

15 June 2018

**RECOMMENDED TAKEOVER OFFER FOR ASIA PACIFIC DIGITAL BY  
TRIMANTIUM GROWTHOPS**

**Highlights**

- Trimantium GrowthOps Limited (“TGO” or “GrowthOps”) [ASX: TGO] has entered into a bid implementation agreement (“BIA”) with Asia Pacific Digital Limited (“Asia Pacific Digital” or “APD”) [ASX: DIG] under which GrowthOps will make an off-market takeover bid to acquire 100% of the fully paid ordinary shares of APD (“Offer”).
- Based on the TGO closing price on 14 June 2018 of \$1.23 per share, the Offer consideration equates to \$0.14 per APD share, and values APD equity at approximately \$20m, representing a premium of 133% to the closing price of APD’s shares on 14 June 2018.
- APD is one of few independent, publicly traded digital transformation companies in the Asia Pacific region, employing approximately 300 professionals in offices across Singapore, Malaysia, the Philippines, Australia and New Zealand.
- GrowthOps’ proposed acquisition of APD will help to cement GrowthOps’ position as an independent, regional provider of integrated consulting, creative and technology-driven services with the scale and local market experience to serve multinational corporate and government clients.
- The expansion of its technology services and geographic footprint within the Asia Pacific market will diversify GrowthOps’ client base and strengthen its competitive edge against global players that operate in the region.
- APD directors unanimously recommend APD’s shareholders to accept the Offer, in the absence of a Superior Proposal.
- North Ridge Partners Pty Ltd, plus other parties with shareholder intent statements and each of their respective Associates<sup>2</sup>, which together hold or control approximately 75.8% of APD’s total shares, have each indicated they intend to accept the Offer, in the absence of a Superior Proposal.

Trimantium GrowthOps Limited and Asia Pacific Digital Limited are pleased to announce they have entered into a Bid Implementation Agreement for an off market takeover bid by GrowthOps for 100% of the fully paid ordinary shares of APD.

The Offer is unanimously recommended by the APD Board, in the absence of a Superior Proposal.

**Offer details**

GrowthOps is offering 1 TGO share for every 8.9 APD fully paid ordinary shares based on TGO’s closing price of \$1.23 per share on 14 June 2018. The Offer represents a 133% premium to APD’s closing share price on 14 June 2018 of \$0.06 per share and implies a market capitalisation of approximately \$20 million for APD.

The Offer is conditional on GrowthOps acquiring at least 90% of APD ordinary shares, as well as certain other customary conditions, including there being no Material Adverse Changes, a unanimous recommendation by the APD Board and no Prescribed Occurrences.

The Offer extends to any APD shares that are issued as a result of the exercise of APD options during the Offer Period. However, GrowthOps also intends to enter into private treaty arrangements with Company Placement Option holders to acquire or cancel their options in exchange for GrowthOps shares (see Schedule 1 of the BIA for further details).

Mr Roger Sharp, Chairman of APD, plus other parties with shareholder intent statements and each of their respective Associates, who together hold or control approximately 75.8% of total APD shares, have each indicated they intend to accept the Offer, in the absence of a Superior Proposal.

### **Working capital facility**

In addition to the Offer, GrowthOps has provided APD with a short-term working capital facility, under which APD can draw up to \$2 million. The initial advance on the facility is expected to be \$1.25 million. The interest rate and credit agreement terms have been negotiated on an arms-length basis and are consistent with the terms of APD's existing unsecured working capital loans.

### **Transaction rationale**

The Boards of Directors of both GrowthOps and APD unanimously support the transaction, and believe there are potential benefits for both GrowthOps and APD shareholders, including:

- An expanded service offering – APD contributes a complementary, non-overlapping capability set that is expected to further strengthen GrowthOps' suite of consulting, creative and technology-driven services;
- An expanded geographic footprint – the combined company will employ over 500 employees across nine cities in six countries in the Asia Pacific region;
- A more diversified client base with less revenue concentration – there is no material overlap in the two companies' existing clients;
- Scale – the company will be better positioned versus the larger, well-capitalised global service providers against which APD has historically competed; and
- Cost efficiencies – the removal of listed company costs, along with modest run-rate cost synergies, are expected to improve APD's financial performance over the medium term.

GrowthOps Managing Director, Phillip Kingston said: "The acquisition of APD enhances the existing GrowthOps service offering. It follows the successful integration of our existing technology-driven businesses. APD's Asian presence and core competencies, particularly in technology, complement our existing end-to-end platform and allow us to strengthen our powerful value proposition for clients in the Asia Pacific region."

GrowthOps Chief Executive Officer, Paul Mansfield said: "Given GrowthOps and APD have minimal overlap in clients and services, there's a tremendous opportunity to expand our cross-selling strategy across clients, industries and geographies. The businesses we have previously acquired have already been successfully cross-selling and co-delivering client work. We've also already integrated five of our technology-driven businesses into one, completing the delivery of the integration milestones outlined in our initial public offering prospectus. We're now well-positioned to welcome APD's talented professionals to our team."

Asia Pacific Digital Chairman, Roger Sharp said: "This transaction provides APD's shareholders, employees and customers with the opportunity to continue their digital transformation journey with a more complete suite of services and a broader and deeper skill base, with the benefit of a stronger balance sheet. We see APD and GrowthOps operating a world-class business together."

Following successful completion of the Offer, Mr Sharp, who is the founder of investment firm North Ridge Partners and the Chairman of ASX-listed Webjet Limited (ASX: WEB), will be invited to join the Board of GrowthOps.

Chairman of the GrowthOps Board, Dominique Fisher said: “Roger brings a lot of relevant experience to the Board, both in terms of expanding a services business in this industry and region, and in integrating different people and cultures into one cohesive team. We look forward to leveraging that experience as we continue to refine our capability set and help our clients to stay competitive and grow.”

**Offer conditions and the indicative timetable**

The Offer is subject to customary conditions, including the following:

- Minimum acceptance condition of 90%;
- No Material Adverse Change or Company Prescribed Occurrences in relation to APD;
- No Convertible Notes are converted into shares during the Offer Period and the Convertible Notes are either due to be redeemed or capable of redemption for an amount equal to their face value and accrued interest; and
- The Company ESOP Options<sup>1</sup> are cancelled or will automatically lapse at the end of the Offer Period, and the acquisition by GrowthOps of at least 80% of the Company Placement Options with an exercise price of 12c per share.

Further details in relation to the Offer conditions are set out in schedule 1 to the BIA (see Appendix 1). Full particulars of the Offer will be provided in the Bidder’s Statement and the Target’s Statement.

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

|                        |  |
|------------------------|--|
| Wednesday, 4 July 2018 | GrowthOps lodges Bidder’s Statement with ASIC and ASX and serves it on APD<br>APD lodges Target’s Statement with ASIC and ASX and serves it on GrowthOps |
| Thursday, 5 July 2018  | GrowthOps dispatches Bidder’s Statement to APD Shareholders<br>APD dispatches Target’s Statement to APD Shareholders                                     |
| Friday, 6 July 2018    | Offer Opens  |
| Monday, 6 August 2018  | Expected Close of Offer  |

**Other matters**

As with other businesses that have joined GrowthOps, APD is expected to be integrated into GrowthOps and re-branded to GrowthOps within 12 months following completion of the Offer.

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<sup>1</sup> As at the date of this Announcement, all Company ESOP Options are “out of the money” with reference to the \$0.14 implied Offer consideration (see Highlights).

## **About GrowthOps**

Trimantium GrowthOps Limited (ASX: TGO) is an entrepreneurial advisory and operations partner for organisations seeking to develop new products, services and growth strategies. We take ideas from concept to reality. Operating across Australia and Asia, we provide services spanning management consulting, technology, and advertising and creative, including: analysis of market threats and opportunities; leadership development; change management; cloud services; software development; systems integration; positioning and brand strategy; and marketing communications.

## **About Asia Pacific Digital**

Asia Pacific Digital Limited (ASX: DIG) is a digital transformation company employing approximately 300 professionals in offices in Singapore, Kuala Lumpur, Manila, Singapore, Sydney, Melbourne and Auckland. The company offers integrated transformation strategy, research insights, technology solutions, customer experience, creative, performance marketing, social media, CRM and analytics to multinational corporate clients operating across the Asia Pacific region.

## **Forward looking statements**

This announcement contains forward looking statements which are identified by words such as ‘may’, ‘could’, ‘believes’, ‘estimates’, ‘expects’, ‘intends’ and other similar words that involve risks and uncertainties. These forward-looking statements speak only as of the date of this announcement, and neither GrowthOps nor APD undertakes to publicly update or revise any forward-looking statement.

Any forward-looking statements are subject to various risks that could cause GrowthOps’ or APD’s actual results to differ materially from the results expressed or anticipated in these statements. Such forward looking statements are not guarantees of future performance and involve known and unknown risks, uncertainties, assumptions and other important factors, many of which are beyond the control of GrowthOps, APD and the companies’ directors and management. GrowthOps and APD cannot and do not give any assurance that the results, performance or achievements expressed or implied by the forward-looking statements contained in this announcement will actually occur and investors are cautioned not to place undue reliance on these forward-looking statements.

## **Investor enquiries:**

GrowthOps: [investors@growthops.com.au](mailto:investors@growthops.com.au)

Asia Pacific Digital: [investors@apdgroup.com](mailto:investors@apdgroup.com)

<sup>2</sup> North Ridge Partners Pty Ltd, Co-Investor No 1 Fund A/C, Valuestream Investment Management Ltd Co-Investor No3 PIPE Fund A/C, Wentworth Financial Pty Ltd, Roger Sharp, Christine Sharp, Tony Lowrie, Treeleaf Pty Ltd, Illimite Pty Ltd, VBS Investments Pty Ltd, Wodi Wodi Pty Ltd, Pyvis Nominees Pty Ltd, Scobie Ward, Mark Dalgleish, Grant Paterson and Modern Dragon Investments Limited.

# Bid Implementation Agreement

Dated *15 June* 2018

Asia Pacific Digital Limited (ACN 000 386 685) (the "**Company**")

Trimantium GrowthOps Limited (ACN 621 067 678) (the "**Bidder**")

**King & Wood Mallesons**  
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Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
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F +61 2 9296 3999  
DX 113 Sydney  
[www.kwm.com](http://www.kwm.com)

# Bid Implementation Agreement

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# Bid Implementation Agreement

## Details

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|                           |                 |  |
|---------------------------|-----------------|--|
| <b>Parties</b>            |                 |  |
| <b>Company</b>            | Name            | <b>Asia Pacific Digital Limited</b>                    |
|                           | ACN             | 000 386 685  |
|                           | Formed in       | Australia  |
|                           | Address         | Ground Floor, 33-35 Saunders Street<br>Pymont NSW 2009 |
|                           | Email           | rsharp@apdgroup.com                                    |
|                           | Contact         | Roger Sharp  |
| <b>Bidder</b>             | Name            | <b>Trimantium GrowthOps Limited</b>                    |
|                           | ACN             | 621 067 678  |
|                           | Formed in       | Australia  |
|                           | Address         | Level 9, 287 Collins Street<br>Melbourne VIC 3000      |
|                           | Email           | phil@trimantium.com                                    |
|                           | Contact         | Phil Kingston  |
| <b>Governing law</b>      | New South Wales |  |
| <b>Business Day place</b> | Sydney          |  |

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|                 |          |  |
|-----------------|----------|--|
| <b>Recitals</b> | <b>A</b> | The Bidder is proposing to acquire all of the Company Shares by way of a Takeover Bid.   |
|                 | <b>B</b> | The Company and the Bidder have agreed to co-operate with each other in relation to the Takeover Bid on the terms of this agreement. |

# Bid Implementation Agreement

## General terms

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### 1 Definitions and interpretation

#### 1.1 Definitions

The following words have these meanings in this agreement unless the contrary intention appears.

**Advisers** means, in relation to an entity, its legal, financial and other expert advisers.

**Amount of the Consideration** means:

- (a) the amount of any payment in connection with a supply; and
- (b) in relation to non-monetary consideration in connection with a supply, the GST exclusive market value of that consideration as reasonably determined by the supplier.

**Announcement** means the announcement substantially in the form of Schedule 5.

**Announcement Date** means the date the Takeover Bid is announced in accordance with clause 11.

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

**Associate** has the meaning set out in section 12 of the Corporations Act, as if section 12(1) of the Corporations Act included a reference to this agreement.

**ASX** means ASX Limited or the Australian Securities Exchange, as appropriate.

**Authorised Officer** means, in respect of a party, a director or secretary of the party or any other person appointed by a party to act as an Authorised Officer under this agreement.

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

**Bidder Counterproposal** has the meaning given in clause 7.9.

**Bidder Group** means Bidder and its Related Bodies Corporate.

**Bidder Securities** means Bidder Shares and securities of any type which are convertible or exchangeable into Bidder Shares or can be exercised to acquire Bidder Shares.

**Bidder Share** means a fully paid ordinary share in the Bidder.

**Bidder's Statement** means the bidder's statement to be issued by the Bidder in respect of the Takeover Bid.

**Break Fee** equals \$330,000.

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

**Company Board** means the board of directors of Company and a **Company Director** means any director of the Company.

**Company Convertible Notes** means all the convertible notes issued by the Company which have an aggregate face value of \$4,320,287 and accrued interest of \$704,159 as of 1 June 2018, which convert into Company Shares, including the convertible notes described in Schedule 2.

**Company ESOP Options** means 11,430,469 options to acquire Company Shares under the Company Share Option Plan and exercisable at 62.5 cents per option and expiring on 28 November 2018.

**Company Group** means Company and its Related Bodies Corporate.

**Company Material Adverse Change** means any event or circumstance occurring, or being discovered or becoming public which has or could reasonably be expected to have, either individually or when aggregated with any events of a similar kind or category, the effect of a diminution in the consolidated net assets of the Company Group (taken as a whole) by \$750,000 or more, but does not include an event, matter or change in circumstance:

- (a) any change in taxation, interest rates or general economic conditions which impact on the Company and the Bidder in a similar manner;
- (b) in or relating to any change in accounting policy required by law;
- (c) occurring directly or indirectly as a result of any matter, event or circumstance required by this agreement or with the prior written consent of the Bidder;
- (d) an event, circumstance, matter or information that is Disclosed by the Company;
- (e) directly or indirectly as a result of any adoption, implementation or change in applicable law or any interpretation of applicable law by a Regulatory Authority;
- (f) occurring directly or indirectly as a result of any act of God, lightning, storm, flood, earthquake, cyclone, tidal wave or landslide; or
- (g) in respect of which a member of the Company Group is entitled to recover under any applicable insurance contract.

**Company Placement Options** means 9,825,000 options to acquire Company Shares and exercisable at 12.0 cents per option and expiring on 22 December 2019.

**Company Prescribed Occurrence** means any of the events listed in Schedule 4 excluding an occurrence directly or indirectly as a result of any matter, event or circumstance required by this agreement or with the prior written consent of the Bidder.

**Company Securities** means Company Shares and securities of any type which are convertible or exchangeable into Company Shares or can be exercised to acquire Company Shares.

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

**Company Shareholder** means a holder of one or more Company Shares.

**Competing Proposal** means any proposal, agreement, arrangement, or transaction which, if entered into or completed, would mean that a third party (either alone or with any associate thereof) would:

- (a) for any person who does not have a Relevant Interest in 20% or more of Company Shares on the date of this agreement, directly or indirectly acquire a Relevant Interest in 20% or more of the Company Shares;
- (b) acquire Control of any member of the Company Group;
- (c) otherwise directly or indirectly acquire or merge with any member of the Company Group; and/or
- (d) directly or indirectly acquire or become the holder of, or otherwise acquire or have a right to acquire a legal, beneficial or economic interest in, or control of, all or substantially all of the business or assets of any member of the Company Group,

whether by way of a takeover bid, scheme, shareholder approved acquisition, capital reduction, buy back, sale or purchase of shares, other securities or assets, assignment of assets or liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement or other transaction or arrangement.

**Conditions** means the conditions set out in Schedule 1.

**Confidentiality Agreement** means the Confidentiality Agreement between the Bidder and Company regarding a potential acquisition of the Company.

**Control** has the meaning given in section 50AA of the Corporations Act.

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

**Details** means the section of this agreement headed "Details".

**Disclosed** means Fairly Disclosed:

- (a) by one party in writing to the other party prior to the date of this document; or
- (b) in any announcement made by the Company on ASX prior to the date of this document.

**Effective Control** when used in relation to the Takeover Bid, means the acquisition by the Bidder of a relevant interest in more than 90% of the Company Shares.

**Encumbrance** means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, claim, covenant, profit a prendre, easement or any other security arrangement or any other arrangement having the same effect.

**End Date** means the earliest of:

- (a) date of termination of this agreement in accordance with its terms; and
- (b) 31 August 2018, or such later date agreed in writing between the Bidder and the Company.

**Exclusivity Period** means the period commencing on the date of this agreement and ending on the End Date.

**Fairly Disclosed** means disclosed in sufficient detail so as to enable a reasonable and sophisticated person to identify the nature and scope of the relevant matter, event or circumstance.

**Foreign Company Shareholder** means a Company Shareholder:

- (a) who is (or is acting on behalf of) a citizen or resident of a jurisdiction other than residents of Australia and its external territories; or
- (b) whose address shown in the Register is a place outside Australia and its external territories or who is acting on behalf of such a person,

unless the Bidder determines that:

- (a) it is lawful and not unduly onerous or unduly impracticable to issue that Company Shareholder with Bidder Shares on completion of the Offer; and
- (b) it is lawful for that Company Shareholder to participate in the Offer by the law of the relevant place outside Australia and its external territories.

**Group** means the Company Group or the Bidder Group, as applicable.

**GST** means a goods and services or similar tax imposed in Australia.

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

**Implementation Committee** means a committee formed pursuant to clause 2.3.

**Input Tax Credit** has the meaning it has in the GST Act.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject); or

- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

**Listing Rules** means the Listing Rules of ASX.

**Loan Agreement** has the meaning given in clause 3.10(a)

**Material Contract** means a contract or commitment requiring payments over the term of the contract in excess of \$500,000.

**New Bidder Shares** means the Bidder Shares to be issued as Share Consideration.

**Octet Consent** means the consent of Octet Finance Pty Ltd (ACN 124 477 916) under the Business Transaction Facility and Debtor Finance Facility dated 7 February 2018 to the Proposed Transaction.

**Offer** means each offer to acquire Company Shares to be made by the Bidder to each Company Shareholder under the Takeover Bid on terms consistent with this agreement.

**Offer Date** has the meaning given in Schedule 6 or such other date agreed between the Bidder and the Company.

**Offer Period** means the period during which the Offer is open for acceptance.

**Officers** means, in relation to an entity, its directors, officers, partners and employees.

**Permitted Indebtedness** means the indebtedness referred to in clause 3.10(b).

**Register** means the share and option register of the Company (as appropriate) and **Registry** has a corresponding meaning.

**Register Date** means the date set by Bidder pursuant to section 633(2) of the Corporations Act.

**Regulatory Approval** means:

- (a) any consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, approval, direction, declaration, authority, ruling or exemption from, by or with a Regulatory Authority; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Regulatory Authority intervened or acted in any way within a specified period after lodgment, filing, registration or notification, the expiry of that period without intervention or action,

as may be necessary to enable a party to fulfill its obligations under this agreement.

**Regulatory Authority** includes:

- (a) ASX and ASIC;

- (b) a government or governmental, semi-governmental or judicial entity or authority;
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (d) any regulatory organisation established under statute.

**Related Bodies Corporate** has the meaning given in the Corporations Act.

**Relevant Interest** has the meaning given by sections 608 and 609 of the Corporations Act.

**Representatives** of a party includes:

- (a) a Related Bodies Corporate of the party; and
- (b) Officers, Advisers and employees of the party or any of its Related Bodies Corporate.

**Restricted Payment** means:

- (a) any management, consulting, monitoring or other shareholder or directors' fees or bonuses or payment of a similar nature to a Restricted Person;
- (b) any payments made or agreed to be made to a Restricted Person in respect of any share or loan capital in any member of the Company Group being issued, redeemed, purchased or repaid or any other return of capital by a member of the Company Group,

but does not include:

- (c) any payments that are expressly permitted or required to be done under this agreement;
- (d) any payment made in the ordinary course of business that a member of the Company Group has budgeted to undertake, including the payment of annual bonuses to employees and non-executive directors' fees which are less than \$75,000 in aggregate (excluding Roger Sharp) paid in the ordinary course of business where the quantum of such payments is consistent with past practice; and
- (e) any payment which is approved in writing by the Bidder (acting reasonably).

**Restricted Person** means any Company Shareholder or Company Director of the Company or any of their Associates.

**Reverse Break Fee** equals \$330,000.

**Share Consideration** has the meaning given in clause 3.2.

**Subsidiary** of an entity means another entity which:

- (a) is a subsidiary of the first entity within the meaning of the Corporations Act; and

- (b) is part of a consolidated entity constituted by the first entity and the entities it is required to include in the consolidated financial statements it prepares, or would be if the first entity was required to prepare consolidated financial statements.

**Superior Proposal** means a bona fide Competing Proposal which the relevant board of the member of the Company Group, acting in good faith, and after receiving written legal advice from its legal advisers and written advice from its financial advisers, determines:

- (a) is reasonably capable of being completed taking into account all aspects of the Competing Proposal including any timing considerations, any conditions precedent, the identity of the proponent and ability to finance; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to the Company Shareholders (as a whole) than any transaction then proposed by the Bidder or any of their Related Bodies Corporate, taking into account all terms and conditions of the Competing Proposal.

**Takeover Bid** means the off-market takeover bid by the Bidder for the Company Shares to be implemented in accordance with Chapter 6 of the Corporations Act.

**Target's Statement** means the Target's Statement to be issued by the Company in respect of the Takeover Bid.

**Tax** means any tax, levy, impost, charge or duty (including stamp and transaction duties) that is assessed, levied, imposed or collected by any imposed by any Regulatory Authority together with any related interest, penalties, fines and expenses in connection with them.

**Timetable** means the timetable set out in Schedule 6, or such other indicative timetable as the Company and the Bidder agree in writing.

## 1.2 References to certain general terms

Unless the contrary intention appears, a reference in this agreement to:

- (a) **(variations or replacement)** a document (including this agreement) includes any variation or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;



- (f) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Regulatory Authority;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (h) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (i) **(dollars)** Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (j) **(Calculation of time)** a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (k) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) **(accounting terms)** an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (m) **(meaning not limited)** the words "include", "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (n) **(time of day)** time is a reference to Sydney, New South Wales time.

### 1.3 **Next day**

If an act under this agreement to be done by a party on or by a given day is done after 5.00 pm on that day, it is taken to be done on the next day.

### 1.4 **Next Business Day**

If an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.

### 1.5 **Headings**

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.

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## 2 **Co-operation**

### 2.1 **General obligations**

The Company and the Bidder must each use all reasonable endeavours, and must procure that its Representatives work in good faith and in a timely and co-operative fashion with the other party, in order to implement the Takeover Bid.

## 2.2 Access to information

To the extent reasonably required to implement the Takeover Bid, each party must following a written request from the other party giving a reasonable period of notice, provide the other party and its Representatives with any documents, records, and other information during normal business hours (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) reasonably requested by them prior to the earlier of the end of the Offer Period and the date this agreement is terminated.

## 2.3 Implementation Committee

- (a) The parties must establish an Implementation Committee as soon as possible after the date of this agreement. The role of the Implementation Committee will be to act as a forum for consultation and planning by parties to implement the Takeover Bid.
- (b) The business to be conducted at the first meeting of the Implementation Committee will be to decide upon the Implementation Committee's own procedures and its scope of work, outline work programmes and a timetable for carrying out those work programmes.
- (c) The Implementation Committee may comprise executives of each party and Advisers of each of the parties.
- (d) Subject to this agreement, nothing in this clause requires either party to act at the direction of the other or compromise the ability of each party to conduct its business as it sees fit. The business of each party will continue to operate independently from the other until the Bidder acquires Effective Control. The parties agree that nothing in this agreement constitutes the relationship of a partnership or a joint venture between the parties.

## 2.4 Implementation obligations of the Company

The Company must:

- (a) provide all necessary information about the Register to the Bidder which the Bidder requires in order to assist it to solicit acceptances under the Takeover Bid; and
- (b) direct the Registry to promptly provide any information that the Bidder reasonably requests in relation to the Register (including any sub-register) and, where requested by the Bidder, the Company must procure such information to be provided to the Bidder in such electronic form as is reasonably requested by the Bidder.

## 2.5 Appointment of directors to Company

As soon as practicable after the Bidder acquires Effective Control, the Company must use its best endeavours to cause the appointment to the Company Board of persons nominated by the Bidder, provided that the Bidder will procure that its Representatives (excluding any independent directors appointed by the Bidder pursuant to this clause 2.5) do not participate in decisions of the Company in relation to the Takeover Bid and that the Company Board maintains an appropriate number of independent directors.

## 2.6 **Appointment of directors to Bidder**

As soon as practicable after the Bidder acquires Effective Control, the Bidder must use reasonable endeavours to procure the appointment of a director of the Company (nominated by the Company) to the board of the Bidder, provided that the Company will procure that the relevant person does not participate in decisions of the Bidder in relation to the Takeover Bid.

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## 3 **The Offer**

### 3.1 **Offer by the Bidder**

The Bidder must, by no later than the Offer Date make the Offer to each Company Shareholders in respect of all Company Shares held by them on the terms of this agreement and otherwise in accordance with all applicable provisions of the Corporations Act.

### 3.2 **Consideration**

The Bidder will offer the Company Shareholders 1 Bidder Share (the "**Share Consideration**") for every 8.9 fully paid Company Shares held by them on the Register Date.

### 3.3 **Foreign Company Shareholders**

Unless:

- (a) the Bidder is satisfied that the laws of a Foreign Company Shareholder's country of residence (as shown in the Register) permit the issue of New Bidder Shares to the Foreign Company Shareholder (either unconditionally or after compliance with conditions which Bidder regards as acceptable and not unduly onerous and not unduly impracticable); or
- (b) ASIC relief permits otherwise, the Bidder will issue the New Bidder Shares to which a Foreign Company Shareholder would otherwise become entitled to a nominee appointed by the Bidder who will sell those New Bidder Shares and pay to that Foreign Company Shareholder the proceeds received, after deducting any applicable brokerage, taxes and charges in accordance with the Offer.

### 3.4 **Fractional entitlements**

If the number of Company Shares held by a Company Shareholder means that their aggregate entitlement to Bidder Shares is not a whole number, then any fractional entitlement will be rounded up to the nearest whole number.

### 3.5 **Conditions of the Offer**

- (a) The Offer and any contract which results from its acceptance will be subject to the Conditions.
- (b) Each party must use all reasonable endeavours to satisfy the Conditions as soon as practicable after the date of this agreement.
- (c) The Bidder may waive the satisfaction of the Conditions in its sole discretion.

### 3.6 Consultation on a failure of a Condition Precedent

If:

- (a) there is a breach or non-fulfilment of a Condition which is not waived in accordance with this agreement by the End Date; or
- (b) there is an act, failure to act or occurrence which will prevent a Condition being satisfied by the End Date (and the breach or nonfulfillment which would otherwise occur has not already been waived in accordance with this agreement),

then the parties must promptly consult in good faith with a view to determining whether:

- (c) the Takeover Bid may proceed by way of alternative means or methods, to the extent possible; or
- (d) to extend the End Date.

### 3.7 Failure to agree

If the parties are unable to reach an agreement under clause 3.6 within 10 Business Days of the commencement of consultation between Bidder and Company, either party may terminate this agreement (and such termination will be in accordance with clause 10.1).

### 3.8 Declaring Offer free of defeating conditions

Within five Business Days of the last of the Conditions set out in paragraphs (a), (k), (l) and (m) of Schedule 1 having been satisfied or waived, Bidder must give a notice to Company declaring the Offer to be free from all other Conditions in accordance with section 650F of the Corporations Act.

### 3.9 Offer Period

- (a) The parties intend that the Offer Period will be one month, but acknowledge and agree that the Offer Period may be extended by the Bidder at its discretion (having obtained the Company's consent in accordance with clause 3.9(b) or automatically, in each case in accordance with the Corporations Act.
- (b) Subject to any automatic extension of the Offer Period in accordance with the Corporations Act, Bidder may only extend the Offer Period with the Company's prior written consent (which may not be unreasonably withheld or delayed).

### 3.10 Bidder Working Capital Facility

The parties acknowledge that:

- (a) on the date of this agreement the Bidder and the Company entered into a loan agreement (**Loan Agreement**) with an advance limit of \$2,000,000 by the Bidder to the Company to be utilised by the Company to fund general working capital and certain expenses in connection with the Takeover Offer; and
- (b) the "outstanding amount" (as that term is defined in the Loan Agreement) constitutes Permitted Indebtedness for the purposes of this agreement.

### 3.11 **No withdrawal of Offer without Company's consent**

Bidder must not apply to ASIC for consent to withdraw unaccepted Offers under section 652B of the Corporations Act without Company's prior written consent, such consent not to be unreasonably withheld.

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## **4 Recommendation and documentation**

### 4.1 **Bidder's obligations to prepare documentation**

- (a) The Bidder will prepare the Bidder's Statement and an acceptance form for the Offer, in each case consistent with clauses 3.2 to 3.6. The Bidder's Statement must not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and must comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC.
- (b) The Bidder agrees to do, and will procure its Officers do, such things as are reasonably necessary to prepare the Bidder's Statement, its lodgement with ASIC and despatch to Company Shareholders in accordance with the Timetable, subject to the Company granting any necessary consents and ASIC granting any necessary modifications.

### 4.2 **Company's obligations to prepare documentation**

- (a) The Company must prepare the Target's Statement in response to the Offer in accordance with the Corporations Act. The Target's Statement must not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC.
- (b) The Company agrees to do, and will procure its Officers do, such things as are reasonably necessary to prepare the Target's Statement, its lodgement with ASIC and despatch to Company Shareholders in accordance with the Timetable.

### 4.3 **Provision of Information**

Each party agrees that it will provide to the other such information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) as is reasonably required by the other party in order to enable the other party to fulfil its obligations under this agreement, including, but not limited to, the preparation of the Bidder's Statement and the Target's Statement.

### 4.4 **Directors' recommendations**

- (a) The Company must use its reasonable endeavours to procure in the Target's Statement and any other public statements made by the Company in relation to the Takeover Bid a statement by the Company Board to the effect that, subject to clause 4.4(b), the Company Directors unanimously recommend that Company Shareholders accept the Offer in the absence of a Superior Proposal.

- (b) The Bidder acknowledges that each of the Company Directors may publicly (or otherwise) change, withdraw or modify its, his or her recommendation to accept the Offer if the Company has received, other than as a breach of clause 6, a Superior Proposal.

#### 4.5 **Sharing of Bidder's Statement and Target's Statement**

The Bidder agrees that it will provide a draft of its Bidder's Statement to the Company and the Company agrees that it will provide a draft of its Target's Statement to the Bidder as soon as reasonably practicable and in any event not less than 5 Business Days before the statement is due to be dispatched for printing. Each party agrees to consider in good faith all reasonable and timely comments received from the other and its Advisers and make such changes to its statement as are reasonably required by the other.

#### 4.6 **Joint Despatch**

Each party agrees that it will take prompt action to ensure that the Bidder's Statement and Target Statement can be mailed together to Company Shareholders in accordance with the Timetable.

#### 4.7 **Timetable**

Each party agrees to use its reasonable endeavours to comply with the Timetable (noting that all dates after lodgement of the Target's Statement are indicative only).

#### 4.8 **Consent to early dispatch of Bidder's Statement**

The Company agrees (by authority of the directors) that the Offer and accompanying documents to be sent by Bidder under the Takeover Bid pursuant to item 6 of section 633(1) of the Corporations Act may be sent up to 14 days earlier than the earliest date for sending under item 6 of section 633(1) of the Corporations Act.

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## 5 **Conduct of business**

### 5.1 **Overview**

From the date of this document up to and including the date the Bidder acquired Effective Control, the Company must, and must cause each member of the Company Group to, conduct its business in the ordinary course.

### 5.2 **Specific obligations**

Without limiting clause 5.1 and other than with the prior approval of the Bidder (which approval must not be unreasonably withheld or delayed) or as required by this document, the Company must, during the period contemplated by clause 5.1, use all reasonable endeavours to ensure that the Company and each member of the Company Group:

- (a) **(business and assets)** maintains the condition of its business and assets;
- (b) **(officers and employees)** subject to the business needs of the Company keeps available the services of its officers and employees;

- (c) **(relationships)** preserves its relationships with customers, suppliers, licensors, licensees, joint venturers and others with whom it has business dealings;
- (d) **(change of control provisions)** with the reasonable assistance of the Bidder obtains the consent of relevant persons who have rights in respect of significant contracts identified by the Bidder containing change of control or similar provisions, to the transactions contemplated by the Takeover Bid; and
- (e) **(cash)** ensures there is no material decrease in the amount of cash in Company other than as:
  - (i) used in the ordinary course of business; or
  - (ii) a result of reasonable costs incurred directly in relation to the transactions contemplated by the Takeover Bid.

### 5.3 Prohibited actions

Other than with the prior approval of the Bidder (which approval must not be unreasonably withheld or delayed) or as required by this document the Company must not, and must ensure that each member of the Company Group does not, during the period referred to in clause 5.1:

- (a) **(Material Contracts)** enter into or terminate a Material Contract;
- (b) **(employment agreements)** increase the remuneration of (including with regard to superannuation benefits) or benefits provided to or pay any bonus (other than in accordance with existing arrangements and in the ordinary course) or issue any securities or options to, or otherwise vary the employment agreements with, any of its:
  - (i) Directors;
  - (ii) employees who earn an annual salary in excess of \$100,000; or
  - (iii) any other employees once remuneration increases have reached \$150,000 in aggregate;
- (c) **(accelerate rights)** accelerate the rights of any of its directors or employees to benefits of any kind;
- (d) **(termination payments)** pay a director, executive or employee a termination payment, other than as provided for in an existing employment contract in place as at 1 January 2018 and a copy of which has previously been provided to the Bidder;
- (e) **(dividends)** announce, declare or pay any dividends;
- (f) **(information technology)** take any action in respect of its information technology systems which would have a material impact on those systems;
- (g) **(indebtedness)** incur additional financier indebtedness except as Disclosed by the Company (and, for the avoidance of doubt, such indebtedness does not restrict additional Permitted Indebtedness, draw-downs on existing working capital or overdraft facilities in the ordinary course of business);
- (h) **(Restricted Payment)** permit any Restricted Payment; or

- (i) **(agree)** agree to do any of the matters set out above.

#### 5.4 **Exceptions to conduct of business provisions**

Nothing in this clause 5 restricts the ability of the Company to take any action which:

- (a) is expressly required or permitted by this document or otherwise required by law;
- (b) has been Disclosed to the Bidder; or
- (c) has been agreed to in writing by the Bidder.

#### 5.5 **Employee retention arrangements**

In the event that the Bidder and the Company agree that the Company make retention payments (or agree to make such payments) to certain employees in order to secure their retention following implementation of the Takeover Bid, any such payments will be excluded from the operation of clauses 5.1, 5.2 and 5.3.

#### 5.6 **Access to people**

Between the date of this document and the date the Bidder acquires Effective Control, the Company must provide the Bidder and its Officers and Advisers, subject to giving reasonable written notice with reasonable access during normal business hours to Company's Officers and Advisers which the Bidder reasonably requires for the purposes of:

- (a) implementing the Takeover Bid;
- (b) preparing for carrying on the business of the Company following completion of the Takeover Bid; and
- (c) any other purpose which is agreed in writing between the parties,

provided in every case that such access is reasonably necessary to the Bidder and does not place an unreasonable burden on the ability of Company to run its business.

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## 6 **Dealing in Company Shares and Bidder Shares**

### 6.1 **Purpose**

Each party acknowledges that clauses 6.2 and 6.3 are intended to ensure that:

- (a) any acquisition of Company Shares by Bidder takes place in an efficient, competitive and informed market; and
- (b) Company Shareholders have a reasonable and equal opportunity to participate in any benefits accruing to the Company Shareholders through any proposal under which a person would acquire an interest in Company.

### 6.2 **No Relevant Interest**

- (a) Bidder warrants that, as at the date of this agreement, neither it, nor any of its controlled or managed Related Bodies Corporate:



- (i) has a Relevant Interest in, or a right to acquire, any Company Shares (whether issued or not or held by the counterparty or not); or
  - (ii) has entered into any agreement or arrangement that confers rights the economic effect of which is equivalent or substantially equivalent to holding, acquiring or disposing of securities in the Company or any of its Subsidiaries or of any assets of the Company or any of its Subsidiaries (including cash-settled derivative contracts, contracts for difference or other derivative contracts).
- (b) Company warrants that, as at the date of this agreement, neither it, nor any of its controlled or managed Related Bodies Corporate:
- (i) has a Relevant Interest in, or a right to acquire, any Bidder Shares (whether issued or not or held by the counterparty or not); or
  - (ii) has entered into any agreement or arrangement that confers rights the economic effect of which is equivalent or substantially equivalent to holding, acquiring or disposing of securities in the Bidder or any of its Subsidiaries or of any assets of the Bidder or any of its Subsidiaries (including cash-settled derivative contracts, contracts for difference or other derivative contracts).

### 6.3 Bidder Standstill

Except pursuant to the Takeover Bid, Bidder must not, and must ensure that its Associates do not (alone or with others), during the Exclusivity Period:

- (a) acquire any Relevant Interest in Company Shares or otherwise acquire, purchase or sell, or agree to acquire, purchase or sell, any Company Shares (or direct or indirect rights, warrants or options to acquire any Company Shares) or any assets of the Company or any of its Related Bodies Corporate;
- (b) enter into any agreement or arrangement that confers rights the economic effect of which is equivalent or substantially equivalent to holding, acquiring or disposing of securities of the Company or any of its Related Bodies Corporate or of any assets of the Company or any of its Related Bodies Corporate (including cash-settled derivative contracts, contracts for difference or other derivative contracts);
- (c) solicit proxies from Company Shareholders, solicit support from Company Shareholders for any proposal by Bidder or any of its Associates, or otherwise seek to influence or control the management or policies of Company (including seeking to call, or seeking support for the calling of, a general meeting of the Company Shareholders);
- (d) enter into any arrangements in relation to securities of the Company with any person who has a Relevant Interest in, or who holds, directly or indirectly, securities of the Company; or
- (e) aid, abet, counsel or induce any other person to do any of the things mentioned in clauses 6.4(a), 6.4(b), 6.4(c) or 6.4(d).

### 6.4 Company Standstill

The Company must not, and must ensure that its Associates do not (alone or with others), during the Exclusivity Period:

- (a) acquire any Relevant Interest in Bidder Shares or otherwise acquire, purchase or sell, or agree to acquire, purchase or sell, any Bidder Shares (or direct or indirect rights, warrants or options to acquire any Bidder Shares) or any assets of the Bidder or any of its Related Bodies Corporate;
- (b) enter into any agreement or arrangement that confers rights the economic effect of which is equivalent or substantially equivalent to holding, acquiring or disposing of securities of the Bidder or any of its Related Bodies Corporate or of any assets of the Bidder or any of its Related Bodies Corporate (including cash-settled derivative contracts, contracts for difference or other derivative contracts);
- (c) solicit proxies from Bidder Shareholders, solicit support from Bidder Shareholders for any proposal by Bidder or any of its Associates, or otherwise seek to influence or control the management or policies of the Bidder (including seeking to call, or seeking support for the calling of, a general meeting of Bidder Shareholders);
- (d) enter into any arrangements in relation to securities of the Bidder with any person who has a Relevant Interest in, or who holds, directly or indirectly, securities of the Bidder; or
- (e) aid, abet, counsel or induce any other person to do any of the things mentioned in clauses 6.3(a), 6.3(b), 6.3(c) or 6.3(d).

## 6.5 Prevalence over Confidentiality Agreement

Despite anything to the contrary in the Confidentiality Agreement, the terms of this clause 6 prevail over the terms of the Confidentiality Agreement to the extent of any inconsistency.

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## 7 Exclusivity

### 7.1 Cease existing discussions

The Company agrees that, other than the discussions with the Bidder in respect of the Takeover Bid, it will immediately cease any other negotiations or discussions in respect of any Competing Proposal with any person. From the date of this agreement, the Company will promptly enforce the terms of any confidentiality agreement entered into with a party other than the Bidder in relation to a Competing Proposal and will immediately request the return of all confidential information relating to the Company Group from any such party and terminate their access to any confidential information on an ongoing basis.

### 7.2 No-shop

During the Exclusivity Period, the Company must ensure that neither it nor any of its Representatives directly or indirectly:

- (a) solicits, invites, encourages or initiates any enquiries, negotiations or discussions; or
- (b) communicates any intention to do any of these things,

with a view to obtaining any offer, proposal or expression of interest from any person in relation to a Competing Proposal.

### 7.3 **No-talk**

Subject to clause 7.5, during the Exclusivity Period, the Company must ensure that neither it nor any of its Representatives:

- (a) negotiates or enters into; or
- (b) participates in negotiations or discussions with any other person regarding,

a Competing Proposal or any agreement, understanding or arrangement that may be reasonably expected to lead to a Competing Proposal, even if that person's Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Company or any of its Representatives or the person has publicly announced the Competing Proposal.

### 7.4 **Due diligence information**

Subject to clauses 7.5 and 7.6, during the Exclusivity Period, the Company must ensure that neither it nor any of its Representatives in relation to a Competing Proposal:

- (a) enables any other person other than the Bidder to undertake due diligence investigations on any member of the Company Group or their businesses or operations; or
- (b) makes available to any other person, or permits any other person to receive, other than the Bidder (in the course of due diligence investigations or otherwise) any non-public information relating to any member of the Company Group or their businesses or operations.

### 7.5 **Exceptions**

Clause 7.3 and clause 7.4 does not apply to the extent that it restricts the Company or the Company Board from taking or refusing to take any action with respect to a genuine Competing Proposal (which was not solicited, invited, encouraged or initiated by the Company in contravention of clause 7.2) provided that the Company Board has determined, in good faith and acting reasonably, that:

- (a) such a genuine Competing Proposal is, or could reasonably be considered to become, a Superior Proposal; and
- (b) after receiving written legal advice from its external legal advisers (who must be reputable advisers experienced in transactions of this nature) that failing to respond to such a genuine Competing Proposal would be reasonably likely to constitute a breach of the Company Board's fiduciary or statutory obligations.

### 7.6 **Further exceptions**

Nothing in this document prevents the Company from:

- (a) continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to the Takeover Bid or its business generally; or
- (b) fulfilling its continuous disclosure requirements.

## 7.7 Notice of unsolicited approach

During the Exclusivity Period, the Company must promptly inform the Bidder if it or any of its Representatives:

- (a) receives any unsolicited approach with respect to any Competing Proposal and must disclose to the Bidder all material details of the Competing Proposal, including details of the proposed bidder or acquirer;
- (b) receives any request for information relating to the Company or any of its Related Bodies Corporate or any of their businesses or operations or any request for access to the books or records of the Company or any of its Related Bodies Corporate, which the Company has reasonable grounds to suspect may relate to a current or future Competing Proposal; and
- (c) provides any information relating to the Company or any of its Related Bodies Corporate or any of their businesses or operations to any person in connection with or for the purposes of a current or future Competing Proposal.

## 7.8 Matching right

Without limiting clauses 7.2 and 7.3, during the Exclusivity Period, the Company:

- (a) must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a third party, Company or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Proposal; and
- (b) must use its best endeavours to procure that none of its directors change their recommendation in favour of the Takeover Bid to publicly recommend an actual, proposed or potential Competing Proposal (or recommend against the Takeover Bid),

unless:

- (c) the Company Board acting in good faith and in order to satisfy what the Company Board considers to be its statutory or fiduciary duties (having received written advice from its external legal advisers), determines that the Competing Proposal would be or would be likely to be an actual, proposed or potential Superior Proposal;
- (d) the Company has provided the Bidder with the material terms and conditions of the actual, proposed or potential Competing Proposal, including price and the identity of the third party making the actual, proposed or potential Competing Proposal;
- (e) Company has given the Bidder at least 5 Business Days after the date of the provision of the information referred to in clause 7.8(d) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal; and
- (f) the Bidder has not announced a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal by the expiry of the 5 Business Day period referred to in clause 7.8(e).

the Company acknowledges and agrees that each successive modification of any actual, proposed or potential Competing Proposal will constitute a new actual, proposed or potential Competing Proposal for the purposes of the requirements under clause 7.8 and accordingly Company must comply with clause 7.8(a) and clause 7.8(b) of this clause in respect of any new actual, proposed or potential Competing Proposal unless clauses 7.8(c) to 7.8(f) (inclusive) apply.

#### 7.9 **Bidder counterproposal**

If the Bidder proposes to the Company, or announces amendments to the Takeover Bid or a new proposal that constitute a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal ("**Bidder Counterproposal**") by the expiry of the 5 Business Day period referred to in clause 7.8(e), the Company must procure that the Company Board considers the Bidder Counterproposal and if the Company Board, acting reasonably and in good faith, determines that the Bidder Counterproposal would provide an equivalent or superior outcome for Company Shareholders as a whole compared with the Competing Proposal, taking into account all of the terms and conditions of the Bidder Counterproposal, then:

- (a) the Company and the Bidder must use their best endeavours to agree the amendments to this document that are reasonably necessary to reflect the Bidder Counterproposal and to implement the Bidder Counterproposal as soon as reasonably practicable; and
- (b) the Company must use its best endeavours to procure that each of the directors of Company continues to recommend the Takeover Bid (as modified by the Bidder Counterproposal) to Company Shareholders.

#### 7.10 **Legal advice**

The Company acknowledges that it has received legal advice on this document and the operation of this clause.

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## 8 **Break Fees**

### 8.1 **Background**

This clause has been agreed in circumstances where:

- (a) the Bidder and the Company believe that the Takeover Bid will provide significant benefits to the Bidder, the Company and their respective shareholders, and the Bidder and the Company acknowledge that, if they enter into this document, the Bidder will incur significant costs, including those set out in clause 8.5;
- (b) the Bidder requested that provision be made for the Break Fee, without which the Bidder would not have entered into this document;
- (c) the Company requested that provision be made for the Reverse Break Fee, without which the Company would not have entered into this document;
- (d) both the Bidder Board and Company Board believe that it is appropriate for both parties to agree to the payments referred to in this clause to secure the Bidder's agreement to implement the Takeover Bid; and
- (e) both parties have received legal advice on this document and the operation of this clause.

## 8.2 Payment by the Company to the Bidder

The Company agrees to pay the Break Fee to the Bidder, without withholding or set off, if:

- (a) **(Competing Proposal)** on or before the End Date a Competing Proposal is announced and within 12 months of the End Date the third party who announced or made the Competing Proposal (or any of its Associates):
  - (i) completes a Competing Proposal; or
  - (ii) acquires more than 50% of Company;
- (b) **(change of recommendation)** any Company Director fails to recommend the Takeover Bid or withdraws their recommendation, adversely changes or qualifies their recommendation or otherwise makes a public statement indicating that he or she no longer supports the Takeover Bid;
- (c) **(termination)** the Bidder validly terminates this agreement by reason of an event referred to in clauses 10.1(a) or 10.1(e) that occurs with respect to the Company; or
- (d) **(failure to satisfy Condition in Company's control)** the Company or any Company Director does (or omits to do) anything (whether or not it may be permitted by the terms of this agreement) which results in the Conditions in paragraphs (b) or (d) of Schedule 1 being breached, that breach is not remedied within three Business Days following written notice from the Bidder outlining the nature of the breach and the Bidder does not declare the Offer free of the breached condition (which Bidder is under no obligation to do).

## 8.3 Payment by the Bidder to the Company

The Bidder agrees to pay the Company the Reverse Break Fee if the Company terminates this agreement by reason of an event referred to in clauses 10.1(a) or 10.1(e) that occurs with respect to the Bidder.

## 8.4 Timing of payment

- (a) A demand by either party for payment of the Break Fee under clause 8.2 or Reverse Break Fee under clause 8.3 must:
  - (i) be in writing;
  - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
  - (iii) state the circumstances which give rise to the demand; and
  - (iv) nominate an account in the name of the relevant party into which the other party must pay the Break Fee or Reverse Break Fee (as applicable).
- (b) A party must pay the Break Fee or Reverse Break Fee to the other party under clause 8.2 or 8.3 (as applicable) without withholding or set off within 5 Business Days of receipt by Company or Bidder (as applicable) of a valid demand for payment.

## 8.5 Nature of payment

- (a) The Break Fee is an amount to compensate the Bidder for:
  - (i) advisory costs
  - (ii) costs of management and directors' time;
  - (iii) out-of-pocket expenses;
  - (iv) the distraction of the Bidder's management from conducting the Bidder's business as usual caused by pursuing the Takeover Bid;
  - (v) reasonable opportunity costs incurred by the Bidder in pursuing the Takeover Bid or in not pursuing alternative acquisitions or strategic initiatives which the Bidder could have developed to further its business and objectives; and
  - (vi) damage to the Bidder's reputation associated with a failed transaction and the implications of that damage to the Bidder's business.
- (b) The Reverse Break Fee is an amount to compensate the Company for:
  - (i) advisory costs
  - (ii) costs of management and directors' time;
  - (iii) out-of-pocket expenses;
  - (iv) the distraction of the Company's management from conducting the Company's business as usual caused by pursuing the Takeover Bid;
  - (v) reasonable opportunity costs incurred by the Company in pursuing the Takeover Bid or in not pursuing alternative transactions or strategic initiatives which the Company could have developed to further its business and objectives; and
  - (vi) damage to the Company's reputation associated with a failed transaction and the implications of that damage to the Company's business.

The parties agree that the costs incurred are of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amounts payable under clause 8.2 and 8.3.

## 8.6 Refund

If, notwithstanding the occurrence of any of the events referred to in clause 8.2, Bidder declares the Offer to be unconditional and becomes the holder of not less than 50.1% of Company's share capital as a result of the Takeover Bid, Bidder must repay to Company any amount received by it under this clause 8.

## 8.7 Compliance with law

If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a Court that all or any part of the amount payable under clause 8.2:

- (a) is unlawful or would if performed be, unlawful;
- (b) involves a breach of the duties of the Company Board; or
- (c) constitutes unacceptable circumstances within the meaning of the Corporations Act,

then the Company's obligation to pay the applicable amount or part of the amount payable under clause 8.2 does not apply and if the Bidder has received any such part of the payment due under clause 8.2 it must refund it within 5 Business Days of such final determination.

The parties must not make or cause or permit to be made any application to a Court, arbitral tribunal or the Takeovers Panel for or in relation to a determination referred to in this clause 8.6.

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## **9 Warranties**

### **9.1 Reciprocal Warranties**

Each of the Bidder and the Company represents and warrants to the other that, as at the date of this agreement:

- (a) it is a validly existing corporation registered under the laws of its place of incorporation; and
- (b) the execution and delivery of this agreement has been properly authorised by all necessary corporate action and it has full corporate power and lawful authority to execute and deliver this agreement and to perform or cause to be performed its obligations under this agreement; and
- (c) (subject to the laws generally affecting creditors' rights and the principles of equity) this agreement constitutes legal, valid and binding obligations on it and execution of this agreement will not result in a breach of or default under its constitution or any agreement or deed or writ, order or injunction, rule or regulation to which it or any member of its Group is a party or to which they are bound or require any consent or approval, authorisation or permit from any governmental agency except for the Regulatory Approvals.

### **9.2 Bidder Warranties**

The Bidder represents and warrants to the Company that, other than as Disclosed to the Company as at the date of this agreement:

- (a) so far as it is aware, the Bidder has, prior to the date of this agreement, fairly disclosed all information reasonably required to enable the Company to undertake due diligence enquiries into the Bidder for the purpose of determining whether to enter into this agreement and all information provided by the Bidder to the Company under this agreement, including, but not limited to information provided under clause 4.3 is complete and accurate in all material respects;
- (b) the Prospectus contained all information that investors and their professional advisers would reasonably require to make an informed assessment of the matters set out in section 710 of the Corporations Act as at the date of admission of the Bidder to the official list of ASX and



was otherwise prepared in accordance with the Corporations Act, the Corporations Regulations, ASIC Class Orders and all ASIC Regulatory Guides, practice notes and other guidance;

- (c) the New Bidder Shares to be offered as consideration under clause 3 will be duly authorised and validly issued, fully paid, not liable to the imposition of any duty and be free of all Encumbrances and will rank equally with all other Bidder Shares;
- (d) it has complied with its continuous disclosure obligations under the Listing Rules and the Corporations Act and its accounts are prepared on a consistent basis with past practices and in accordance with all relevant accounting standards;
- (e) to the best of the Bidder's knowledge, the Bidder and its Subsidiaries have complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over them and have all material licenses, permits and franchises necessary for them to conduct their respective businesses as presently being conducted;
- (f) neither the Bidder nor any of its Subsidiaries is in material default under any material document, agreement or instrument binding on it or its assets nor has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party thereto a termination right or right to accelerate any right or obligation, under any such document or agreement with such an effect;
- (g) schedule 3 accurately records the total number and details of the Bidder Securities on issue as at the date of this agreement. There are no other shares, options, notes or other securities of the Bidder and no rights to be issued such shares, options, notes or other securities;
- (h) there is no current, pending or threatened dispute between any member of the Bidder Group and any Regulatory Authority which would have a material adverse effect on the Bidder Group and, to the best of Bidder's knowledge, no such dispute is anticipated, nor is there any current, pending or threatened Tax audit or investigation of any member of the Bidder Group; and
- (i) there is no material claim, action or proceeding pending or in progress or threatened against or relating to any member of the Bidder Group.

### 9.3 Company Warranties

The Company represents and warrants to the Bidder that, other than as Disclosed to the Bidder as at the date of this agreement:

- (a) so far as it is aware, the Company has, prior to the date of this agreement, fairly disclosed all information reasonably required to enable the Bidder to undertake due diligence enquiries into the Company for the purpose of determining whether to enter into this agreement and all information provided by the Company to the Bidder under this agreement, including, but not limited to information provided under clause 4.3 is complete and accurate in all material respects;
- (b) subject to release of the Announcement contemplated by clause 12.1, it has complied with its continuous disclosure obligations under the Listing Rules and the Corporations Act and is not relying on Listing Rule 3.1A to withhold any information from disclosure other than as disclosed in

writing to the Bidder or its Representatives on or before the date of this agreement;

- (c) the Company Group's accounts are prepared on a consistent basis with past practices and in accordance with all relevant accounting standards;
- (d) to the best of the Company's knowledge, the Company and its Subsidiaries have complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over them and have all material licenses, permits and franchises necessary for them to conduct their respective businesses as presently being conducted;
- (e) neither the Company nor any of its Subsidiaries is in material default under any material document, agreement or instrument binding on it or its assets nor has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party thereto a termination right or right to accelerate any right or obligation, under any such document or agreement with such an effect;
- (f) Schedule 2 accurately records the total number and details of Company Securities on issue as at the date of this agreement. There are no other shares, options, notes or other securities of Company and no rights to be issued such shares, options, notes or other securities;
- (g) there are no Encumbrances over all or any of the assets or revenues of any member of the Company Group;
- (h) all material Tax, levies, assessments, contributions, fees, rates, duties and other governmental or municipal charges or impositions (other than those that may still be paid without penalty or interest) for which any member of the Company Group are liable, including any penalty or interest, having been paid;
- (i) other than as provided for in the Company's financial statements for the financial year ended 30 June 2017 or the half yearly report for the year ended 31 December 2017, no material additional liability for Tax has, or will accrue to any member of the Company Group otherwise than as a result of the trading activities in the ordinary course of business;
- (j) there is no current, pending or threatened dispute between any member of the Company Group and any Regulatory Authority which would have a material adverse effect on the Company Group and, to the best of Company's knowledge, no such dispute is anticipated, nor is there any current, pending or threatened Tax audit or investigation of any member of the Company Group; and
- (k) there is no material claim, action or proceeding pending or in progress or threatened against or relating to any member of the Company Group.

#### 9.4 **Company indemnity**

The Company agrees with the Bidder to indemnify and keep the Bidder indemnified against all claims, liabilities and losses which it may suffer or incur by reason of any breach of any of its warranties in clauses 9.1 and 9.3.

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## **10 Termination**

### **10.1 Termination rights**

This agreement may be terminated by either party by notice to the other party:

- (a) if the other party is in material breach of this agreement and that breach is not remedied by that other party within 5 Business Days of it receiving notice from the first party of the details of the breach and the first party's intention to terminate;
- (b) in accordance with and pursuant to clause 3.7;
- (c) if the Bidder withdraws the Takeover Bid as permitted by the Corporations Act or the Takeover Bid lapses for any reason, including non-satisfaction of a Condition;
- (d) if a Court or other Regulatory Authority has issued a final and non-appealable order, decree or ruling or taken other action which permanently restrains or prohibits the Takeover Bid;
- (e) if the other party or any of their material Related Bodies Corporate becomes Insolvent; or
- (f) a Superior Proposal is made or publicly announced for the Company by a third party, provided that the Company complies with its obligations under clause 7 and the Bidder has decided not to match that Superior Proposal in accordance with clause 7.8.

### **10.2 Termination by Bidder**

This agreement may be terminated by the Bidder by notice in writing to the Company if:

- (a) a Superior Proposal is made or publically announced for the Company by a third party and any director of the Company publicly recommends that Superior Proposal;
- (b) any director of the Company does not recommend the Company Shareholders to accept the Offer or having recommended the Offer, withdraws or adversely modifies his or her recommendation of the Offer; or
- (c) a person (other than the Bidder or its associates) has a relevant interest in more than 20% of the Company Shares on issue (other than existing Company Shareholders who at the date of this agreement hold a relevant interest in more than 20% of the Company Shares on issue).

### **10.3 Termination by the Company**

This agreement may be terminated by the Company by a notice in writing to the Bidder if all of the Company Directors either:

- (a) adversely change or withdraw their recommendation to Company Shareholders in relation to the Takeover Bid; or
- (b) recommend a Competing Proposal in accordance with clause 4.4(b); and

the Company complies with its obligations under clause 8.

#### **10.4 Effect of termination**

If this agreement is terminated by another party under this clause 10:

- (a) each party will be released from its obligations under this agreement except its obligations under clauses 8, 14 and 15.12;
- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this agreement; and
- (c) in all other respects, all future obligations of the parties under this agreement will immediately terminate and be of no further force or effect, including, without limitation, any further obligations in respect of the Takeover Bid.

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### **11 Bidder acknowledgements**

The Bidder acknowledges and agrees that, if it has received forward looking opinions, estimates, projections, business plans, budget information or forecasts in connection with the Company Group (including in connection with any financial analysis or modelling conducted by Bidder or any of its Representatives):

- (a) there are uncertainties inherent in attempting to make these forward looking opinions, estimates, projections, business plans, budgets and forecasts and Bidder is familiar with these uncertainties;
- (b) the Bidder will make its own evaluation of the adequacy and accuracy of all forward looking opinions, estimates, projections, business plans, budgets and forecasts furnished to it; and
- (c) to the extent permitted by law, no member of the Company Group nor any Company Shareholder is liable to the extent that any claim arises out of any forward looking opinions, estimates, projections, business plans, budgets or forecasts in connection with the Company Group.

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### **12 Announcement of Takeover Bid**

#### **12.1 Public announcement of Takeover Bid**

Immediately after signing this agreement, the parties must procure the issue of the Announcement.

#### **12.2 Required Disclosure**

Where a party is required by law or the Listing Rules to make any announcement or make any disclosure relating to a matter the subject of the Takeover Bid, it may do so only after it has given the other party as much notice as reasonably practicable having regard to its disclosure obligations and has consulted with the other party to the extent reasonably practicable having regard to its disclosure obligations.

#### **12.3 Other Announcements**

Subject to clause 12.2, no party may make any public announcement or disclosure in connection with the Takeover Bid (including, where possible,

disclosure to a Regulatory Authority) other than in a form approved by the other party (acting reasonably). Each party will use all reasonable endeavours to provide such approval as soon as practicable.

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## **13 Notices and other communications**

### **13.1 Form**

Unless this document expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in connection with this document must be in writing and signed by the sender (if an individual) or an Authorised Officer of the sender.

All communications (other than email communications) must also be marked for the attention of the person referred to in the Details (or, if the recipient has notified otherwise, then marked for attention in the way last notified).

Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

### **13.2 Delivery**

Communications must be:

- (a) left at the address set out or referred to in the Details;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details;
- (c) sent by email to the address referred to in the Details; or
- (d) given in any other way permitted by law.

However, if the intended recipient has notified a changed address then communications must be to that address.

### **13.3 When effective and taken to be received**

Communications are taken to be received:

- (a) if sent by post, 6 Business Days after posting (or 10 days after posting if sent from one country to another);
- (b) if sent by email:
  - (i) when the sender receives an automated message confirming delivery; or
  - (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

### **13.4 Receipt outside business hours**

Despite anything else in this clause 13, if communications are received or taken to be received under clause 13.3 after 5.00pm on a Business Day or on a non-

Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

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## **14 Goods and services tax (GST)**

### **14.1 Consideration does not include GST**

The consideration specified in this agreement does not include any amount for GST.

### **14.2 Recovery of GST**

If a supply under this agreement is subject to GST, the recipient must pay to the supplier an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate.

### **14.3 Time of payment**

The additional amount is payable at the same time as the consideration for the supply is payable or is to be provided. However, the additional amount need not be paid until the supplier gives the recipient a Tax invoice.

### **14.4 Adjustment of additional amount**

If the additional amount differs from the amount of GST payable by the supplier, the parties must adjust the additional amount.

### **14.5 Reimbursement**

If a party is entitled to be reimbursed or indemnified under this agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

### **14.6 Survival**

This clause 14 will survive termination of this agreement.

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## **15 Miscellaneous**

### **15.1 Discretion in exercising rights**

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this agreement expressly states otherwise.

### **15.2 Partial exercising of rights**

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

### **15.3 No liability for loss**

A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this agreement.

#### **15.4 Approvals and consents**

By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

#### **15.5 Conflict of interest**

The parties' rights and remedies under this agreement may be exercised even if it involves a conflict of duty or a party has a personal interest in their exercise.

#### **15.6 Remedies cumulative**

The rights and remedies in this agreement are in addition to other rights and remedies given by law independently of this agreement.

#### **15.7 Variation and waiver**

A provision of this agreement or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

#### **15.8 No merger**

The warranties, undertakings and indemnities in this agreement do not merge on completion of any transaction contemplated by this agreement.

#### **15.9 Indemnities**

The indemnities in this agreement are continuing obligations, independent from the other obligations of the parties under this agreement and continue after this agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this agreement.

#### **15.10 Further steps**

Each party agrees, at its own expense, to do anything the other party asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to bind the party and any other person intended to be bound under this agreement; or
- (b) to show whether the party is complying with this agreement.

#### **15.11 Construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this agreement or any part of it.

#### **15.12 Costs**

The parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this agreement and other related documentation except for stamp duty.

### 15.13 **Stamp duty**

The Bidder agrees to pay all stamp duty (including fines and penalties) payable and assessed on this agreement or in respect of a transaction evidenced by this agreement.

### 15.14 **Entire agreement**

This agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

### 15.15 **Assignment**

A party may not assign or otherwise deal with its rights under this agreement or allow any interest in them to arise or be varied in each case, without the prior written consent of the other party.

### 15.16 **No representation or reliance**

Each party acknowledges that:

- (a) no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement;
- (b) it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this agreement; and
- (c) clauses 15.16(a) and 15.16(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX.

### 15.17 **Governing law**

This agreement is governed by the law in force in the place specified in the Details. Each party submits to the non-exclusive jurisdiction of the courts of that place.

### 15.18 **Counterparts**

This agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

### 15.19 **Knowledge and belief**

Any statement made by a party on the basis of its knowledge, information, belief or awareness, is made on the basis that the party has, in order to establish that the statement is accurate and not misleading in any material respect, made all reasonable enquiries of its officers, managers and employees who could reasonably be expected to have information relevant to matters to which the statement relates.



# Bid Implementation Agreement

## Schedule 1 - Conditions to the Offer

The Offer, and any contract resulting from the acceptance of the Offer, are subject to the following conditions:

- (a) **(minimum acceptance)** during or at the end of the Offer Period, the Bidder Group together have received acceptances under the Offer which give the Bidder Group a relevant interest in at least 90% of the Company Shares.
- (b) **(no Company Prescribed Occurrences)** there not occurring a Company Prescribed Occurrence during the Offer Period;
- (c) **(no Company Material Adverse Change)** there not occurring a Company Material Adverse Change during the Offer Period;
- (d) **(no material acquisitions, disposals or new commitments)** except for any proposed transaction publicly announced by the Company before the Announcement Date or directly or indirectly as a result of any matter, event or circumstance required by this agreement or with the prior written consent of the Bidder, none of the following events occurs during the period from the Announcement Date to the end of the Offer Period:
  - (i) a member of the Company Group acquires, offers to acquire or agrees to acquire one or more companies, businesses or assets (or any interest in one or more companies, businesses or assets) for an amount in aggregate greater than \$1,000,000 or makes an announcement in relation to such an acquisition, offer or agreement;
  - (ii) a member of the Company Group disposes of, offers to dispose of or agrees to dispose of one or more companies, businesses or assets (or any interest in one or more companies, businesses or assets) for an amount, or in respect of which the book value is, in aggregate, greater than \$1,000,000 or makes an announcement in relation to such a disposition, offer or agreement;
  - (iii) a member of the Company Group enters into, or offers to enter into or agrees to enter into, any agreement, joint venture, partnership, management agreement or commitment which would require expenditure, or the foregoing of revenue, by a member of the Company Group of an amount which is, in aggregate, more than \$1,000,000, other than in the ordinary course of business, or makes an announcement in relation to such an entry, offer or agreement;
- (e) **(no restraining orders)** that between the Announcement Date and the end of the Offer Period:
  - (i) there is not in effect any preliminary or final decision, order or decree issued by any Regulatory Authority; and
  - (ii) no application is made to any Regulatory Authority (other than by a member of the Bidder Group), or action or investigation is

announced, threatened or commenced by a Regulatory Authority,

in consequence of, or in connection with, the offer (other than a determination by ASIC or the Takeovers Panel in exercise of the powers and discretions conferred by the Corporations Act), which:

- (i) restrains, prohibits or impedes (or if granted could restrain, prohibit or impede), or otherwise materially adversely impacts on, the making of the offer or the completion of any transaction contemplated by the offer (whether subject to conditions or not) or the rights of Bidder in respect of the Company and the Company Shares to be acquired under the Offer; or
  - (ii) requires the divestiture by Bidder of any Company Shares, or the divestiture of any assets of the Company Group, the Bidder Group, or otherwise.
- (f) **(non-existence of certain rights)** that no person has any right (whether subject to conditions or not) as a result of the Bidder acquiring Company Shares to:
- (i) acquire, or require the Company or a Subsidiary of the Company to dispose of, or offer to dispose of, any material asset of the Company or a Subsidiary of the Company; or
  - (ii) terminate or vary or exercise any right under any material agreement with the Company or a Subsidiary of the Company,
- except for any rights under any provision of any agreement or other instrument disclosed in writing to the Bidder or its Representatives prior to execution of this agreement;
- (g) **(No regulatory action)** that between the Announcement Date and the end of the Offer Period:
- (i) there is not in effect any preliminary or final decision, order or decree issued by a public authority; and
  - (ii) no application is made to any public authority, or action or investigation is announced, threatened or commenced by a public authority in consequence of or in connection with the Offer,
- (other than an application to or a determination by ASIC or the Takeovers Panel in the exercise of the powers and discretions conferred by the Corporations Act), which restrains, impedes or prohibits (or if granted could restrain, impede or prohibit), or otherwise materially adversely impacts upon, the making of the Offer or any transaction contemplated by the Bidder's Statement (including, without limitation, full, lawful and effectual implementation of the intentions set out in the Bidder's Statement), the Offer (whether subject to conditions or not) or the rights of Bidder;
- (h) **(no termination of this agreement by the Company)** between the Announcement Date and the end of the Offer Period, the Company does not terminate this agreement in accordance with its terms.

- (i) **(no material breach of this agreement by the Company)** between the Announcement Date and the end of the Offer Period, the Company is not in breach of any provision of this agreement in circumstances where:
  - (i) that breach is material;
  - (ii) the Bidder has given written notice to the Company setting out that breach; and
  - (iii) either:
    - (A) the breach is incapable of remedy; or
    - (B) if the breach is capable of remedy but the breach is not remedied by the Company within 5 Business Days of it receiving notice from the Bidder.
  
- (j) **(Company Directors to recommend)** the Company Directors unanimously recommend that the Company Shareholders accept the Offer in the Target Statement and any other public statements made by the Company in relation to the Takeover Bid, and do not modify that recommendation.
  
- (k) **(Consents)** the Octet Consent is obtained, on an unconditional basis or otherwise on terms satisfactory to the Bidder (acting reasonably).
  
- (l) **(Options)** before the end of the Offer Period:
  - (i) each of the Company ESOP Options on issue are either cancelled for NIL consideration or will automatically lapse at the end of the Offer Period; and
  - (ii) holders of at least 80% of the Company Placement Options on issue have agreed to transfer all of their Company Placement Options to the Bidder in exchange for the Bidder issuing them 1 Bidder Share for every 65 Company Placement Options.
  
- (m) **(Company Convertible Notes)** no Company Convertible Notes have been converted into Company Shares during the Offer Period and before the end of the Offer Period the Company Convertible Notes are either:
  - (i) due to be redeemed by the Company for an amount equal to their face value and accrued interest; or
  - (ii) capable of redemption by the Company (at the election of the Company) for an amount equal to their face value and accrued interest,

and the Convertible Notes can no longer be converted into Company Shares.

The above conditions are conditions subsequent and do not prevent a contract resulting from acceptance of the Offer from coming into effect but any breach or non-fulfilment of them entitles the Bidder to rescind any contracts resulting from acceptance of the Offer.

# Bid Implementation Agreement

## Schedule 2 - Company securities

### Company Shares

| Share class     | Number of shares in issue | Amount paid up on those shares |
|-----------------|---------------------------|--------------------------------|
| Ordinary shares | 142,830,763               | Fully paid                     |

### Options:

| Options                   | Number of Options | Expiry Date | Exercise Price |
|---------------------------|-------------------|-------------|----------------|
| Company Placement Options | 9,825,000         | 22 Dec 2019 | \$0.12         |
| Company ESOP Options      | 11,430,469        | 28 Nov 2018 | \$0.625        |

### Convertible Notes

| Security class    | Face Value  | Accrued Interest | Interest Rate |
|-------------------|-------------|------------------|---------------|
| Convertible Notes | \$4,320,287 | \$704,159        | 10% p.a.      |

## Schedule 3 – Bidder securities

| Share class                              | Number of shares in issue | Amount paid up on those shares |
|--|---------------------------|--------------------------------|
| Ordinary shares                          | 94,869,006                | Fully paid                     |
| Convertible redeemable preference shares | 47,780,200                | Fully paid                     |

## Schedule 4 - Company Prescribed Occurrences

- 1     **(Conversion)** Company converts all or any of its shares into a larger or smaller number of shares.
- 2     **(Reduction of share capital)** Company resolves to reduce its share capital in any way or reclassifies, combines, splits or redeems or repurchases directly or indirectly any of its shares.
- 3     **(Buy-back)** Company:
  - (a)     enters into a buy-back agreement; or
  - (b)     resolves to approve the terms of a buy-back agreement under the Corporations Act.
- 4     **(Distribution)** Company makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie).
- 5     **(Issuing or granting shares or options)** Company or any of its Subsidiaries:
  - (a)     issues shares;
  - (b)     grants an option over its shares; or
  - (c)     agrees to make such an issue or grant such an option,in each case to a person outside the Company Group.
- 6     **(Securities or other instruments)** Company or any of its Subsidiaries:
  - (a)     issues securities or other instruments convertible into shares or debt securities; or
  - (b)     agrees to issue securities or other instruments convertible into shares or debt securities,in each case to a person outside the Company Group.
- 7     **(constitution)** Company adopts a new constitution or materially modifies or repeals its constitution or a material provision of it.
- 8     **(disposals)** any member of the Company Group disposes, or agrees to dispose of the whole or a substantial part of its business or property;
- 9     **(acquisitions, disposals or tenders)** any member of the Company Group
  - (a)     acquires or disposes of;
  - (b)     agrees to acquire or dispose of; or
  - (c)     offers, proposes, announces a bid or tenders for,any business, assets, entity or undertaking the value of which exceeds \$1,000,000;

- 10 **(Insolvency)** Company or any of its Related Bodies Corporate becomes Insolvent;
- 11 **(related party transactions)** any member of the Company Group entering into, or resolving to enter into, a transaction with a related party of Company (other than a related party that is a member of Company Group) as defined in section 228 of the Corporations Act which would require shareholder approval under Chapter 2E or under Chapter 10 of the Listing Rules.
- 12 **(indebtedness)** incur additional financier indebtedness except as Disclosed by the Company (and, for the avoidance of doubt, such indebtedness does not restrict additional Permitted Indebtedness, draw-downs on existing working capital or overdraft facilities in the ordinary course of business).
- 13 **(encumbrance)** any member of the Company Group creates, or agrees to create any Encumbrance over the whole or a substantial part of its business or property, other than:
  - (a) a lien, retention of title (or similar security interest) which arises by operation of law or legislation or arises in the ordinary course of the Company Group's business;
  - (b) to Company or another Company Group Member; or
  - (c) any security required in connection with Company's debt facilities Disclosed to the Bidder,

provided that a Company Prescribed Event listed in items 1 to 13 will not occur where the Company has first consulted with the Bidder in relation to the event (and provided reasonable details of the proposed transaction and its material terms in writing to the Bidder) and the Bidder has approved the proposed event in writing or has not objected to the proposed event within 5 Business Days of having being so consulted.

# Bid Implementation Agreement

## Schedule 5 – Announcement



# Bid Implementation Agreement

## Schedule 6 – Timetable

|  |   |
|--|---|
| Announcement Date  | Day 1   |
| Lodge Bidder's Statement and Target's Statement with ASIC, ASX and the Company                           | On the 13th Business Day after Day 1 (the "Offer Date") |
| Dispatch Bidder's Statement and Target's Statement to Company Shareholders                               | On the 14th Business Day after Day 1                    |
| Bidder to notify the Company that the Bidder's Statement has been dispatched to all Company Shareholders | Approximately the 15th Business Day after Day 1         |
| Assumed date on which the Conditions will be satisfied   | Approximately the 31st Business Day after Day 1         |
| Assumed date to Close Offer Period and proceed with compulsory acquisition                               | Approximately the 38th Business Day after Day 1         |

# Signing page

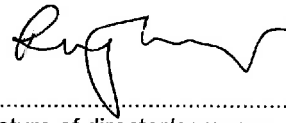
DATED: 15 June 2018

EXECUTED by ASIA PACIFIC  
DIGITAL LIMITED in accordance with  
section 127(1) of the Corporations Act  
2001 (Cwlth) by authority of its  
directors:

.....  
Signature of director

MARK DALGLEISH

.....  
Name of director (block letters)



.....  
Signature of director/company  
secretary\*

\*delete whichever is not applicable

ROGER SHARP

.....  
Name of director/company secretary\*  
(block letters)

\*delete whichever is not applicable

EXECUTED by TRIMANTIUM  
GROWTHOPS LIMITED in accordance  
with section 127(1) of the Corporations  
Act 2001 (Cwlth) by authority of its  
directors:

.....  
Signature of director

.....  
Name of director (block letters)

.....  
Signature of director/company  
secretary\*

\*delete whichever is not applicable

.....  
Name of director/company secretary\*  
(block letters)

\*delete whichever is not applicable

# Signing page

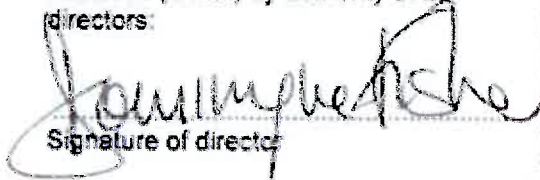
**DATED:**

**EXECUTED by ASIA PACIFIC  
DIGITAL LIMITED** in accordance with  
section 127(1) of the Corporations Act  
2001 (Cwth) by authority of its  
directors:

.....  
Signature of director

.....  
Name of director (block letters)

**EXECUTED by TRIMANTIUM  
GROWTHOPS LIMITED** in accordance  
with section 127(1) of the Corporations  
Act 2001 (Cwth) by authority of its  
directors:

  
.....  
Signature of director

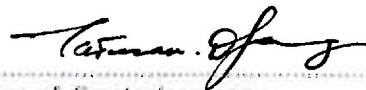
  
.....  
Name of director (block letters)

.....  
Signature of director/company  
secretary\*


\*delete whichever is not applicable

.....  
Name of director/company secretary\*  
(block letters)

\*delete whichever is not applicable

  
.....  
Signature of director/company  
secretary\*

\*delete whichever is not applicable

  
.....  
Name of director/company secretary\*  
(block letters)

\*delete whichever is not applicable