



ASX ANNOUNCEMENT

27 December 2019

The Manager

Company Announcements

Australian Securities Exchange

Level 5, 20 Bridge Street

SYDNEY NSW 2000

Cleansing Notice given under Section 708A(12C)(e) of the Corporations Act

IncentiaPay Limited (**IncentiaPay** or the **Company**) (ASX: INP) gives this cleansing notice (**Cleansing Notice**) under section 708A(12C)(e) of the *Corporations Act 2001* (Cth) (**Corporations Act**) as amended by *ASIC Corporations (Sale Offers: Securities Issued on Conversion of Convertible Notes) Instrument 2016/82*.

The Company hereby gives notice that:

- (a) the Convertible Loan Deed (defined below) was issued without disclosure to investors under Part 6D.2 of the Corporations Act; and
- (b) this Cleansing Notice has been given in accordance with section 708A(12C)(e) of the Corporations Act.

The issue of this Cleansing Notice enables the fully paid ordinary shares in the capital of the Company (**Shares**) issued on the conversion of the Convertible Loan issued by the Company on the terms described below, to be on-sold to retail investors without further disclosure.

This Cleansing Notice is important and should be read in its entirety.

1. Background

The Company entered into a \$19 million loan facility under a loan deed with Suzerain Investments Holdings Limited (**Suzerain**) dated on or about 8 August 2019 (**Loan Deed**). Under the Loan Deed, \$19 million will be loaned to the Company (as borrower) from Suzerain (as lender) in various tranches set out in the notice of 2019 annual general meeting released to ASX on 20 November 2019 (**2019 AGM Notice**).

After shareholder approval was obtained at the 2019 annual general meeting held on 20 December 2019, the Company entered into a convertible loan deed with Suzerain on 27 December 2019 which gives the Company access to Tranches 3 and 4 (as set out in the 2019 AGM Notice) as well as the ability for Suzerain to elect to convert the loan into fully paid ordinary shares (**Convertible Loan Deed**). The Convertible Loan Deed replaces the Loan Deed and provides for conversion rights for Suzerain.

The proceeds of the Convertible Loan Deed will be used for working capital purposes and restructuring for the removal of operational costs.

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If Suzerain elects to convert the debt under the Convertible Loan Deed (**Conversion**), the Conversion will comprise of an issue of up to 438,109,921 fully paid ordinary shares (**Shares**) each at an issue price of the higher of:

- (a) \$0.047 per Share; or
- (b) the volume weighted average price of Shares traded on ASX during the period of 30 trading days up to and concluding on the trading day before the issue date of the relevant Shares.

Full details of the material terms of the Convertible Loan Deed are summarised in the 2019 AGM Notice.

The Directors consider that the entry into the Convertible Loan Deed is in the best interests of the Company.

2. Contents of this Cleansing Notice

This Cleansing Notice sets out the following:

- (a) in relation to the Convertible Loan Deed:
 - (i) the effect of the issue on the Company;
 - (ii) a summary of the rights and liabilities attaching to the Convertible Loan Deed; and
 - (iii) a summary of the rights and liabilities attaching to the Shares that will be issued on the conversion of the debt under the Convertible Loan Deed; and
- (b) any information that:
 - (i) has been excluded from continuous disclosure notice in accordance with the ASX Listing Rules; and
 - (ii) is information that investors and their professional advisers would reasonably require for the purpose of making an informed assessment of:
 - a. the assets and liabilities, financial position and performance, profits and losses and prospects of the Company; and
 - b. the rights and liabilities attaching to the Shares; and
 - (iii) other information relating to the Company's status as a disclosing entity.

3. The effect of the issue on the structure of the Company

3.1. Effect of the issue on the Company

The principal effect of the issue of the Convertible Loan Deed on the Company will be to:

- (a) increase the Company's cash reserves by a further \$6 million consisting of Tranches 3 and 4 (as set out in the 2019 AGM Notice) which are only available upon entry into the Convertible Loan Deed and satisfaction of the Tranche 3 Hurdle and Tranche 4 Hurdle (as defined in the 2019 AGM Notice) respectively being met (before costs associated with the entry into the Loan Deed and Convertible Loan Deed);
- (b) give rise to the Company having a liability for Tranches 3 and 4 under the Convertible Loan Deed; and
- (c) if the debt under the Convertible Loan Deed is converted, either whole or in part, increase the number of Shares on issue as a consequence of the issue of Shares on the conversion of the debt under the Convertible Loan Deed.

3.2. Pro-forma balance sheet of the Company taking into account issue of the Convertible Loan Deed

- (a) Set out below is a pro-forma consolidated balance sheet of the Company, as at 30 June 2019, based on the consolidated balance sheet of the Company under its 2019 annual report (released to ASX on 11 September 2019) adjusted to reflect the Convertible Loan Deed and the recent settlement of claim with TCM investments Australia, prepared on the basis of the accounting policies normally adopted by the Company.
- (b) The pro-forma financial information is presented in an abbreviated form in so far as it does not include all of the disclosures required by Australian Accounting Standards applicable to the annual financial statements. The pro-forma financial information is not audited. The classification of the allocations between debt and equity for the Convertible Loan Deed may change in the future.

Pro-forma Statement of Financial Position as at 30 June 2019

	FY2019 \$'000
ASSETS	
Current assets	
Cash and cash equivalents	18,460
Deferred consideration	200
Trade and other receivables	2,728
Inventories	96
Other assets	7,853
Assets and disposal group classified as held for sale	-
Total current assets	29,337
Non-current assets	
Deferred consideration	-
Trade and other receivables	-
Property, plant and equipment	2,383
Deferred tax assets	3,717
Intangible assets	22,507
Other financial assets	-
Total non-current assets	28,607
TOTAL ASSETS	57,944
LIABILITIES	
Current liabilities	
Trade and other payables	5,941
Borrowings	19,169
Vendor loans	
Current tax liabilities	186
Deferred revenue	21,394
Provisions	1,833
Liabilities included in disposal group held for sale	-
Total current liabilities	48,523

Non-current liabilities	
Trade and other payables	0
Borrowings	466
Provisions	217
Deferred tax liability	-
Total non-current liabilities	683
TOTAL LIABILITIES	49,206
NET ASSETS	8,737
EQUITY	
Issued capital	96,006
Reserves	1,136
Retained earnings	(88,404)
TOTAL EQUITY	8,737

3.3. Potential effect on share structure

- (a) As at the date of this Cleansing Notice, the issued capital of the Company is 245,296,846 Shares.
- (b) The capital structure of the Company will be affected by the conversion of the debt under the Convertible Loan Deed by Suzerain which will result in additional Shares being issued.
- (c) The debt under the Convertible Loan Deed can be converted at any time prior to 30 June 2020 (being the period from the date the Convertible Loan Deed is entered into until 30 June 2020) (**Conversion Period**) at the request of Suzerain.
- (d) If the Suzerain elects to convert the maximum debt under the Convertible Loan Deed, then 438,109,921 new Shares would be issued (assuming full drawdown, a conversion price of \$0.047 per Share and full interest capitalisation until 30 June 2020). The actual effect of the share capital of the Company will depend on how much of the debt under the Convertible Loan Deed is converted and the price at which the Shares convert (which may vary if the volume weighted average price over 30 trading days up to the day before conversion is over \$0.047 per Share). The effect on the issued share capital of the Company on conversion of the debt under the Convertible Loan Deed (assuming full drawdown, interest capitalisation and a conversion price of \$0.047) and is set out in the table below.

Security	Number
Shares currently on issue	245,296,846
Shares issued upon conversion of the debt under the Convertible Loan Deed	438,109,921
Total Shares on issue following conversion of the Convertible Loan Deed	683,406,767

4. Rights and liabilities under the Convertible Loan Deed

The following is a broad summary of the rights, privileges and restrictions attaching to the Convertible Loan Deed. The summary is not exhaustive and does not constitute a definitive statement of the rights and liabilities of the Company or Suzerain. A more comprehensive summary is set out in the

2019 AGM Notice. Capitalised terms not otherwise defined in this section 4 have the meaning given to them in the 2019 AGM Notice.

(a) **Loan Facility**

The loan facility provided under the Convertible Loan Deed consists of the following:

- Tranche 1: \$8 million consisting of:
 - \$4 million recognised as already advanced pursuant to a line of credit facility letter dated on or about 16 May 2019 from Suzerain to the Company (**Line of Credit Letter**); and
 - \$4 million which was drawn down on the date of the Loan Deed;
- Tranche 2: \$5 million which may be drawn down on or after the date the Tranche 2 Hurdle is met;
- Tranche 3: \$3 million which may be drawn down on or after the date the Tranche 3 Hurdle is met; and
- Tranche 4: \$3 million which may be drawn down on or after the date the Tranche 4 Hurdle is met.

(b) **Interest rate and repayment**

If there is no event of default, the interest rate accruing under facility provided under this Convertible Loan Deed is 10% per annum calculated daily and to be capitalised on the principal balance outstanding, unless there are overdue monies payable to Suzerain under the Convertible Loan Deed; or

For so long as interest is capitalised, the Company must repay the outstanding balance of the principal amount, all interest payable under the Convertible Loan Deed (whether capitalised or not), and all other amounts payable by the Company under the Loan Deed on 30 September 2020 (**Repayment Date**).

If an event of default has occurred there will be no capitalisation of interest and accrued and uncapitalised interest will be payable on the last day of each month during the term and on the Repayment Date. Interest on overdue monies will be payable at the overdue rate, being 12% per annum, if there is a continuing event of default.

Interest at the overdue rate must be paid on demand, and if not paid will be capitalised monthly (without limiting Suzerain's right to exercise its rights under the Convertible Loan Deed or any security interest (if applicable) following an event of default).

(c) **Events of default**

It will be an event of default if any of the following events occur:

- the Company fails to pay an amount under the Convertible Loan Deed when due or fails to comply with any of its obligations under the Convertible Loan Deed;
- an Insolvency Event occurs with respect to the Company or the Company (or an analogous process under an overseas law is commenced);
- the Company ceases or threatens to cease to carry on its business or a substantial part of its business;
- any Security Interest securing amounts greater than \$100,000 becomes enforceable or is

enforced over all or any of the assets and undertakings of the Company (or an analogous process under an overseas law is commenced);

- a distress, attachment or other execution is levied or enforced or applied for over all or any of the assets or undertakings of the Company (or an analogous process under an overseas law is commenced);
- a warranty, representation or statement made by the Company under the Convertible Loan Deed is untrue or misleading in any material respect;
- an obligation of the Company in the Convertible Loan Deed becomes wholly or partly invalid, void, voidable or unenforceable;
- the Company repudiates the Convertible Loan Deed or evidences an intention to repudiate it;
- it is or becomes unlawful for the Company to perform any of its obligations under the Convertible Loan Deed;
- if the drawn down funds are used by the Company for any use other than the approved purpose;
- any debt in relation to a finance related transaction by the Company in excess of \$100,000 (other than under the Convertible Loan Deed):
 - is or becomes due and payable before the due date for payment as a result of an event of default or review event (however described); or
 - is not paid when due (after taking into account any applicable grace period); or
- an event or series of events, whether related or not, including any material adverse change in the property or financial condition of the Company, occurs which has or is likely to have a material adverse effect on:
 - the ability of the Company to comply with its obligations under the Convertible Loan Deed; or
 - the effectiveness, priority or enforceability of the whole or any part of the Convertible Loan Deed.

If an event of default is continuing then Suzerain may by notice to the Company, declare that any remaining amounts owing are immediately due and payable.

(d) Use of funds

The Company must only use the funds raised under the Convertible Loan Deed for working capital purposes and for redundancies (unless Suzerain approves otherwise in writing).

(e) Conversion

The Convertible Loan Deed also provides that during the period from the date the Convertible Loan Deed is entered into until 30 June 2020, i.e. the Conversion Period, Suzerain may give written notice to the Company to convert some or all of the monies owing under the loan into Shares to be issued to Suzerain (or its wholly owned subsidiary) within 5 business days at the issue price, being the higher of:

- \$0.047 per Share; or
- the volume weighted average price of Shares traded on ASX during the period of 30 trading

days and concluding on the trading day before the issue date of the relevant Shares.

Suzerain may also give more than one notice to convert.

If the Company reorganises its capital before conversion or repayment of the loan facility, the number of Shares to be issued on conversion will be reorganised so that Suzerain will not receive a benefit that Shareholders will not receive and vice versa.

Immediately following the issue of any Shares on conversion of the loan facility, the Company must:

- apply for quotation of the converted Shares on ASX and do all things necessary to ensure that the converted Shares are quoted on such terms and conditions as are usual for quotation of securities;
- issue a notice which complies with section 708A(6) of the Corporations Act, or if the Company is unable to satisfy the Corporations Act requirements to give such a notice, it must lodge a prospectus with ASIC within 10 Business Days following the issue of the converted Shares that qualifies the converted Shares for resale under section 708A(11) of the Corporations Act; and
- take all steps to procure the delivery to Suzerain a holding statement for the converted Shares.

(f) Recognition of prior advances

The Company and Suzerain agree that:

- (a) the principal amounts owing under the Loan Deed are taken to be owing under the Convertible Loan Deed;
- (b) the interest, as well as other amounts, owing under the Loan Deed are taken to be owing under the Convertible Loan Deed;
- (c) the amounts set out above will be set-off against the amounts the Company is entitled to draw down under Tranches 1 to 4 in that order and Tranches 1 to 4 will be taken to have been drawn down by that aggregate amount; and
- (d) on the date the Convertible Loan Deed is entered into, the Line of Credit Letter is taken to be terminated but without prejudice to the parties' obligations under:
 - (i) (a) to (c) above;
 - (ii) the Company's obligation to pay interest under the Line of Credit Letter on any amount payable under (b) and (c) above that is not paid in accordance with that clause; and
 - (iii) cross-references in the Convertible Loan Deed to the Loan Deed.

(g) Security

The debt under the Convertible Loan Deed is secured against all of the Company's present and future property.

5. Rights and Liabilities attaching to Shares issued under the Convertible Loan Deed

The Shares to be issued to Suzerain on the conversion of the debt under the Convertible Loan Deed will rank equally in all respects with all of the Company's existing Shares. The rights attaching to Shares, including new Shares to be issued to Suzerain on the conversion of the debt under the

Convertible Loan Deed, are set out in the Company's Constitution, and, in certain circumstances, regulated by the Corporations Act, the ASX Listing Rules and the general law.

The Company intends to apply to ASX Limited for quotation of the shares issued on conversion of the debt under the Convertible Loan Deed.

Full details of the rights and liabilities attaching to shares are set out in the Constitution, a copy of which can be inspected, free of charge, at the Company's registered office during normal business hours.

The following is a broad summary of the rights, privileges and restrictions attaching to all Shares. This summary is not exhaustive and does not constitute a definitive statement of the rights and liabilities of shareholders of the Company (**Shareholders**).

(a) General meetings

Shareholders are entitled to be present in person, by proxy, attorney or representative to attend and vote at general meetings of the Company.

Shareholders may requisition meetings in accordance with section 249D of the Corporations Act and the Constitution.

(b) Voting rights

Subject to any rights or restrictions for the time being attached to any class or classes of Shares, at general meetings of Shareholders or classes of Shareholders:

- (i) each Shareholder entitled to vote may vote in person or by proxy, attorney or representative;
- (ii) on a show of hands, every person present who is a Shareholder or a proxy, attorney or representative of a Shareholder has one vote; and
- (iii) on a poll, every person present who is a Shareholder or a proxy, attorney or representative of a Shareholder shall, in respect of each fully paid Share held by him, or in respect of which he is appointed a proxy, attorney or representative, have one vote for the share, but in respect of partly paid Shares, shall have such number of votes being equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable in respect of those Shares (excluding amounts credited).

(c) Dividend rights

Subject to and in accordance with the Corporations Act, the ASX Listing Rules, the rights of any preference Shareholders and to the rights of the holders of any Shares created or raised under any special arrangement as to dividend, the Directors may from time to time decide to pay a dividend to the Shareholders entitled to the dividend which shall be payable on all Shares according to the proportion that the amount paid (not credited) is of the total amount paid and payable (excluding amounts credited) in respect of such Shares.

The Directors may from time to time pay to the Shareholders any interim dividends that they may determine. No dividend shall carry interest against the Company.

Subject to the ASX Listing Rules and the Corporations Act, the Company may, by resolution of the Directors, implement a dividend reinvestment plan on such terms and conditions as the Directors think fit and which provides for any dividend which the Directors may declare from time to time payable on Shares which are participating Shares in the dividend reinvestment plan, less any amount which the Company shall either pursuant to the Constitution or any law

be entitled or obliged to retain, to be applied by the Company to the payment of the subscription price of Shares.

(d) **Winding-up**

If the Company is wound up, the liquidator may, with the authority of a special resolution of the Company, divide among the Shareholders in kind the whole or any part of the property of the Company, and may for that purpose set such value as the liquidator considers fair upon any property to be so divided, and may determine how the division is to be carried out as between the Shareholders or different classes of Shareholders.

The liquidator may, with the authority of a special resolution of the Company, vest the whole or any part of any such property in trustees upon such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no Shareholder is compelled to accept any Shares or other securities in respect of which there is any liability.

(e) **Transfer of Shares**

Generally, Shares are freely transferable, subject to formal requirements, the registration of the transfer not resulting in a contravention of or failure to observe the provisions of a law of Australia and the transfer not being in breach of the Corporations Act or the ASX Listings Rules.

(f) **Variation of Rights**

If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class), whether or not the Company is being wound up, may be varied with the consent in writing of the holders of three quarters of the issued shares of that class or if authorised by a special resolution passed at a separate meeting of the holders of the shares of that class.

6. **Compliance with disclosure obligations**

The Company is a “**disclosing entity**” under the Corporations Act and, as such, is subject to regular reporting and disclosure obligations under both the Corporations Act and the ASX Listing Rules.

These obligations require the Company to notify ASX of information about specific events and matters as they arise. In particular, the Company is obliged to continuously disclose to the market immediately any information which a reasonable person would expect to have a material effect on the price or the value of the Company’s Shares.

The Company is also required to prepare and lodge with ASIC yearly and half-yearly financial statements accompanied by a directors’ statement and report, and an audit report or review. Copies of documents lodged with ASIC in relation to the Company may be obtained from, or inspected at, an ASIC office.

The Company will provide a copy of each of the following documents, free of charge, to any person on request:

- (a) the annual financial report most recently lodged by the Company with ASIC, being the financial report of the Company for the year ended 30 June 2019; and
- (b) any continuous disclosure documents given by the Company to ASX after the lodgement of the annual financial report referred to in (a) and before the lodgement of this Cleansing Notice with ASX.

7. **Information excluded from continuous disclosure notices**

As at the date of this Cleansing Notice, the Company advises that it has fully complied with its disclosure

obligations under the ASX Listing Rules and the Corporations Act, and, in particular, there is no information which the Company has excluded from any of its continuous disclosure notices given in accordance with the ASX Listing Rules and the Corporations Act as at the date of this Cleansing Notice which it would be reasonable for investors and their professional advisers to require for the purpose of making an informed assessment of:

- (a) the assets and liabilities, financial position and performance, profits and losses and prospects of the Company; and
- (b) the rights and liabilities attaching to the Convertible Loan Deed and Shares.

For further information, please contact:

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