark Shares.

New Zealand tax resident Shareholders (**New Zealand Shareholders**) will hold their Embark Shares on revenue account, and therefore be subject to New Zealand income tax, if a Shareholder:

- is in the business of dealing in shares;
- acquired the Embark Shares as part of an undertaking or scheme carried out for the purpose of making a profit; or
- acquired the Embark Shares with the dominant purpose of selling them.

Shareholders who hold their Embark Shares on revenue account for tax purposes will not be treated as holding their Embark Shares on capital account.

As the Embark Shares are exchanged under the Scheme on a one-for-one basis for New Listed Parent Shares, Shareholders who hold their Embark Shares on revenue account will be treated as disposing of these Embark Shares for market value, and will be taxed on any gain at their marginal tax rates, subject to any applicable exemptions.

A Shareholder who holds Embark Shares on revenue account will likely be required to include any gain in a tax return for the tax year in which the disposal occurs.

### (b) *Subsequent disposal of New Listed Parent Shares*

The tax consequences on a subsequent disposal of New Listed Parent Shares by a New Zealand Shareholder will depend on whether the New Listed Parent Shares are held on capital or revenue account, and are as outlined above.

### (c) *Application of the New Zealand FIF and CFC rules*

Following implementation of the Scheme, New Zealand Shareholders will hold shares in the New Listed Parent, a company incorporated and tax resident in Australia and listed on the ASX.

An investment in the New Listed Parent will be subject to the New Zealand foreign investment fund (**FIF**) rules. Provided that five or fewer New Zealand Shareholders do not hold more than 50% of the New Listed Parent Shares, the controlled foreign company (**CFC**) rules will not apply.

New Zealand Shareholders should be treated as having an interest in a FIF, but should generally be exempt from attributing FIF income on the basis of an exemption for ASX listed companies. New Zealand Shareholders should continue to be taxed under the general New Zealand income tax rules in relation to dividends received from the New Listed Parent, and should be subject to tax on any gain on disposal of their New Listed Parent Shares if these shares are held on revenue account (as explained above).

New Zealand Shareholders should obtain independent advice on the application of the CFC and FIF rules to their shareholding.

*(d) Distributions received from the New Listed Parent*

Distributions from the New Listed Parent will generally be taxable as dividends for New Zealand tax purposes (unless the Shareholder is a company). Some distributions may not be taxable dividends, such as non-taxable bonus issues and certain returns of capital.

If dividends paid by the New Listed Parent to Shareholders are subject to Australian withholding tax, New Zealand Shareholders should be able to credit the amount of any Australian withholding tax against their New Zealand income tax liability. If the New Listed Parent attaches franking credits to dividends, New Zealand Shareholders will not be able to use these franking credits to reduce their assessable income in New Zealand.

If a distribution is received in a currency other than New Zealand dollars (e.g. Australian dollars), the amount included in New Zealand assessable income is to be translated into New Zealand dollars generally at the exchange rate applicable on the day the dividend is paid.

Non-resident Embark Shareholders (including Australia)

*(a) Disposal of Embark Shares under the Scheme - New Zealand tax implications*

Shareholders who are not tax resident in New Zealand (**Non-New Zealand Shareholders**) will be treated as disposing of their Embark Shares for market value. Non-New Zealand Shareholders who hold their Embark Shares on capital account for tax purposes will not be subject to New Zealand tax on any gain.

Non-New Zealand Shareholders who hold their Embark Shares on revenue account for tax purposes and who are resident in a country that has a Double Tax Agreement (**DTA**) with New Zealand (such as Australia, Canada and the United States) may qualify for an exemption from New Zealand tax under the relevant DTA if their Embark Shares are not held as part of a business they carry on in New Zealand through a permanent establishment in New Zealand.

Non-New Zealand Shareholders who hold their Embark Shares on revenue account for New Zealand tax purposes and who are not resident in a country that has a DTA with New Zealand will be liable for New Zealand income tax on any gain on disposal of their Embark Shares.

*(b) Subsequent disposal of New Listed Parent Shares - New Zealand tax implications*

A disposal of New Listed Parent Shares subsequent to the Scheme by Australian and Non-New Zealand Shareholders should not be taxable in New Zealand.

Goods and Services Tax (GST)

No New Zealand GST should apply to the disposal of the Embark Shares or the acquisition of New Listed Parent Shares under the Scheme, or to any subsequent disposal of New Listed Parent Shares.

Stamp duty and gift duty

New Zealand does not impose any stamp or gift duty.

## Australia

The following summary is intended for Embark Shareholders that hold their Embark Shares on capital account for income tax purposes (namely their Embark Shares are capital gains tax (**CGT**) assets for income tax purposes).

This summary does not address the position of Embark Shareholders who:

- hold their Embark Shares as a revenue asset (e.g. trading entities or entities who acquired their Embark Shares for the purpose of resale at a profit) or as trading stock for Australian income tax purposes;
- hold any other interests in Embark (such as Options);
- are subject to the provisions in Division 230 of the ITAA97 in relation to gains or losses on the Embark Shares;
- are temporary residents for the purposes of Australian income tax law;
- are non-residents of Australia for Australian income tax purposes that hold their Embark Shares in carrying on a business at or through a permanent establishment in Australia; or
- are financial institutions, insurance companies, partnerships, tax exempt organisations, dealers in securities, managed investment trusts or Portfolio Investment Entities (**PIEs**), or Embark Shareholders who changed their tax residency while holding the Embark Shares and are subject to special tax rules.

Embark Shareholders that are tax residents of a country other than Australia (whether or not they are also residents, or are temporary residents, of Australia for income tax purposes) should take into account the tax consequences of the Scheme under the laws of their country of residence, as well as under Australian law. Shareholders are advised to consult their own independent tax advisor regarding their residency status.

This summary has been prepared on the basis that the Embark Directors are of the view that the Embark Shares are not:

- taxable Australian property by reason of the fact that Embark's underlying value is not principally derived from Australian real property; or
- subject to deferred taxation under Division 83A of the ITAA97 or former Division 13A of Part III of the ITAA36.

Embark Shareholders should obtain their own independent taxation advice and assurance in respect of the availability of rollover relief pursuant to Division 615 of the ITAA97.

### Australian tax resident Embark Shareholders

#### (a) *Capital gains tax implications*

Shareholders will dispose of all their Embark Shares to the New Listed Parent as a result of the implementation of Scheme upon approval. In exchange for each Embark Share held by each Embark Shareholder, the New Listed Parent will issue each Eligible Shareholder the same number of New Listed Parent Shares. The disposal of the Embark Shares will constitute a CGT event for

Embark Shareholders (namely CGT Event A1). This CGT event will occur on the Implementation Date.

The tax implications for the Shareholders who are residents of Australia for income tax purposes from the disposal of their Embark Shares will depend upon their taxpayer status (e.g. whether they are an individual, company or the trustee of a trust) and the cost base of their Embark Shares. The circumstances in which rollover relief may be available to the Eligible Shareholders to defer a capital gain arising from the exchange of Embark Shares in the New Listed Parent are outlined below. Rollover relief is expected to be available for Australian resident Shareholders who hold their Embark Shares on capital account.

For completeness, rollover relief should not be available for the Ineligible Shareholders on the basis that no New Listed Parent Shares will be issued to the Ineligible Shareholders.

If rollover relief is not available for a Shareholder, the Shareholder will make a capital gain on the disposal of an Embark Share if the capital proceeds received for that Embark Share exceeds the cost base of that Embark Share. The capital proceeds will be the market value (calculated as at the Implementation Date) of the New Listed Parent Share received in exchange for that Embark Share. As noted below, rollover relief is expected to be available for Australian resident Shareholders who hold their Embark Shares on capital account.

A Shareholder will make a capital loss if the capital proceeds are less than the reduced cost base of their Embark Shares. Embark Shares acquired in different transactions may have different cost bases and reduced cost bases and therefore capital gains may arise in respect of some Embark Shares, while capital losses may arise in respect of other Embark Shares. The cost base of each Embark Share, and any arising capital gain or loss, will depend on the individual circumstances of each Embark Shareholder.

Capital gains and capital losses of a taxpayer in a year of income from all sources are aggregated together with any unapplied net capital loss from prior years, to determine if the taxpayer has made a net capital gain. If a Shareholder makes a net capital gain for the year, they will be entitled to benefit from the CGT discount concession if:

- the Shareholder has beneficially owned the Embark Share for at least 12 months at the Implementation Date; and
- the Shareholder is an individual, the trustee of a trust, or a complying superannuation entity.

Should the CGT discount concession apply, a Shareholder will be entitled to reduce their capital gain realised on disposal of their Embark Shares by 50% (for individuals and trusts) or 33.33% (for complying superannuation entities). The CGT discount concession is applied only after available capital losses have been applied to reduce the capital gain. The CGT discount concession will not be available to a Shareholder that is a company.

Any net capital gain for the year after the application of any CGT discount concession is included in the taxpayer's assessable income and is subject to income tax at the taxpayer's marginal tax rate.

Net capital losses may not be deducted against other income for income tax purposes, but may be carried forward to offset against capital gains derived in future income years. Specific loss rules apply to Shareholders that are companies. These rules may limit the ability to offset capital losses in a current or later income year.

(b) *Rollover relief*

Broadly, the rollover pursuant to Division 615 of the ITAA97 enables shareholders of a company to disregard a company gain or capital loss from a share that is either disposed of, or redeemed or cancelled, as part of a re-organisation of the affairs of the company, where the shareholders become the owners of new shares in another company in exchange.

Embark has obtained advice from its Australian tax advisors that confirms the availability for rollover relief for Eligible Shareholders under Division 615 of the ITAA97. Embark has decided not to apply to the Commissioner of Taxation for a Class Ruling in relation to the availability of rollover relief. Embark Shareholders should obtain their own independent taxation advice and assurance in respect of the availability of rollover relief pursuant to Division 615 of the ITAA97.

Rollover relief will only be available where Eligible Shareholders and the New Listed Parent make a choice for this rollover relief to apply. In this respect:

- The New Listed Parent will make a choice for rollover relief to apply for Eligible Shareholders (as required by section 615-30 of the ITAA97); and
- Embark Shareholders who wish to choose to obtain the rollover do not need to lodge any written election – generally the choice is demonstrated by not including a capital gain or loss in respect of the share for share exchange in their tax return.

Where a Shareholder chooses to obtain rollover relief:

- any capital gain made as a result of the exchange of Embark Shares for New Listed Parent Shares is disregarded;
- the first element of the cost base of the New Listed Parent Share acquired in the exchange is the cost base of the Embark Share for which rollover relief is obtained; and
- the date of acquisition of the New Listed Parent Share for CGT purposes is taken to be the date of acquisition of the Embark Share (e.g. for the purposes of determining if the CGT discount is available for a later disposal of the New Listed Parent Share).

Non-resident Embark Shareholders (including New Zealand)

(a) *Calculation of capital gain or loss*

Embark Shareholders who are not residents of Australia for income tax purposes and do not hold their Embark Shares through a permanent establishment in Australia should be able to disregard any capital gain or capital loss that would otherwise arise from the disposal of their Embark Shares.

While Australian tax law applies in certain circumstances to tax a non-resident on the disposal of interests in an Australian company, this will only occur where the Shareholder, together with their associates, own at least 10% of the Australian company and more than 50% of the market value of the company's underlying assets is referable to direct or indirect interests in Australian real property. The Embark Directors are of the view that, as at the date of this Scheme Booklet, the interests Embark holds in real property does not exceed 50% of the value of Embark's total assets, and the Embark Directors expect that this will remain the position as at the Implementation Date. If that does remain the position at the Implementation Date, these provisions will not apply.

Non-resident Shareholders should also consider the taxation implications of the disposal of their Embark Shares in their territory of residence.

*(b) Foreign resident capital gains withholding (FRCGW)*

The FRCGW regime can impose a 12.5% 'withholding' obligation (calculated by reference to the purchase price) on the purchasers of certain assets (including shares which are 'indirect Australian real property interests' as defined in the income tax legislation) in certain circumstances.

On the basis that less than 50% of the market value of Embark's assets is attributable to direct and indirect interests in 'taxable Australian real property' (as defined in the income tax legislation), the FRCGW regime should not apply to the New Listed Parent's acquisition of Embark Shares from an Embark Shareholder.

Certain Australian income tax implications from holding and dealing in New Listed Parent Shares

The following comments only apply to holders of New Listed Parent Shares who are residents of Australia for Australian income tax purposes and hold their New Listed Parent Shares on capital account for Australian income tax purposes. The following comments only consider the Australian income tax treatment for these shareholders in relation to:

- dividends paid in respect of the New Listed Parent Shares; and
- future disposal of the New Listed Parent Shares.

We strongly recommend holders of New Listed Parent Shares to seek their own independent tax advice in relation to the Australian and foreign taxation implications of New Listed Parent Shares reflecting their own circumstances.

*(a) Dividends received by holder of New Listed Parent Shares*

*Australian tax resident Embark Shareholders*

Holders of New Listed Parent Shares may receive dividends from the New Listed Parent. Holders of New Listed Parent Shares that are Australian tax residents should be assessed on the amount of the dividends received, together with any franking credit attached to the dividend.

Where the franking credit is included in the New Listed Parent Shareholder's assessable income, the New Listed Parent Shareholder will generally be entitled to a corresponding tax offset. To be eligible for the franking credit and tax offset, New Listed Parent Shareholders must have held the New Listed Parent Shares at risk for a period of at least 45 days (not including the date of acquisition or the date of disposal) and free of any related payment obligations. A New Listed Parent Shareholder may not be taken to have held New Listed Parent Shares at risk where the New Listed Parent Shareholder or an associate holds a position (such as an option or other hedging arrangement) which materially diminishes the risks of loss or opportunity for gain in respect of those New Listed Parent Shares.

The holding period rule will not apply to a New Listed Parent Shareholder who is an individual whose tax offset entitlement (for all franked distributions received in the income year) does not exceed \$5,000 for the income year in which the franked dividend from the New Listed Parent is received.

Under current law, where the New Listed Parent Shareholder is an Australian tax resident individual, complying superannuation entity, or registered charity (in certain circumstances) and satisfies the

above requirements, the New Listed Parent Shareholder will generally be entitled to a refund of tax to the extent that the franking credit attached to the New Listed Parent Shareholder's dividends exceeds the New Listed Parent Shareholder's income tax liability for the relevant income year.

A Shareholder is not obliged to quote a tax file number (**TFN**), or where relevant, Australian Business Number (**ABN**), to the Company. However, if a TFN or ABN is not quoted and no exemption is applicable, income tax is required to be deducted by the Company at the highest marginal rate (currently 45%) plus Medicare levy (currently 2%) from certain dividends paid. The withholding requirement does not apply to the franked part (if any) of a dividend paid by the New Listed Parent.

*Non-resident Embark Shareholders (including New Zealand)*

Dividends paid to a non-resident of Australia should not be subject to Australian dividend withholding tax to the extent that the dividends have been franked or, if unfranked, the dividends have been declared to be conduit foreign income.

To the extent that a dividend is unfranked and has not been declared to be conduit foreign income, Australian dividend withholding tax will be required to be withheld by the Company on behalf of the non-Australian tax resident investor at a rate not exceeding 30%. Dividend withholding tax may be reduced under an applicable double taxation treaty Australia has with certain treaty countries.

*(b) Future disposal of New Listed Parent Shares*

Where a Shareholder of New Listed Parent Shares sells, transfers, or otherwise disposes of the New Listed Parent Shares to a third party, this should give rise to a CGT event for the holder of the New Listed Parent Shares.

The shareholder should realise a capital gain to the extent that the capital proceeds in respect of the CGT event exceed their cost base in the New Listed Parent Shares.

A shareholder should make a capital loss if the capital proceeds are less than the reduced cost base of their New Listed Parent Shares. New Listed Parent Shares acquired in different transactions may have different cost bases and reduced cost bases and therefore capital gains may arise in respect of some New Listed Parent Shares, while capital losses may arise in respect of other New Listed Parent Shares. The cost base of each New Listed Parent Share, and any arising capital gain or loss, will depend on the individual circumstances of each New Listed Parent shareholder.

To the extent that the Shareholder of the New Listed Parent Shares chooses Division 615 rollover in respect of the original exchange of the Embark Shares for New Listed Parent Shares, the cost base and reduced cost base for those New Listed Parent Shares should reflect the appropriate portion of the cost base and reduced cost base of the Embark Shares.

Capital gains and capital losses of a taxpayer in a year of income from all sources are aggregated together with any unapplied net capital loss from prior years, to determine if the taxpayer has made a net capital gain. If a Shareholder makes a net capital gain for the year, they will be entitled to benefit from the CGT discount concession if:

- the Shareholder has beneficially owned the New Listed Parent Share for at least 12 months at the relevant date; and
- the Shareholder is an individual, the trustee of a trust, or a complying superannuation entity.

Should the CGT discount concession apply, a Shareholder will be entitled to reduce their capital gain realised on disposal of their New Listed Parent Shares by 50% (for individuals and trusts) or 33.33% (for complying superannuation entities). The CGT discount concession is applied only after available capital losses have been applied to reduce the capital gain. The CGT discount concession will not be available to a Shareholder that is a company.

Any net capital gain for the year after the application of any CGT discount concession is included in the taxpayer's assessable income and is subject to income tax at the taxpayer's marginal tax rate.

Where Division 615 rollover relief applies to the exchange of the Embark Shares for New Listed Parent Shares, the New Listed Parent Shares will be treated for CGT discount purposes as having been acquired on the same date as the original Embark Shares.

Net capital losses may not be deducted against other income for income tax purposes, but may be carried forward to offset against capital gains derived in future income years. Specific loss rules apply to Shareholders that are companies. These rules may limit the ability to offset capital losses in a current or later income year.

#### Stamp duty

There should not be stamp duty (including landholder duty) payable by Embark Shareholders on the disposal of their Embark Shares under the Scheme.

#### Goods and services tax

No GST should be payable by Embark Shareholders on the disposal of Embark Shares under the Scheme. The acquisition and disposal of shares in a company is a financial supply which is an input taxed supply and therefore not subject to GST. The acquisition of shares in a company is also not a creditable acquisition for GST purposes.

## SECTION 8: INFORMATION EQUIVALENT TO SCHEDULE 1 AND 2 OF THE TAKEOVERS CODE

The information in this Section contains information, to the extent applicable, equivalent to the information that would be provided in a takeover offer document in accordance with Schedule 1 and 2 of the Takeovers Code.

### 8.1 New Listed Parent and its directors

The name and postal address of the New Listed Parent is Embark Early Education Limited, Suite 102, Level 1, M1 Connect Business Hub, 120-122 Siganto Drive, Helensvale, Queensland 4212, Australia. The electronic address of the New Listed Parent is [info@embarkeducation.com.au](mailto:info@embarkeducation.com.au).

The directors of the New Listed Parent are the same as Embark, as outlined in Section 6.

The sole shareholder of the New Listed Parent is J47 Pty Ltd, a company associated with Chris Scott, the Managing Director of Embark.

### 8.2 Ownership of equity securities of Embark

The table below sets out the number and the percentage of Embark Shares held or controlled by each director of Embark or their associates as at 17 May 2023. Such directors will receive New Listed Parent Shares on the same terms as all other Shareholders.

No other director or their Associates (as defined in the Takeovers Code) holds or controls any equity securities of Embark.

Name	Number of Embark Shares held or controlled	Percentage of total Embark Shares
Chris Scott	26,227,514	16.438%
Kim Campbell	3,750	0.002%
Adrian Fonseca	2,156,250	1.351%

### 8.3 Arrangements between Embark and the New Listed Parent

Embark and the New Listed Parent entered into the Scheme Implementation Agreement dated 26 April 2023. Under the Scheme Implementation Agreement, Embark agreed to propose a Scheme of Arrangement between Embark, the New Listed Parent and Embark's Shareholders as outlined in this Scheme Booklet. As the Scheme is effectively an internal corporate restructure and re-domicile of Embark without an effective change in control of Embark, the Scheme Implementation Agreement does not contain the customary warranties, undertakings and indemnities that would be usual for an agreement of this nature.

As Embark is responsible for proposing the Scheme, Embark has incurred certain external costs in connection with the Scheme.

#### **8.4 Pre-emption clauses in Embark's constitution**

There is no restriction on the right to transfer equity securities to which the Scheme relates contained in the constitution of Embark which has the effect of requiring the holders of the securities to offer the securities for purchase to Shareholders of Embark or to any other person before transferring the securities.

#### **8.5 No escalation clause**

There is no agreement or arrangement (whether legally enforceable or not) under which any existing holder of equity securities in Embark will or may receive in relation to, or as a consequence of, the Scheme any additional consideration or other benefit over and above the consideration under the Scheme, or any prior holder of equity securities in Embark will or may receive any consideration or other benefit as a consequence of the Scheme.

#### **8.6 Equity securities of Embark and New Listed Parent**

Embark has 159,549,484 Embark Shares on issue. All Embark Shares are fully paid and their terms of issue do not impose any liability on Shareholders to Embark.

Subject to certain conditions in the constitution of Embark and the NZX Listing Rules and ASX Listing Rules, each Embark Share confers upon the holder the right to:

- an equal share in dividends authorised by the Board;
- an equal share in the distribution of surplus assets on liquidation of Embark;
- participate in certain further issues of equity securities by Embark; and
- cast one vote on a show of hands or cast one vote per share on a poll, at a meeting of Shareholders on any resolution, including a resolution to:
  - appoint or remove a director or auditor;
  - alter Embark's constitution;
  - approve a major transaction;
  - approve an amalgamation involving Embark; and
  - put Embark into liquidation.

Each share to be issued in the New Listed Parent will be issued fully paid, without imposing liability on its holder to the New Listed Parent and will confer upon its holder comparable rights to those outlined above (although under the Corporations Act, there is no shareholder approval requirement for major transactions or to put a company into liquidation). Further details of the rights attaching to the shares to be issued in the New Listed Parent and other differences between New Zealand and Australian law applicable to Shareholders are set out in Schedule 2 to this Scheme Booklet.

In addition, as at the date of this document, Embark has 1,250,000 options on issue granted to Timothy Wong (*TW*), the former New Zealand CEO of Embark, each of which grants TW the right to be issued one ordinary share in Embark with an exercise price of \$1.20 per

share and with a termination date of 31 December 2023. Under the Scheme Plan, as explained in more detail in Schedule 1, the options in Embark will be cancelled and replacement options in New Listed Parent issued to TW on materially identical terms.

## **8.7 Financial information**

Copies of Embark's most recent annual report (for the year ended 31 December 2022) and Embark's annual report for the preceding year (for the year ended 31 December 2021) are available on Embark's website at <https://embarkeducation.com.au/investor-relations/investor-information>.

Each person who is eligible to vote on the Scheme is also entitled to obtain from Embark a copy of these annual reports, free of charge, by making a written request to:

Suite 102, Level 1, M1 Connect Business Hub  
120-122 Siganto Drive  
Helensvale, Queensland 4212  
Australia

Email: [info@embarkeducation.com.au](mailto:info@embarkeducation.com.au)

There have not been any material changes in the financial or trading position, or prospects, of Embark since the most recent annual report was prepared and sent to Shareholders.

Any full year or half year financial results made publicly available by Embark or the New Listed Parent subsequent to the publication of Embark's annual report for the year ended 31 December 2022 but prior to the Implementation Date will also be made available on Embark's website at <https://embarkeducation.com.au/investor-relations/investor-information>.

## **8.8 Asset valuations**

No information provided in this Scheme Booklet refers to a valuation of any asset of Embark.

## **8.9 Prospective financial information**

This Scheme Booklet does not refer to any prospective financial information about Embark or the New Listed Parent.

## **8.10 Other information**

The directors of Embark are not aware of any additional information, which is not required to be disclosed elsewhere in this Scheme Booklet, that could reasonably be expected to be material to Shareholders when making a decision to vote for, or against, the Scheme Resolution.

## **8.11 Board approval of this Scheme Booklet**

The contents of the Scheme Booklet have been approved by the Board.

## **SECTION 9: INFORMATION FOR SHAREHOLDERS OUTSIDE NEW ZEALAND AND AUSTRALIA**

No action has been taken to register or qualify the New Listed Parent Shares or otherwise permit a public offering of such securities in any jurisdiction outside New Zealand and Australia.

All Shareholders with an address recorded in Embark's share register in New Zealand or Australia at 7:00pm on the Record Date will be Eligible Shareholders.

In addition, based on the information available to Embark, Shareholders with an address recorded in the Embark share register at 7:00pm on the Record Date as being in the following jurisdictions will be entitled to receive the Scheme Booklet and have New Listed Parent Shares issued to them pursuant to the Scheme (subject to the qualifications, if any, set out below in respect of that jurisdiction):

- Canada;
- the European Union (excluding Austria) where (i) the Embark shareholder is a "qualified investor" (as defined in Article 2(e) of the Prospectus Regulation) or (ii) the number of other Embark shareholders is less than 150;
- Hong Kong;
- Singapore;
- the United Kingdom;
- the United States of America; and
- any other person or jurisdiction in respect of which Embark reasonably believes that it is not prohibited and not unduly onerous or impractical to implement the Scheme and to issue New Listed Parent Shares to a Shareholder with an address recorded in the Embark share register at 7:00pm on the Record Date in such jurisdiction.

Nominees, custodians and other Shareholders who hold Embark Shares on behalf of a beneficial owner resident outside New Zealand, Australia, Canada, Hong Kong, Singapore, the United Kingdom and the United States of America may not forward this Scheme Booklet (or accompanying documents) to anyone outside these countries without the consent of Embark, except nominees and custodians may forward the Scheme Booklet to any beneficial shareholder in the European Union (excluding Austria) who is a "qualified investor" (as defined in Article 2(e) of the Regulation (EU) 2017/1129 of the European Parliament and the Council of the European Union).

This Notice of Meeting and the Scheme does not constitute an offer of Embark Shares in any jurisdiction in which it would be unlawful. In particular, this Notice of Meeting may not be distributed to any person, and New Listed Parent Shares may not be offered or sold, in any country outside New Zealand and Australia except to the extent provided below.

### **Canada**

The New Listed Parent Shares will be issued by the New Listed Parent in reliance upon exemptions from the prospectus and registration requirements of the applicable Canadian securities law in each province and territory of Canada.

No securities commission in Canada has reviewed or in any way passed upon this document or the merits of the Scheme.


### European Union

This Scheme Booklet is not a prospectus under Regulation (EU) 2017/1129 of the European Parliament and the Council of the European Union (the "Prospectus Regulation"). Therefore, the Scheme Booklet has not been, and will not be, registered with or approved by any securities regulator or supervisory authority in the European Union. Accordingly, this Scheme Booklet may not be made available, nor may the New Listed Parent Shares be offered for sale or exchange, in the European Union except in circumstances that do not require the obligation to publish a prospectus under the Prospectus Regulation.

In accordance with Article 1(4) of the Prospectus Regulation, an offer of New Listed Parent Shares in each member state of the European Union is limited:

- to persons who are "qualified investors" (as defined in Article 2(e) of the Prospectus Regulation);
- to fewer than 150 other natural or legal persons (excluding France); and
- in any other circumstance falling within Article 1(4) of the Prospectus Regulation.

Investors in the Netherlands should note:

<p><b>Attention! This investment falls outside AFM supervision.</b></p> <p><b>No prospectus required for this activity.</b></p>	
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### Hong Kong

**WARNING:** The contents of this Scheme Booklet have not been reviewed or approved by any regulatory authority in Hong Kong. You are advised to exercise caution in relation to the Scheme. If you are in any doubt about any of the contents of this Scheme Booklet, you should obtain independent professional advice.

This Scheme Booklet does not constitute an offer or invitation to the public in Hong Kong to acquire or subscribe for or dispose of any securities. This Scheme Booklet also does not constitute a prospectus (as defined in section 2(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32 of the Laws of Hong Kong)) or notice, circular, brochure or advertisement offering any securities to the public for subscription or purchase or calculated to invite such offers by the public to subscribe for or purchase any securities, nor is it an advertisement, invitation or document containing an advertisement or invitation falling within the meaning of section 103 of the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong).

Accordingly, unless permitted by the securities laws of Hong Kong, no person may issue or cause to be issued this Scheme Booklet in Hong Kong, other than to persons who are "professional investors" (as defined in the Securities and Futures Ordinance and any rules made thereunder) or in other circumstances that do not constitute an offer to the public within the meaning of the Companies (Winding Up and Miscellaneous Provisions) Ordinance.

No person may issue or have in its possession for the purposes of issue, this Scheme Booklet or any advertisement, invitation or document relating to these securities, whether in Hong Kong or

elsewhere, which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than any such advertisement, invitation or document relating to securities that are or are intended to be disposed of only to persons outside Hong Kong or only to professional investors.

Copies of this Scheme Booklet may be issued to a limited number of persons in Hong Kong in a manner that does not constitute any issue, circulation or distribution of this Scheme Booklet, or any offer or an invitation in respect of these securities, to the public in Hong Kong. This Scheme Booklet is for the exclusive use of Embark Shareholders in connection with the Scheme. No steps have been taken to register or seek authorisation for the issue of this Scheme Booklet in Hong Kong.

This Scheme Booklet is confidential to the person to whom it is addressed and no person to whom a copy of this Scheme Booklet is issued may issue, circulate, distribute, publish, reproduce or disclose (in whole or in part) this Scheme Booklet to any other person in Hong Kong or use for any purpose in Hong Kong other than in connection with consideration of the Scheme by Embark Shareholders.

### **Singapore**

This Scheme Booklet and any other document relating to the Scheme have not been, and will not be, registered as a prospectus with the Monetary Authority of Singapore and the Scheme is not regulated by any financial supervisory authority in Singapore. Accordingly, statutory liabilities in connection with the contents of prospectuses under the Securities and Futures Act 2001 (the "SFA") will not apply.

This Scheme Booklet and any other document relating to the Scheme may not be made the subject of an invitation for subscription, purchase or receipt, whether directly or indirectly, to persons in Singapore except pursuant to exemptions in Subdivision (4) Division 1, Part 13 of the SFA, including the exemption under section 273(1)(c) of the SFA, or otherwise pursuant to, and in accordance with the conditions of, any other applicable provisions of the SFA.

Any offer is not made to you with a view to New Listed Parent Shares being subsequently offered for sale to any other party in Singapore. You are advised to acquaint yourself with the SFA provisions relating to on-sale restrictions in Singapore and comply accordingly.

This Scheme Booklet is being furnished to you on a confidential basis and solely for your information and may not be reproduced, disclosed, or distributed to any other person. Any investment referred to in this Scheme Booklet may not be suitable for you and it is recommended that you consult an independent investment advisor if you are in doubt about such investment.

Neither Embark nor the New Listed Parent is in the business of dealing in securities or holds itself out, or purports to hold itself out, to be doing so. As such, Embark and the New Listed Parent are neither licensed nor exempted from dealing in securities or carrying out any other regulated activities under the SFA or any other applicable legislation in Singapore.

### **United Kingdom**

Neither this Scheme Booklet nor any other document relating to the Scheme has been delivered for approval to the Financial Conduct Authority in the United Kingdom and no prospectus (within the meaning of section 85 of the Financial Services and Markets Act 2000, as amended ("FSMA")) has been published or is intended to be published in respect of the New Listed Parent Shares.

This Scheme Booklet does not constitute an offer of transferable securities to the public within the meaning of the UK Prospectus Regulation or the FSMA. Accordingly, this Scheme Booklet does not constitute a prospectus for the purposes of the UK Prospectus Regulation or the FSMA.

Any invitation or inducement to engage in investment activity (within the meaning of section 21 FSMA) received in connection with the issue or sale of the New Listed Parent Shares has only been communicated or caused to be communicated and will only be communicated or caused to be communicated in the United Kingdom in circumstances in which section 21(1) FSMA does not apply to Embark.

In the United Kingdom, this Scheme Booklet is being distributed only to, and is directed at, persons (i) who fall within Article 43 (members of certain bodies corporate) of the Financial Services and Markets Act 2000 (Financial Promotions) Order 2005, or (ii) to whom it may otherwise be lawfully communicated (together "relevant persons"). The investments to which this Scheme Booklet relates are available only to, and any invitation, offer or agreement to purchase will be engaged in only with, relevant persons. Any person who is not a relevant person should not act or rely on this Scheme Booklet.

### **United States**

Embark and the New Listed Parent intend to rely on an exemption from the registration requirements of the US Securities Act of 1933 provided by Section 3(a)(10) thereof in connection with the consummation of the Scheme and the issuance of New Listed Parent Shares. Approval of the Scheme by a New Zealand court will be relied upon by Embark and AUS Top-HatCo for purposes of qualifying for the Section 3(a)(10) exemption.

US Shareholders of Embark should note that the Scheme is made for the securities of a New Zealand company in accordance with the laws of New Zealand and the listing rules of the NZX Main Board. The Scheme is subject to disclosure requirements of New Zealand that are different from those of the United States.

It may be difficult for you to enforce your rights and any claim you may have arising under US federal securities laws since Embark and the New Listed Parent are located, respectively, in New Zealand and Australia and most of their respective officers and directors reside outside the United States. You may not be able to sue Embark, the New Listed Parent or their respective officers or directors in New Zealand or Australia for violations of the US securities laws. It may be difficult to compel Embark and its affiliates to subject themselves to a US court's judgment.

The Scheme Booklet has not been filed with or reviewed by the US Securities and Exchange Commission or any state securities authority and none of them has passed upon or endorsed the merits of the Scheme or the accuracy, adequacy or completeness of the Scheme Booklet. Any representation to the contrary is a criminal offence.

The New Listed Parent Shares to be issued pursuant to the Scheme have not been, and will not be, registered under the US Securities Act or the securities laws of any US state or other jurisdiction. The Scheme is not being made in any US state or other jurisdiction where it is not legally permitted to do so.

## GLOSSARY

**Annual Meeting** means the annual meeting of Shareholders to be held at 11:00am on Tuesday, 6 June 2023 at the offices of Link Market Services, Level 30, PwC Tower, 15 Customs Street West, Auckland, and via Link Market Services Virtual Annual Meeting platform at [www.virtualmeeting.co.nz/evo23](http://www.virtualmeeting.co.nz/evo23), or any adjournment thereof.

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

**Board** means the board of directors of Embark.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are generally open in Auckland, New Zealand, and Brisbane, Australia, for normal business.

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

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

**Court** and **High Court** mean the High Court of New Zealand.

**Delisting** means the proposed delisting of Embark from the NZX Main Board and the ASX, which is conditional on the Scheme Resolution being passed.

**Eligible Shareholder** means a Shareholder who will be entitled to have New Listed Parent Shares issued to them pursuant to the Scheme subject to the qualifications, if any, in respect of the jurisdiction in which they have an address recorded in Embark's share register.

**Embark** means Embark Education Group Limited.

**Embark Share** means an ordinary share in Embark.

**Final Court Hearing** means the hearing of the Court in respect of the Scheme in relation to the grant of the Final Court Orders.

**Final Court Orders** means the final orders of the Court in respect of the Scheme made under Part 15 of the Companies Act.

**Group** means Embark and each of its subsidiaries, being Evolve Early Education Pty Limited, Embark NZ Holdings Limited and Embark NZ Management Group Limited.

**Implementation Date** means the date on which the Scheme will be implemented, which, as at the date of this Notice of Meeting, is expected to be 5 July 2023.

**Ineligible Shareholder** means a Shareholder in respect of whom Embark is not satisfied that the laws of the country in which that Shareholder has an address recorded in Embark's share register permit the issue of New Listed Parent Shares to the Shareholder, either unconditionally or after compliance with conditions which Embark in its sole discretion regards as acceptable and not unduly onerous.

**Initial Court Orders** means the initial orders of the Court relating to the Scheme as outlined in Section 5 (Further Details of the Scheme) of this Notice of Meeting.

**Link Market Services** means Link Market Services Limited (NZ Company Number: 1582925) or Link Market Services Limited (ACN 083 214 537), as the context requires.

**New Listed Parent** means Embark Early Education Limited (ACN 667 611 752).

**New Listed Parent Board** means the board of directors of the New Listed Parent proposed in this Notice of Meeting.

**New Listed Parent Share** means an ordinary share in the New Listed Parent.

**Notice of Meeting** means the notice convening the Annual Meeting which accompanies this Scheme Booklet.

**NZX** means NZX Limited.

**NZX Listing Rules** means the NZX Listing Rules.

**NZX Main Board** means the main board securities market operated by NZX.

**Option** means an option to subscribe for a Share in Embark.

**Pacific Custodians** means Pacific Custodians (New Zealand) Limited or such other nominee as may be agreed between Embark and Link Market Services from time to time.

**Record Date** means the date and time at which the entitlement of Shareholders to participate in the Scheme is determined, which, as at the date of this Notice of Meeting, is expected to be 7:00pm on 28 June 2023.

**Resolutions** means the resolutions to be considered by Shareholders at the Annual Meeting as set out in the Notice of Meeting.

**Scheme** means the Court approved scheme of arrangement under Part 15 of the Companies Act set out in the Scheme Plan and described in this Scheme Booklet, subject to any amendments or variations made in accordance with the Initial Court Orders, the Final Court Orders, and/or required by the Court.

**Scheme Booklet** means this document dated 19 May 2023.

**Scheme Implementation Agreement** means the scheme implementation agreement between Embark and the New Listed Parent dated 2 May 2023.

**Scheme Plan** means the scheme plan set out in Schedule 1 of this Scheme Booklet, subject to any amendments or variations made in accordance with the Initial Court Orders, the Final Court Orders, and/or required by the Court.

**Scheme Resolution** means a resolution to approve the Scheme to be considered by Shareholders at the Annual Meeting as set out in the Notice of Meeting.

**Second Court Date** means the date on which the Final Court Hearing will occur, which is expected to be 21 June 2023.

**Shareholder** means a registered holder of Embark Shares.

**Takeovers Code** means the New Zealand Takeovers Code approved pursuant to the Takeovers Regulations 2000 (as amended).

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**SCHEDULE 1: SCHEME PLAN PURSUANT TO PART 15 OF THE COMPANIES ACT 1993**

**PARTIES:**

**Embark Education Group Limited** (*Embark*)

**Embark Early Education Limited** (ACN 667 611 752) (*New Listed Parent*)

**Shareholders** (as defined at clause 1.1(v) below)

**1 INTERPRETATION**

1.1 In this document, unless the context otherwise requires:

- (a) *Annual Meeting* means the meeting of Shareholders held for, among other things, the purposes of section 236A(2) of the Companies Act in respect of the Restructure (and includes any adjournment of that meeting).
- (b) *ASX* means ASX Limited (ABN 98 008 624 691) or the securities market operated by it (as the context requires).
- (c) *Business Day* means a day (other than a Saturday or Sunday) on which banks are generally open for business in Auckland and Brisbane.
- (d) *Companies Act* means the Companies Act 1993.
- (e) *Court* means the High Court of New Zealand, Auckland Registry.
- (f) *Eligible Shareholder* means a Shareholder with an address recorded in the Embark Register as at 7:00pm on the Record Date in:
  - (i) New Zealand or Australia; or
  - (ii) any other jurisdiction in respect of which Embark reasonably believes:
    - (A) it is not prohibited from implementing the Restructure or issuing New Listed Parent Shares to a Shareholder in that jurisdiction; and
    - (B) issuing New Listed Parent Shares to a Shareholder in that jurisdiction would not be unduly onerous or impractical.
- (g) *Embark Options* means the 1,250,000 options on issue in Embark.
- (h) *Embark Register* means the register of Embark Shares maintained by Link Market Services on behalf of Embark.
- (i) *Embark Share* means a fully paid ordinary share in Embark.
- (j) *Final Court Orders* means orders of the Court that the Restructure shall be given effect, which shall be binding on Embark, Shareholders and such other persons or classes of persons as the Court may specify, in accordance with section 236(1) of the Companies Act.

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- (k) *Implementation Date* means 28 June 2023 or such other date as determined by Embark and the New Listed Parent, and notified by Embark to NZX.
- (l) *Ineligible Shareholder* means a Shareholder as at 7:00pm on the Record Date that is not an Eligible Shareholder.
- (m) *Link Market Services* means Link Market Services Limited (NZ Company Number: 1582925) or Link Market Services Limited (ACN 083 214 537), as the context requires.
- (n) *New Listed Parent Options* means the 1,250,000 options in the New Listed Parent to be granted on the terms set out in the Option Plan Rules in Annexure A to this document.
- (o) *New Listed Parent Register* means the register of New Listed Parent Shares to be maintained by Link Market Services on behalf of the New Listed Parent.
- (p) *New Listed Parent Share* means a fully paid ordinary share in the New Listed Parent.
- (q) *NZX* means NZX Limited and, where the context requires, the main board financial market that it operates.
- (r) *NZX Main Board* means the main board financial products market operated by NZX.
- (s) *Pacific Custodians* means Pacific Custodians (New Zealand) Limited or such other nominee as may be agreed between Embark and Link Market Services from time to time.
- (t) *Record Date* means the date on which the entitlement of Shareholders to participate in the Restructure is determined, expected to be 21 June 2023 or such other date as determined by Embark and the New Listed Parent, and notified by Embark to NZX.
- (u) *Restructure* means this scheme of arrangement, subject to any terms and conditions made or required by the Court under Part 15 of the Companies Act and approved by Embark and the New Listed Parent in writing.
- (v) *Scheme Plan* means this Scheme Plan.
- (w) *Shareholder* means a person who is recorded in the Embark Register as the holder of one or more Embark Shares from time to time.
- (x) *Trading Halt Date* means 21 June 2023 or such other date as agreed between Embark and the New Listed Parent, and notified by Embark to NZX.

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

- (a) references to persons or entities include natural persons, bodies corporate, partnerships, trusts and unincorporated associations of persons;
- (b) references to an individual or a natural person include their estate and personal representatives;

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- (c) references to a party include the successors or assigns (immediate or otherwise) of that party;
  - (d) a reference to any instrument or document includes any variation or replacement of it;
  - (e) unless otherwise indicated, a reference to any time is a reference to that time in New Zealand;
  - (f) a reference to \$, NZ\$ or dollars is to New Zealand currency;
  - (g) singular words include the plural and vice versa;
  - (h) a word of any gender includes the corresponding words of any other gender;
  - (i) if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;
  - (j) general words must not be given a restrictive meaning just because they are followed by particular examples intended to be embraced by the general words; and
  - (k) the headings do not affect interpretation.

## **2 IMPLEMENTATION SEQUENCE**

Subject to any amendments or variations as may be required by the Court the following will occur on the dates specified and in the sequential order specified below.

2.1 Following the sealing of the Final Court Orders:

- (a) Embark will advise NZX of the grant of the Final Court Orders and of the Record Date.
- (b) At the close of trading on the Trading Halt Date, trading in Embark Shares on the NZX Main Board and ASX will cease.
- (c) The Shareholders entitled to participate in the Restructure will be determined as those Shareholders on the Embark Register on the Record Date.

2.2 Commencing at 8:30am on the Implementation Date, the following steps will occur sequentially:

- (a) All Embark Shares held by Shareholders will be transferred to the New Listed Parent.
- (b) In consideration for the transfer set out at step (a):
  - (i) The New Listed Parent will issue New Listed Parent Shares to each Eligible Shareholder (on a one-for-one basis for each Embark Share held by that Shareholder).

- (ii) In the case of Ineligible Shareholders, New Listed Parent Shares that such holders would otherwise have been entitled to receive as a result of step (i) above will be issued to Pacific Custodians, who will hold the New Listed Parent Shares on trust for Ineligible Shareholders. Pacific Custodians will appoint an Australian broking firm (as chosen by the New Listed Parent) to sell the relevant New Listed Parent Shares on-market and will liaise with Link Market Services to ensure that the proceeds of the sale are paid to each Ineligible Shareholder as soon as practicable following the Implementation Date (any brokerage costs and/or transaction fees associated with this sale will be paid by the New Listed Parent).
- (c) All Embark Options will be cancelled.
- (d) In consideration for the cancellation of the Embark Options set out at step (c), the New Listed Parent will grant the New Listed Parent Options to the holder of the Embark Options.
- (e) The Embark Register and the New Listed Parent Register will be updated to record the change in shareholding as a result of steps (a) to (d) above.

### **3 TITLE TO AND RIGHTS IN SHARES**

- 3.1 To the extent permitted by law, the Embark Shares (including all rights and entitlements attaching to the Embark Shares) transferred under this Implementation Plan to the New Listed Parent will, at the time of the transfer of them to the New Listed Parent, vest in the New Listed Parent 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 free from any restrictions on transfer of any kind.
- 3.2 Each Shareholder is taken to have warranted to the New Listed Parent on the Implementation Date that all their Embark Shares (including any rights and entitlements attaching to those shares) which are transferred to and vest in the New Listed Parent pursuant to this Implementation Plan will, immediately prior to the 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.

### **4 AUTHORITY GIVEN TO EMBARK AND THE NEW LISTED PARENT**

- 4.1 Each Shareholder, without the need for any further act and with effect from the Implementation Date, irrevocably appoints Embark, the New Listed Parent and each of their 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 Restructure and the transactions contemplated by it, and Embark and the New Listed Parent, for themselves and on behalf of each of their directors, accepts each such appointment. Each such attorney and agent, may sub-delegate its functions, authorities or powers under this clause 4.1 to one or more of Embark or the New Listed Parent' officers.

## **5 BINDING EFFECT OF THE RESTRUCTURE**

5.1 The Restructure binds:

- (a) Embark;
- (b) the New Listed Parent;
- (c) all of the Shareholders (including those who did not attend the Annual Meeting, did not vote at the Annual Meeting, or voted against the Restructure at the Annual Meeting); and
- (d) such other persons as may be necessary to give effect to the Restructure.

5.2 In the event of any inconsistency, this Implementation Plan prevails over the constitution of Embark or the New Listed Parent.

## Annexure A to the Scheme Plan - Option Plan Rules

### 1 Definitions and Construction

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#### 1.1 Defined terms

In these Plan Rules, unless the context requires otherwise:

**Business Day** means a day on which trading banks are open for normal banking business in Sydney, Australia (excluding Saturdays and Sundays);

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

**Company** means Embark Early Education Limited (ACN 667 611 752);

**Exercise Price** means the AUD\$1.20 per Share;

**Grant** means the grant of the Options to the Participant pursuant to a deed poll entered into by the Company on or about [Date];

**Listing Rules** means the ASX Listing Rules, as amended from time to time;

**Option** means an option to subscribe for a Share pursuant to these Plan Rules;

**Participant** means Timothy Wong;

**Plan Rules** means these plan rules;

**Share** means an ordinary share in the Company and where the Company is admitted to the Official List of ASX will mean an ordinary share in the Company quoted on ASX;

**Taxes** means a tax, levy, impost, charge, deduction, withholding or duty of any nature (including stamp and transaction duty) imposed or levied by any government agency or required to be remitted to, or collected, withheld or assessed by, any government agency, together with any related interest, penalty, fine, expense or other charge on those amounts; and

**Termination Date** means 31 December 2023.

#### 1.2 Construction

Unless the context requires otherwise:

- (a) the singular includes the plural and vice versa, and words importing any gender include the other genders;
- (b) a reference to a "person" includes any individual, partnership and incorporated or unincorporated body (whether or not having a separate legal personality);
- (c) a reference to an "amendment" includes any deletion or addition;
- (d) a reference to an enactment (statute or regulation) includes enactments in Australia and in any other jurisdiction affecting the Plan Rules, and is a reference to that enactment as amended, or any enactment substituted for that enactment;
- (e) where a word or expression is defined in the Plan Rules, other parts of speech and grammatical forms of that word or expression have a corresponding meaning; and
- (f) a reference to a person includes its successors and permitted assigns.

## **2 Procedure for Exercise**

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### **2.1 Exercise of Options**

Any Options will be eligible to be exercised on any Business Day up until the Termination Date, at which time any unexercised Options will lapse.

### **2.2 Exercise Notice**

The Participant may exercise part or all of his Options by giving the Company notice in writing (an *Exercise Notice*).

### **2.3 Payment**

Any Exercise Notice must be accompanied by payment of the aggregate Exercise Price or arrangements must have been agreed in writing between the Participant and the Company that are acceptable to the Company in relation to such payment.

### **2.4 Issue**

Within five Business Days after the date on which the Company receives an Exercise Notice and payment of the Exercise Price in accordance with this clause 2, the Company will issue the applicable Shares to the Participant.

## **3 Rights on exercise**

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### **3.1 Shares issued rank pari passu**

Shares issued to the Participant will be credited as fully paid and will rank pari passu in all respects with all Shares at the date of issue, except for any dividend declared on Shares for which the record date is prior to the date of issue.

## **4 No divestment of options**

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The Participant may not sell, transfer, charge, encumber, mortgage, create any interest in or otherwise dispose of an Option, without the prior written consent of the Board.

## **5 Taxes**

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### **5.1 Responsibility for Taxes**

Neither the Company nor any subsidiary is responsible for any Taxes which may become payable by the Participant in connection with the Options and these Plan Rules, including any Taxes arising from:

- (a) the issue or transfer of Options; or
- (b) the issue, transfer or allocation of Shares; or
- (c) any other dealing by the Participant with such Options or Shares including the payment of any cash amount,

and the Participant is solely responsible for all such amounts.

### **5.2 Withholding for Taxes**

Notwithstanding any other provision in these Plan Rules, if the Company or any subsidiary is required or deemed to make a payment to or on behalf of the Participant under or in respect of these Plan Rules or any Grant, or the Participant

is treated as receiving a taxable benefit under or in respect of these Plan Rules or any Grant, the Company or applicable subsidiary may deduct or withhold any amount in respect of Taxes payable (including by withholding Options and/or Shares and selling them to raise the necessary funds at any price reasonably obtainable by the Company or making a deduction from the Participant's net salary or wages). The Participant authorises and directs the Company and any applicable subsidiary to make any deduction or withholding contemplated by this clause 5 and consents to such deduction or withholding for the purposes of any applicable laws.

## **6 Amendment and termination**

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### **6.1 Board's Discretion**

Subject to the Listing Rules and all applicable laws, the Board may from time to time, vary any term of the Participant's participation under the Plan Rules, with the agreement of the Participant.

## **7 Quotation**

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The Options will not be quoted on any stock exchange.

## **8 Miscellaneous**

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### **8.1 No Alienation of Participant's Rights**

The entitlements, rights and interests of the Participant under the Plan Rules are strictly personal and must not in any way be assigned, charged, alienated or borrowed against.

### **8.2 Entire Agreement**

The Plan Rules represent all of the terms on which Options are issued.

### **8.3 Delay**

No failure, delay or indulgence by the Board in exercising any power or right conferred on it under the Plan Rules will operate as a waiver of that power or right; nor will a single exercise of a power or right preclude further exercises, or the exercise of any other power or right under the Plan Rules.

### **8.4 Notice**

All notices and communications required to be given or made under the Plan Rules will be in writing and addressed to the recipient at the address or email address from time to time designated by the recipient. Any notice or communication will be deemed to have been received:

- (a) at the time of delivery, if delivered by hand;
- (b) on the second Business Day after the date of mailing, if sent by post or airmail with postage prepaid;
- (c) in the case of delivery by email, on receiving an active response from the addressee (not being an automatically generated response such as an out of office notification or read receipt); or
- (d) on the day on which confirmation of proper transmission is received (on transmission), if sent by facsimile.

8.5 **Governing Law**

The Plan Rules will be governed by and construed in accordance with Australian law.

**SCHEDULE 2: KEY DIFFERENCES BETWEEN NEW ZEALAND AND AUSTRALIAN LAW**

Set out below is a table summarising key features of the laws that apply to Embark as a New Zealand company (under New Zealand law, including as modified by exemptions or waivers) compared with the laws that apply to Australian publicly-listed companies generally, such as is proposed to be the case for the New Listed Parent. It is important to note that this summary does not purport to be a complete review of all matters of New Zealand law applicable to Embark or all matters of Australian law applicable to Australian publicly-listed companies or to highlight all provisions that may differ from the equivalent provisions in Australia.

**Table: Comparison of laws governing Embark as a New Zealand publicly-listed company with laws governing Australian publicly-listed companies generally**

Unless otherwise stated, the Corporations Act provisions do not apply to Embark as a foreign company and the vast majority of the ASX Listing Rule requirements do not apply to Embark as it is presently admitted to the ASX Official List as a foreign exempt listing.

After completion of the Scheme, the Corporations Act provisions will apply to the New Listed Parent.

	<b>NEW ZEALAND</b>	<b>AUSTRALIA</b>
<b>Transactions that require shareholder approval</b>	<p>Under the Companies Act, the principal transactions or actions requiring shareholder approval include:</p> <ul style="list-style-type: none"> <li>adopting or altering the constitution of the company;</li> <li>appointing or removing a director or auditor;</li> <li>major transactions (being transactions involving the acquisition or disposition of assets, the acquisition of rights or interests or the incurring of obligations or liabilities, the value of which is more than half the value of the company’s total assets);</li> <li>amalgamations (other than between the company and its wholly-owned subsidiaries);</li> <li>putting the company into liquidation; and</li> <li>changes to the rights attached to shares.</li> </ul> <p>In addition to the Companies Act requirements listed above, shareholder approval is required under the NZX Listing Rules for:</p> <ul style="list-style-type: none"> <li>director remuneration;</li> <li>certain transactions with related parties;</li> <li>certain issues of shares; and</li> <li>in certain circumstances, the provision of financial assistance for the purpose of, or in</li> </ul>	<p>Under the Corporations Act, the principal transactions or actions requiring shareholder approval are generally comparable to those under the Companies Act. Shareholder approval is also required for certain transactions affecting share capital (e.g. share buybacks and share capital reductions).</p> <p>Although under the Corporations Act, there is no shareholder approval requirement for major transactions, certain related party transactions require shareholder approval.</p> <p>Shareholder approval is required under the ASX Listing Rules for:</p> <ul style="list-style-type: none"> <li>directors’ termination benefits in certain circumstances;</li> <li>certain transactions with related parties;</li> <li>certain issues of shares; and</li> <li>if a company proposes to make a significant change to the nature or scale of its activities or proposes to dispose of its main undertaking.</li> </ul>

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	<b>NEW ZEALAND</b>	<b>AUSTRALIA</b>
	connection with, the acquisition of shares.	
<b>Shareholders' right to request or requisition a general meeting</b>	A special meeting of shareholders must be called by the board on the written request of shareholders holding shares carrying together not less than 5% of the voting rights entitled to be exercised on the issue.	The Corporations Act contains a comparable right.  Shareholders with at least 5% of the votes that may be cast at the general meeting may also call and arrange to hold a general meeting at their own expense.
<b>Shareholders' right to appoint proxies to attend and vote at meetings on their behalf</b>	A shareholder may exercise the right to vote at a meeting either by being present in person or by proxy. A proxy is entitled to attend and be heard, and to vote, at a meeting of shareholders as if the proxy were the shareholder.  A proxy must be appointed by notice in writing signed by or, in the case of an electronic notice, sent by the shareholder to the company. The notice of appointment must state whether the appointment is for a particular meeting or a specified term.	The position is comparable under the Corporations Act.  To be effective, the proxy appointment (and any authority under which the appointment is made) must be given to the company at least 48 hours before the meeting.
<b>Changes in the rights attaching to shares</b>	A company must not take action that affects the rights attached to shares unless that action has been approved by a special resolution of each affected interest group. (An "Interest group" in relation to an action or proposal affecting the rights attached to shares means a group of shareholders whose affected rights are identical and whose rights are affected by the action or proposal in the same way and who comprise the holders of one or more classes of shares in the company).	The Corporations Act allows a company to set out in its constitution the procedure for varying or cancelling rights attached to shares in a class of shares.  If a company does not have a constitution, or has a constitution that does not set out a procedure, the rights may only be varied or cancelled by: <ul style="list-style-type: none"> <li>• a special resolution passed at a meeting for a company with a share capital of the class of members holding shares in the class; or</li> <li>• a written consent of members who hold at least 75% of the votes in the class.</li> </ul>
<b>Shareholder protections against oppressive conduct</b>	A shareholder or former shareholder of a company (or any other entitled person) who considers that the affairs of a company have been (or are being, or are likely to be) conducted in a manner that is (or any act or acts of the company have been, or are, or are likely to be) oppressive, unfairly discriminatory, or unfairly prejudicial to him or her in any capacity may apply to the court for relief.  The court may, if it thinks it is just and equitable to do so, make such orders as it thinks fit.	Under the Corporations Act, shareholders have statutory remedies for conduct that is: <ul style="list-style-type: none"> <li>• contrary to the interests of the members as a whole; or</li> <li>• oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a member or members in that capacity or in any other capacity.</li> </ul> The court can make any order as it considers appropriate.
<b>Shareholders' rights to bring or</b>	A court may, on the application of a shareholder or director of a company, grant leave to that shareholder or	The Corporations Act permits certain persons to apply to the court for leave to bring proceedings on behalf of the

	<b>NEW ZEALAND</b>	<b>AUSTRALIA</b>
<b>intervene in legal proceedings on behalf of the company</b>	<p>director to bring proceedings in the name and on behalf of the company or any related company, or intervene in proceedings to which the company or any related company is a party, for the purpose of continuing, defending or discontinuing the proceedings on behalf of the company or related company. Leave may only be granted if the court is satisfied that either the company or related company does not intend to bring, diligently continue or defend, or discontinue the proceedings, or it is in the interests of the company or related company that the conduct of the proceedings should not be left to the directors or to the determination of the shareholders as a whole.</p> <p>No proceedings brought by a shareholder or a director or in which a shareholder or a director intervenes with leave of the court (as described above) may be settled or compromised or discontinued without the approval of the court.</p>	<p>company, or to intervene in, proceedings to which the company is a party for the purpose of taking responsibility on behalf of the company for those proceedings, or for a particular step in those proceedings.</p> <p>Those who may apply are members, former members, persons entitled to be registered as members of the company or a related body corporate, officers and former officers of the company.</p> <p>The court must grant the application if it is satisfied that:</p> <ul style="list-style-type: none"> <li>• it is probable that the company will not itself bring the proceedings, or properly take responsibility for them, or for the steps in them;</li> <li>• the applicant is acting in good faith;</li> <li>• it is in the best interests of the company that the applicant be granted leave;</li> <li>• if the applicant is applying for leave to bring proceedings, there is a serious question to be tried; and</li> <li>• either at least 14 days before making the application, the applicant gave written notice to the company of the intention to apply for leave and of the reasons for applying, or the court considers it appropriate to grant leave.</li> </ul> <p>Proceedings brought or intervened in with leave must not be discontinued, compromised or settled without the leave of the court.</p>
<b>"2 strikes" rule in relation to remuneration reports</b>	<p>There is no equivalent of a "2 strikes" rule in relation to remuneration reports in New Zealand. New Zealand companies are not required to publish remuneration reports so shareholders necessarily cannot vote on them.</p> <p>There is, however, an obligation to state in the company's annual report, in respect of each director or former director of the company, the total of the remuneration and the value of other benefits received by that director or former director from the company during the relevant accounting period and, in respect of employees or former employees of the company (not being directors of the company) who received remuneration and any other benefits in their capacity as employees during</p>	<p>The Corporations Act requires that a company's annual report must include a report by the directors on the company's remuneration framework (called a "remuneration report").</p> <p>For a listed company, a resolution must be put to a shareholder vote at each annual general meeting of the company's shareholders (AGM) that the remuneration report be adopted. The result of that vote is advisory only, however, if more than 25% of shareholders vote against the adoption of the remuneration report at 2 consecutive AGMs (i.e. 2 strikes) an ordinary (50%) resolution must be put to shareholders at the second AGM proposing that a further meeting be held within 90 days at which all of the directors who were directors when</p>

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	the relevant accounting period, the value of which was or exceeded NZ\$100,000 per annum, the number of such employees, stated in brackets of NZ\$10,000.	the second remuneration report was approved must resign and stand for re-election (except for the managing director who may continue to hold office indefinitely in accordance with the ASX Listing Rules).
<b>Related party transactions and interests</b>	<p>The company must comply with NZX Listing Rule requirements in respect of related party transactions, except to the extent this obligation is modified by waivers or rulings granted by NZX Regulation Limited in respect of the company.</p> <p>In particular, shareholder approval is required for significant transactions between a listed company and a "related party". The definition of related party catches a number of persons, for example, a director of a listed company, or the holder of a relevant interest in 10% or more of a class of securities of a listed company carrying votes. A related party who is a direct party to or a beneficiary of a material transaction (and its associates) are prohibited from voting in favour of a resolution to approve that transaction.</p> <p>The Financial Markets Conduct Act 2013 requires a director or officer of a listed issuer who has a "relevant interest" in a quoted financial product of the listed issuer to give notice of this fact to NZX and to disclose any such relevant interest in the interests register of the listed issuer.</p> <p>The Companies Act requires directors who are "interested" in transactions or potential transactions with the company to make appropriate disclosure to the company. Under a company's constitution and the NZX Listing Rules, interested directors will generally not be permitted to vote on such transactions.</p> <p>Director remuneration requires approval of shareholders under the NZX Listing Rules. Certain share issues, redemptions and buybacks, and certain "financial assistance" in connection with the purchase of shares, will also require shareholder approval if a director (or an associated person of a director) is party to that transaction.</p> <p>Each New Zealand company is required to keep an interests register, containing particulars of certain director disclosure. The company's annual report must state particulars of</p>	<p>Under the Corporations Act, public companies must obtain shareholder approval before giving a financial benefit to a "related party" of the public company unless an exemption applies. The exemptions include where:</p> <ul style="list-style-type: none"> <li>• the arrangement is on arm's length terms;</li> <li>• the benefit is reasonable remuneration paid to an officer or employee of the company;</li> <li>• the benefit is a reasonable indemnity or insurance premium given to an officer or employee of the company;</li> <li>• the benefit is given to a "closely held subsidiary"; or</li> <li>• the benefit is given to all shareholders and does not discriminate other shareholders unfairly.</li> </ul> <p>In addition, a company will be required to comply with ASX Listing Rule requirements in respect of related party transactions. Unless an exception applies, shareholder approval is required for:</p> <ul style="list-style-type: none"> <li>• the acquisition of a substantial asset from, or disposal of a substantial asset to, among other persons, a related party or a person who, together with their associates, holds, or has held in the six months before the relevant transaction, 10%+ of the voting securities;</li> <li>• issuing or agreeing to issue securities to related parties (including directors) or a person who, together with their associates, holds, or has held in the six months before the relevant transaction, a relevant interest in at least 30%+ the voting securities, or a person who, together with their associates, holds, or has held in the six months before the relevant transaction, a relevant interest in at least 10%+ of the voting securities and who has nominated</li> </ul>

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	<p>entries in the interests register made during the accounting period.</p>	<p>a director to the board of the entity;</p> <ul style="list-style-type: none"> <li>• increasing the total remuneration pool for directors;</li> <li>• certain directors' termination benefits; and</li> <li>• directors acquiring securities under an employee incentive scheme.</li> </ul> <p>The definition of related party includes, among others, directors of the public company, entities that control the public company and directors of an entity that controls the public company.</p> <p>Under the ASX Listing Rules, a company is also required to disclose the notifiable interests of its directors at prescribed times and any changes to those notifiable interests.</p>
<b>Disclosure of substantial holdings</b>	<p>The Financial Markets Conduct Act 2013 requires every person who is a "substantial product holder" in a listed issuer to give notice to that listed issuer and NZX that they are a substantial security holder.</p> <p>"Substantial product holder" means, in relation to a listed issuer, a person who has a relevant interest in 5% or more of a class of quoted voting securities of that listed issuer.</p> <p>The substantial product holder has ongoing disclosure requirements to notify the listed issuer and NZX of certain changes in the number of voting securities in which the substantial product holder has a relevant interest or if there is any change in the nature of any relevant interest in the relevant holding or where that person ceases to be a substantial product holder.</p>	<p>The Corporations Act requires every person who is a substantial holder to notify the listed company and ASX that they are a substantial holder and give prescribed information in relation to their holding if:</p> <ul style="list-style-type: none"> <li>• the person begins to have, or ceases to have, a substantial holding in the company;</li> <li>• there is a movement of at least 1% in their holding; or</li> <li>• the person makes a takeover bid for securities of the company.</li> </ul> <p>A person has a substantial holding if the total votes attached to voting shares in the company in which they or their associates have relevant interests is 5% or more of the total number of votes attached to voting shares in the company or the person has made a takeover bid for voting shares in the company and the bid period has started and not yet ended.</p>
<b>How takeovers are regulated</b>	<p>The New Zealand position under the Takeovers Code and Financial Markets Conduct Act 2013 is comparable to the Australian position in relation to the regulation of takeovers.</p> <p>Substantial product holder notice requirements apply to relevant interests in 5% or more of a company's quoted voting securities (as discussed above under the heading "Disclosure of substantial holdings").</p> <p>A 20% threshold applies (under which a person is prevented from increasing</p>	<p>The Corporations Act prohibits a person from acquiring a relevant interest in issued voting shares in a listed company if any person's voting power in the company will increase from 20% or below to more than 20%, or from a starting point that is above 20% and below 90%.</p> <p>Exceptions to the prohibition may apply (e.g. acquisitions with shareholder approval, 3% creep over 6 months and rights issues that satisfy prescribed conditions).</p>

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	<p>the percentage of voting rights held or controlled by them in excess of that threshold or from becoming the holder or controller of an increased percentage of voting rights if they already hold or control more than 20% of the voting rights), subject to certain "compliance options" (including full and partial offers, 5% creep over 12 months in the 50% to 90% range, and acquisitions with shareholder approval).</p> <p>Compulsory acquisitions are permitted by persons who hold or control 90% or more of voting rights in a company.</p>	<p>Substantial holder notice requirements apply (as discussed above under the heading "Disclosure of substantial holdings").</p> <p>Compulsory acquisitions are permitted by persons who hold 90% or more of securities or voting rights in a company.</p>
<b>Requirement for information to be sent to shareholders</b>	<p>Embark must send the following information to its shareholders:</p> <ul style="list-style-type: none"> <li>• annual reports (or a statement as to how to obtain them, which need only be sent to each shareholder once);</li> <li>• notices of meetings of shareholders (including, where applicable, such information as necessary to enable shareholders to appraise the implications of the proposed resolutions);</li> <li>• a disclosure document where the board of the company proposes to acquire or redeem shares in the company or offer financial assistance;</li> <li>• where requested by a shareholder, a statement that sets out the information about the shareholder's shareholding and the rights attached to that shareholder's shares; and</li> <li>• information requested by a shareholder or an explanation as to why the company has refused to provide the information.</li> </ul>	<p>The Corporations Act and the ASX Listing Rules require a public company to send the following information to its shareholders:</p> <ul style="list-style-type: none"> <li>• financial statements (annual);</li> <li>• directors' report (annual);</li> <li>• auditor's report (annual);</li> <li>• annual report, including remuneration report and corporate governance report;</li> <li>• notices of meetings of shareholders (which includes the information prescribed by the Corporations Act or the ASX Listing Rules (as applicable)); and</li> <li>• offer documentation for certain types of capital raising undertaken by the company.</li> </ul>

**DIRECTORY**

**Embark Education Group Limited**

Suite 102, Level 1, M1 Connect Business Hub  
120-122 Siganto Drive  
Helensvale, Queensland 4212  
Australia  
Phone: +61 7 5322 5245

**Embark Early Education Limited**

Suite 102, Level 1, M1 Connect Business Hub  
120-122 Siganto Drive  
Helensvale, Queensland 4212  
Australia  
Phone: +61 7 5322 5245

***New Zealand Legal Advisers***

**Chapman Tripp**

Level 34, PwC Tower, 15 Customs Street West  
Auckland 1010  
New Zealand  
Phone: +64 9 357 9000

***Australian Legal Advisers***

**Thomson Geer**

Level 28, Waterfront Place  
1 Eagle Street  
Brisbane, Queensland 4000  
Australia  
Phone: +61 7 3338 7500

***Share registrar***

**Link Market Services Limited - New Zealand**

Level 30, PwC Tower, 15 Customs Street West  
Auckland 1010  
PO Box 91976  
Auckland 1142  
New Zealand  
Phone: +64 9 375 5998

**Link Market Services Limited - Australia**

Level 12, 680 George Street  
Sydney  
NSW 2000  
Locked Bag A14  
Sydney South, New South Wales 1235  
Australia  
Phone: +61 1300 554 474

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