

amaysim Australia Ltd  
Level 6, 17-19 Bridge Street  
Sydney NSW 2000  
[www.amaysim.com.au](http://www.amaysim.com.au)  
ABN: 65 143 613 478

15 December 2020

The Manager  
Market Announcements Office  
Australian Securities Exchange  
4<sup>th</sup> Floor, 20 Bridge Street  
Sydney NSW 2000

Dear Sir / Madam

**Complementary Recommended Takeover Offer for amaysim Australia Limited**

Please find enclosed an announcement from amaysim Australia Limited (ASX: AYS) and WAM Capital Limited (ASX:WAM) regarding a recommended takeover offer for amaysim Australia Limited that is complementary to the sale of Mobile to Optus.

Authorised by:

**Alexander Feldman**

amaysim | Chief Strategy Officer, General Counsel & Company Secretary

**ASX ANNOUNCEMENT**

15 December 2020

**Recommended Takeover Offer for amaysim Australia Limited  
Complementary to Optus Mobile Sale**

amaysim Australia Limited (ASX: AYS) (**amaysim** or the **Company**) and WAM Capital Limited (ASX: WAM) (**WAM**) are pleased to announce that they have entered into a bid implementation agreement dated 14 December 2020 (**BIA**), under which it is proposed that WAM will make an agreed off-market takeover bid for 100% of the outstanding fully paid ordinary shares of amaysim, subject to certain conditions (the **WAM Offer**).

**The Board unanimously recommends shareholders accept the WAM Offer and the Directors have indicated that they each intend to accept the WAM Offer in respect of all amaysim shares they own or control, both in the absence of a superior proposal.**

The WAM Offer is conditional upon amaysim shareholder approval of the sale of amaysim's Mobile business (**Mobile Sale**) to Optus Mobile Pty Limited (**Optus**), which was announced on 2 November 2020 (**Mobile Sale Announcement**). On the basis that the WAM Offer relies on, and is supplemental to, the Mobile Sale, the amaysim Board considers that the **WAM Offer is complementary to the Mobile Sale and enhances the overall outcome for shareholders**. Optus has provided its consent to the making of this announcement.<sup>1</sup>

A copy of the BIA is attached as Annexure A for further information. Unless otherwise defined, capitalised terms used in this announcement will have the meaning given in the Mobile Sale Announcement as supplemented by amaysim's Notice of Extraordinary General Meeting and Explanatory Memorandum (**Notice of Meeting**) announced 3 December 2020.

**Summary of WAM Offer**

- Under the WAM Offer, each amaysim shareholder may elect to receive either:
  - o 1 WAM share for every 2.7 amaysim shares, representing A\$0.833<sup>2</sup> of implied value per amaysim share (the **Scrip Consideration**);
  - o cash consideration of A\$0.695 per amaysim share (the **Cash Consideration**); or
  - o a combination of cash and scrip.
- The WAM Offer is subject to customary conditions and WAM has provided an undertaking to amaysim that it will waive any remaining conditions immediately following completion of the Mobile Sale, expected to be on or around 1 February 2021.
- If the WAM Offer remains open past the Record Date for the major distribution of proceeds from the Mobile Sale (**Major Distribution**), the consideration will be reduced for shareholders whose acceptances of the WAM Offer take effect after that Record Date, by the amount of the Major Distribution (without any associated adjustment with respect to franking credits).

---

<sup>1</sup> Optus' consent was provided in connection with its rights in respect of the Mobile Sale only and it takes no responsibility in respect of this announcement.

<sup>2</sup> Based on WAM's closing price of \$2.25 per share on 14 December 2020. The implied value of the WAM Offer (measured by reference to the Scrip Consideration) depends on the value of WAM's share price at the time of any acceptance into the WAM Offer.

- As the WAM Offer is conditional on amaysim shareholders approving the Mobile Sale to Optus, or an alternative superior proposal, and opens subsequent to the completion of the Mobile Sale, the WAM Offer is considered complementary to the Mobile Sale by delivering enhanced value, optionality and faster payment for amaysim shareholders.
- The WAM Offer will open on the latter to occur of 1 February 2021 and the first business day after completion of the Mobile Sale, at which point the WAM Offer will be declared unconditional and will remain open at least until the day prior to the Record Date for the Major Distribution. In order to facilitate the WAM Offer, the Record Date of the Major Distribution will be amended from 12 March 2021 as shown in the Notice of Meeting to 31 March 2021<sup>3</sup>. Accepting amaysim shareholders will be paid within 5 business days of the processing of valid acceptances into the WAM Offer.
- The implied value of the WAM Offer (Scrip Consideration) reflects a 28.4%<sup>4</sup> premium to amaysim's 1 month VWAP<sup>4</sup> up until 30 October 2020 (last trading day prior to the Mobile Sale being announced) and a 12.6% premium to amaysim's VWAP since the Mobile Sale was announced.<sup>5</sup>

### Update to Distribution range

As detailed in the Notice of Meeting, amaysim expected shareholders would receive Distributions from amaysim through its delisting and wind-up process, of between A\$0.67 per share and A\$0.73 per share, with a midpoint of A\$0.70 per share.

It is expected that amaysim will incur additional incremental transaction costs of approximately A\$1.5 million directly associated with the WAM Offer, should the WAM Offer open and become unconditional.

This will reduce the cash available for Distribution by amaysim through its wind-up process by approximately \$1.5 million or A\$0.005 per share. The A\$0.005 per share reduction is expected to reduce the Final Distribution (as detailed in the Notice of Meeting) such that the Final Distribution is now expected to be in the range of A\$0.065 per share and A\$0.125 per share (with a midpoint of A\$0.095 per share) instead of the A\$0.07 per share to A\$0.13 per share (with a midpoint of A\$0.10 per share).

Accordingly, amaysim expects shareholders would receive Distributions from amaysim through its wind-up process, of between A\$0.665 per share and A\$0.725 per share with a midpoint of A\$0.695.

### Board Recommendation

The Board of amaysim views the WAM Offer as complementary to the Mobile Sale to Optus.

**The Board unanimously recommends shareholders accept the WAM Offer and the Directors have indicated that they each intend to accept the WAM Offer in respect of all amaysim shares they own or control, both in the absence of a superior proposal.**

---

<sup>3</sup> If the Mobile Sale completion date extends beyond 1 February 2021, the Record Date will also be extended by the corresponding delay

<sup>4</sup> amaysim's last close price on 30 October 2020, prior to Mobile Sale Announcement of A\$0.67 and 1 month VWAP up until 30 October 2020 of A\$0.65 and a 3 month VWAP up until 30 October 2020 of A\$0.67

<sup>5</sup> amaysim's VWAP from 2 November 2020 to 14 December 2020 (inclusive) of A\$0.74

Each shareholder should have regard to their own individual circumstances in determining whether to accept the Scrip Consideration or the Cash Consideration, however the Board's view is that:

- Ineligible Foreign Shareholders<sup>6</sup> should either:
  - accept the Cash Consideration on the basis that it is more beneficial to receive A\$0.695 per amaysim share now from WAM than total Distributions of between A\$0.665 and A\$0.725 per amaysim share over a period of time from amaysim through its windup process; or alternatively they may wish to sell their amaysim shares on market<sup>7</sup>; or
  - accept the Scrip Consideration under which a nominee will sell those new WAM shares issued under the WAM Offer and return the cash proceeds to them, in which case the Ineligible Foreign Shareholders may be better off; and
- all other shareholders should accept the Scrip Consideration and, subject to their risk profile and market conditions, may wish to either hold their WAM Shares or sell those WAM shares on market.

Although the Board recommends that shareholders accept the WAM Offer in accordance with the above, it acknowledges that some amaysim shareholders may wish to retain their shareholding in amaysim until after the Record Date considering that the franked component of the Major Distribution could deliver additional value to shareholders who can make use of franking credits to differing degrees depending on their own personal tax circumstances.

The Scrip Consideration, however, already offers a premium<sup>8</sup> exceeding that value, and amaysim shareholders wanting access to the Major Distribution may not have access to the WAM Offer as a result. There is no certainty that the WAM Offer will remain open after the Record Date for that distribution, and shareholders who elect to retain their amaysim shares in order to obtain the franked dividend may have to retain their shares until all Distributions are completed, or sell on market if the WAM Offer is not open at that time. Provided that the Mobile Sale completes, amaysim shareholders not accepting the WAM Offer will not impact the WAM Offer as the minimum acceptance condition of 50.1% will be waived upon completion of the Mobile Sale.

---

<sup>6</sup> An Ineligible Foreign Shareholder is an amaysim shareholder whose registered address is outside of Australia and its external territories or New Zealand, unless WAM determines that it is lawful, not unduly onerous and not unduly impractical to issue WAM shares to that shareholder. In the case of shareholders in Germany, the WAM Offer has not been, and will not be, registered with or approved by any securities regulator in Germany or elsewhere in the European Union. Accordingly, the WAM Offer may not be made available, nor may the WAM shares be offered, in Germany except in circumstances that do not require a prospectus under Article 1(4) of Regulation (EU) 2017/1129 of the European Parliament and the Council of the European Union (the **Prospectus Regulation**). In accordance with Article 1(4) of the Prospectus Regulation, an offer of WAM shares in Germany is limited:

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

In the case of shareholders in the United States, the WAM Offer does not constitute an offer to sell, or a solicitation of an offer to buy, any securities in the United States (US). The WAM shares to be issued under the Offer have not been, and will not be, registered under the US Securities Act of 1933, as amended (US Securities Act) or the securities laws of any state or other jurisdiction of the US. Accordingly, the WAM shares may not be offered or sold, directly or indirectly, to any person in the US or to, or for the account or benefit of, a US person (as defined in Regulation S under the US Securities Act), except in a transaction exempt from, or in a transaction not subject to, the registration requirements of the US Securities Act and applicable US securities laws.

<sup>7</sup> The closing price of amaysim shares on 14 December 2020 was A\$0.73. There can be no assurance that the amaysim share price will continue to trade above the Cash Consideration of A\$0.695.

<sup>8</sup> Based on WAM's closing price of A\$2.25 per share on 14 December 2020. The implied value of the WAM Offer (measured by reference to the Scrip Consideration) depends on the value of WAM's share price at the time of any acceptance into the WAM Offer.

**The Board maintains its unanimous recommendation to vote in favour of all resolutions contained in the Notice of Meeting issued on 3 December 2020 including the Mobile Sale and Distributions, subject to no superior proposal.**

### Overview of WAM Offer

Following announcement of the Mobile Sale to Optus on 2 November 2020, WAM approached amaysim with a proposal to acquire all of the shares in amaysim by way of an off-market takeover bid, conditional on amaysim's shareholders approving the Mobile Sale, and the Mobile Sale being completed.

### WAM Offer Consideration

Under the WAM Offer, WAM is offering amaysim shareholders the following:

- Scrip Consideration of 1 WAM share for every 2.7 amaysim shares, representing A\$0.833<sup>9</sup> of implied value per amaysim share;
- Cash Consideration of A\$0.695 cash per amaysim share; or
- a combination of scrip or cash.

If no election is made, the default option for accepting amaysim shareholders will be Scrip Consideration.

If the WAM Offer remains open past the Record Date for the Major Distribution, the consideration will be reduced for shareholders whose acceptances of the WAM Offer take effect after that Record Date, by the value of the Major Distribution (without any associated adjustment with respect to franking credits).

For example, a shareholder who accepts the WAM Offer after the Record Date for the Major Distribution of A\$0.50, and elects the Scrip Consideration, would receive share consideration of 1 WAM share for every 6.75 amaysim shares worth A\$0.333, being an equivalent A\$0.50 reduction from A\$0.833, whereas a shareholder who accepts the WAM Offer after the Record Date for the Major Distribution, and elects the Cash Consideration, would receive A\$0.195 per share (being A\$0.695 less the A\$0.50 Major Distribution).

In the event that amaysim announces a higher distribution than outlined in the Notice of Meeting, WAM has 4 business days to amend its Cash Consideration and match the new distribution forecast level announced by amaysim, or amaysim Directors may amend their recommendation of the WAM Offer.

The WAM Offer, assuming election of the default Scrip Consideration, delivers an attractive premium to amaysim shareholders when compared to the period before the Mobile Sale Announcement of:

- 24.4% premium to the closing price<sup>4</sup> on 30 October 2020;
- 12.4% premium to the closing price of amaysim shares on 14 December 2020;
- 28.4% premium to the 1 month VWAP<sup>4</sup> of amaysim shares;
- 24.4% premium to the 3 month VWAP<sup>4</sup> of amaysim shares; and
- 12.6% premium to amaysim's VWAP since the Mobile Sale was announced.<sup>10</sup>

<sup>9</sup> Based on WAM's closing price of A\$2.25 per share on 14 December 2020. The implied value of the WAM Offer (measured by reference to the Scrip Option) depends on the value of WAM's share price at the time of any acceptance into the WAM Offer.

<sup>10</sup> amaysim's VWAP from 2 November 2020 to 14 December 2020 (inclusive) of A\$0.74

In order to facilitate the WAM Offer, the Record Date of the Major Distribution will be amended from 12 March 2021 as shown in the Notice of Meeting to 31 March 2021, but the Major Distribution will continue to be paid on 27 April 2021. WAM has agreed to open the WAM Offer on the latter to occur of 1 February 2021 and the business day after the day on which completion of the Mobile Sale occurs and declare it unconditional once the Mobile Sale completes.

### Rationale

Commenting on the WAM Offer, Geoff Wilson, Chairman and Chief Investment Officer of WAM said:

“We see a considerable opportunity to provide amaysim shareholders with a superior and complementary proposal. We look forward to welcoming the amaysim shareholders to the Wilson Asset Management family as we continue to grow WAM Capital”.

“We are pleased to receive the support of the amaysim Directors and senior management for the Offer and look forward to working with them to provide collective benefits to both WAM Capital and amaysim shareholders”.

For amaysim, the WAM Offer presents several important benefits:

- **Potential additional value above Mobile Sale cash Distributions:** Shareholders who elect to receive the Scrip Consideration will receive A\$0.833 per amaysim share of implied value, above the A\$0.695 per share midpoint of the anticipated updated cash Distribution forecast<sup>11</sup>;
- **Accelerated receipt of funds:** Accepting amaysim shareholders will receive cash or scrip consideration within 5 business days of the processing of valid acceptances into the WAM Offer rather than through the series of cash Distributions post the Mobile Sale which would be paid over the period from March to October 2021; and
- **Additional optionality:** Shareholders who elect to receive the Scrip Consideration will receive WAM Shares or can elect to receive a combination of cash and scrip.

Andrew Reitzer, amaysim Chairman commented: “The WAM Offer is complementary to the existing offer from Optus to acquire the Mobile business. It has no impact on the existing offer from Optus, but rather, provides amaysim shareholders with additional optionality to receive a higher return. It also removes the uncertainty in the current Distribution to shareholders that is dependent on the Company’s ability to cost efficiently wind-up and de-list.”

### Consideration Funding

As at 30 November 2020, the investment portfolio of WAM was comprised of 9.4% cash (A\$126.4million), with the remaining 90.6% predominantly comprised of liquid investments listed on the ASX. WAM’s portfolio is predominately comprised of highly liquid investments, which WAM can liquidate at short notice if required to fund the cash component of the WAM Offer consideration and/or costs.

---

<sup>11</sup>Note that a portion of cash Distributions as contemplated in the Mobile Sale Announcement include a franked distribution component which could deliver additional value to shareholders who can make use of franking credits to differing degrees depending on their own personal tax circumstances (as an offset to their liability for Australian tax, although the franking credit itself needs to be included in taxable income and is therefore subject to tax in its own right). That benefit is not available to shareholders who accept the WAM Offer.

## BIA / Conditions

The BIA between amaysim and WAM contains certain terms that are customary for a transaction of this nature. A copy of the BIA is annexed to this announcement.

These terms include deal protection mechanisms including "exclusivity", "no shop", "no talk" and "no due diligence" restrictions (subject to customary fiduciary duty carve-outs) as well as notification and matching rights in the event of a competing proposal. There is no break fee.

The WAM Offer will also be subject to the following defeating conditions:

- amaysim shareholder approval of the Mobile Sale (or alternative superior proposal) **(Shareholder Approval Condition)**;
- WAM has a relevant interest in at least 50.1% (by number) of amaysim shares;
- the Record Date for the Major Distribution following amaysim shareholder approval of the Mobile Sale will be no earlier than 31 March 2021;
- no prescribed occurrences in relation to amaysim (other than in relation to the Mobile Sale);
- no material adverse change in relation to amaysim (other than in relation to the Mobile Sale);
- no material litigation;
- no market fall of 10% or more;
- amaysim and its subsidiaries do not vary their constitutions, give any encumbrance over their assets, or appointing any additional directors to their board of directors;
- the grant of any regulatory or third party approvals which would otherwise impede the Mobile Sale or alternative superior proposal; and
- no regulatory action which materially affects the WAM Offer.

Under the terms of the BIA, WAM has agreed to waive each of the defeating conditions immediately upon completion of the Mobile Sale. WAM has undertaken not to waive the Shareholder Approval Condition until the date the offer opens (i.e. until after the completion of the Mobile Sale).

## Timetable

Event	Timing
Bidder Statement and Target Statement	Dispatched in January 2021
Extraordinary General Meeting (EGM)	3.00pm AEDT 21 January 2021
Completion of the Mobile Sale (pending approval at the EGM)	Expected to be 1 February 2021
WAM Offer opens	The latter of 1 February 2021 and the first business day after completion of the Mobile Sale
WAM Offer closes (unless extended)	30 March 2021
Record Date for Major Distribution	31 March 2021 (amended from 12 March 2021)
Major Distribution payment date	27 April 2021

Detailed information relating to the WAM Offer will be set out in the Bidder's Statement and Target's Statement, which are expected to be dispatched to amaysim shareholders in January 2021.

The WAM Offer will extend to all amaysim shares on issue during the offer period, including shares issued following the vesting of performance rights.<sup>12</sup>

### Advisers

amaysim is being advised by Luminis Partners as financial adviser and King & Wood Mallesons as legal adviser.

#### Investor & analyst contact:

Rosa Smith  
T: +61 475 305 047  
E: [rosa.smith@amaysim.com.au](mailto:rosa.smith@amaysim.com.au)

#### Media contact:

Renée Bertuch, Cannings Strategic Communications  
T: +61 409 550 389  
E: [rbertuch@canningscomms.com.au](mailto:rbertuch@canningscomms.com.au)

WAM is being advised by Mills Oakley as legal adviser.

#### Chief Financial Officer & Company Secretary

Jesse Hamilton  
T: +61 401 944 807  
E: [jesse@wilsonassetmanagement.com.au](mailto:jesse@wilsonassetmanagement.com.au)

#### Head of Corporate Affairs

James McNamara  
T: +61 416 734 080  
E: [james@wilsonassetmanagement.com.au](mailto:james@wilsonassetmanagement.com.au)

### IMPORTANT NOTICES

#### Disclaimer

To the maximum extent permitted by law, amaysim disclaims any responsibility for the accuracy or completeness of any forward-looking statements whether as a result of new information, future events or results or otherwise. amaysim disclaims any responsibility to update or revise any forward-looking statement to reflect any change in amaysim's financial condition, status or affairs or any change in the events, conditions or circumstances on which a statement is based, except as required by law or the ASX listing rules.

Forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause amaysim's actual results, performance or achievements to differ materially from any future results, performance or achievements expressed or implied by these forward-looking statements. A number of important factors could cause actual results or performance to differ materially from the forward-looking statements. Investors should consider the forward-looking statements contained in this announcement in light of those disclosures and not place reliance on such statements.

Statements made in this announcement are made only as at the date of this announcement.

#### About amaysim

At amaysim, 10 years of being the least complained about telco comes with certain responsibilities. With award-winning customer service, amaysim goes above and beyond to show 'Crazy Customer Love' by providing great value, frictionless connection and what you need most: no lock-in contracts, more data for your buck, unrestricted 4G Plus network and surprising bonuses. In other words, the amaysim SIM is a little love machine, powered by customer love.

We're the fourth largest mobile service provider, servicing over 1.19 million subscribers. We exist to courageously champion our customers, giving them amazingly simple connectivity, smart tools, DIY account management, and transparent products. For more info about amaysim visit [amaysim.com.au](http://amaysim.com.au)

---

<sup>12</sup> As announced in amaysim's notice of meeting dated 2 December 2020, amaysim intends to waive the vesting conditions for the 19,573,225 performance rights on issue so that they will vest on completion of the Mobile Sale. Instead of settling the performance rights in cash, amaysim's present intention is that all performance rights will be exercised on vesting and holders issued one amaysim share for each performance right they hold. It is also the Company's present intention to transfer the 4,287,828 treasury shares which are held by the Company's employee share trust to holders of performance rights for the purpose of satisfying, in part, the equity settlement of the Performance Rights.

#### **About WAM Capital**

WAM Capital Limited (ASX:WAM) is a listed investment company (LIC) managed by Wilson Asset Management. Listed in August 1999, WAM Capital provides investors with exposure to an actively managed, diversified portfolio of undervalued growth companies listed on the ASX, with a focus on small-to-medium sized businesses. The Company's investment objectives are to deliver a stream of fully franked dividends, provide capital growth and preserve capital.

#### **About Wilson Asset Management**

Wilson Asset Management has a track record of making a difference for shareholders and the community for more than 20 years. As the investment managers for seven leading LICs: WAM Capital, WAM Leaders, WAM Global, WAM Microcap, WAM Alternative Assets, WAM Research and WAM Active, Wilson Asset Management invests over A\$3.5 billion on behalf of more than 90,000 retail investors. Wilson Asset Management is the creator and lead supporter of Future Generation Australia (ASX: FGX) and Future Generation Global (ASX: FGG). Wilson Asset Management advocates and acts for retail investors, is a member of the global philanthropic Pledge 1% movement, is a significant funder of many Australian Charities and provides all team members with \$10,000 each year to donate to charities of their choice. All philanthropic investments are made by the Investment Manager.

**Annexure A – Bid Implementation Agreement**

Please see the following page for the BIA

# **Bid Implementation Agreement**

**BETWEEN**

WAM Capital Limited

**AND**

amaysim Australia Limited

**MILLS OAKLEY**

Level 7, 151 Clarence Street

SYDNEY NSW 2000

Telephone: +61 2 8289 5800

Facsimile: +61 2 9247 1315

DX 13025, SYDNEY MARKET STREET

[www.millsoakley.com.au](http://www.millsoakley.com.au)

Ref: LYRS/3486178

## Table of Contents

<b>1</b>	<b>Definitions and Interpretation.....</b>	<b>1</b>
1.1	Definitions.....	1
	Optus means Optus Mobile Pty Limited (ACN 054 365 696). .....	5
1.2	Interpretation .....	8
1.3	Payment .....	9
<b>2</b>	<b>Agreement to propose Takeover Bid .....</b>	<b>9</b>
2.1	Agreement to bid .....	9
2.2	No withdrawal of Offer without Target’s consent .....	10
<b>3</b>	<b>Bid Conditions.....</b>	<b>10</b>
3.1	Bid Conditions .....	10
3.2	Declaring Offer free or unconditional.....	10
3.3	Target undertakings: Langfrist statement and no Prescribed Occurrences .....	10
<b>4</b>	<b>Takeover Bid.....</b>	<b>11</b>
4.1	Compliance with Timetable .....	11
4.2	Bidder’s Statement .....	11
4.3	Target assistance .....	11
4.4	Dispatch of Bidder’s Statement.....	11
4.5	Target’s Statement .....	11
4.6	Bidder assistance .....	12
4.7	No Independent Expert’s Report.....	12
4.8	Register .....	12
4.9	Bidder undertakes to support Target’s intentions .....	12
4.10	Treatment of Performance Rights .....	13
<b>5</b>	<b>Recommendation of Takeover Bid.....</b>	<b>13</b>
5.1	Target Directors’ recommendation .....	13
5.2	Target Directors’ intentions .....	14
5.3	Joint promotion of Takeover Bid .....	14
<b>6</b>	<b>Exclusivity .....</b>	<b>14</b>
6.1	Termination of existing discussions .....	14
6.2	No-shop.....	15
6.3	No-talk .....	15
6.4	No due diligence .....	15
6.5	Notification of approaches .....	15
6.6	Matching right .....	16
6.7	Bidder Counter Proposal.....	17
6.8	Exceptions to no-talk and no due diligence .....	18
<b>7</b>	<b>Conduct of business .....</b>	<b>18</b>
7.1	Conduct of Target’s business .....	18
7.2	Permitted Acts .....	18
7.3	Notification to Bidder.....	18
7.4	Access and information.....	19
7.5	Bidder representation on Target Board.....	19
<b>8</b>	<b>Representations and warranties .....</b>	<b>19</b>
8.1	Target warranties.....	19

8.2	Target's indemnity .....	21
8.3	Bidder warranties .....	21
8.4	Bidder's indemnity .....	23
8.5	Liability of directors and officers .....	23
8.7	Notice .....	24
8.8	Survival of representations and warranties .....	24
8.9	Survival of indemnities .....	24
<b>9</b>	<b>Termination.....</b>	<b>24</b>
9.1	Material breach .....	24
9.2	Bidder termination events .....	25
9.3	Target termination events .....	25
9.4	Other termination events.....	25
9.5	Effect of termination .....	25
<b>10</b>	<b>Announcements and confidentiality .....</b>	<b>26</b>
10.1	Announcements .....	26
10.2	Other announcements .....	26
10.3	Permitted announcements .....	26
10.4	Confidentiality .....	26
<b>11</b>	<b>GST.....</b>	<b>26</b>
11.1	Definitions.....	26
11.2	Payments exclusive of GST .....	26
11.3	Input tax credits .....	27
<b>12</b>	<b>Duty, costs and expenses .....</b>	<b>27</b>
12.1	Stamp duty .....	27
12.2	Costs and expenses .....	27
<b>13</b>	<b>General.....</b>	<b>27</b>
13.1	Notices .....	27
13.2	Governing law and jurisdiction .....	28
13.3	Prohibition or enforceability .....	29
13.4	Waivers .....	29
13.5	Variation .....	29
13.6	Cumulative rights .....	29
13.7	Further assurances.....	29
13.8	Entire agreement .....	30
13.9	Third party rights.....	30
13.10	Counterparts.....	30
13.11	Non-merger .....	30
13.12	Continuing indemnities and survival of indemnities .....	30
13.13	No assignment or novation .....	30
13.14	Costs .....	30
13.15	Legal advice .....	31
13.16	Supervening legislation.....	31
13.17	Consents .....	31
<b>Schedule 1</b>	<b>Agreed Bid Terms (clause 3).....</b>	<b>32</b>
<b>1</b>	<b>Consideration .....</b>	<b>32</b>
<b>2</b>	<b>Offer Period .....</b>	<b>33</b>
<b>3</b>	<b>Foreign Target Shareholders.....</b>	<b>33</b>

---

<b>4</b>	<b>Bid Conditions</b> .....	<b>33</b>
4.1	Target Shareholder approval of the Mobile Sale .....	33
4.2	Minimum Acceptance .....	33
4.3	Major Distribution.....	33
4.4	No material adverse change .....	34
4.5	No litigation.....	34
4.6	No market fall .....	34
4.7	No material change to the business of Target and/or its Subsidiaries ..	34
4.8	Regulatory and third party approvals .....	35
4.9	No regulatory action.....	35
<b>Schedule 2</b>	<b>Timetable (clause 4.1)</b> .....	<b>36</b>
<b>Execution Page</b>	.....	<b>37</b>
<b>Annexure A</b>	<b>Agreed Announcement (clause 10)</b> .....	<b>38</b>

## Parties

**WAM Capital Limited** (ACN 086 587 395)

of Level 26, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000

Email: jesse@wilsonassetmanagement.com.au

Attention: Jesse Hamilton

(Bidder)

**amaysim Australia Limited** (ACN 143 613 478)

of Level 6, 17-19 Bridge Street, Sydney NSW 2000

Email: Alex.Feldman@amaysim.com.au

Attention: Alex Feldman

(Target)

## Background

- A. Bidder proposes to acquire Target by way of the Takeover Bid.
- B. The Target Directors propose to recommend that Target Shareholders accept the Offer in respect of their Target Shares in the absence of a Superior Proposal.
- C. The Bidder and Target have agreed to co-operate with each other in relation to the Takeover Bid on the terms of this Agreement.

## Terms and Conditions

### 1 Definitions and Interpretation

---

#### 1.1 Definitions

In this Agreement unless the context otherwise requires:

**Agreed Announcement** means the joint announcement concerning the Takeover Bid substantially in the form set out in Annexure A.

**Agreed Bid Terms** means the terms and conditions of the Takeover Bid set out in Schedule 1.

**Agreement** means this agreement and any schedules, annexures and attachments to it, as amended by the parties in writing.

**Announcement Date** means the date of first announcement of the Takeover Bid, which will be no later than 15 December 2020 or such later date as agreed between the parties in writing.

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

**Associate** has the meaning given in the Corporations Act.

**ASX** means ASX Limited (ABN 98 008 624 691) and, where the context permits, the Australian Securities Exchange operated by ASX Limited.

**Authority** means:

- (a) ASX, ASIC and the Takeovers Panel;
- (b) any government or governmental, semi-governmental or local authority within the Commonwealth of Australia or any of its states and territories and any department, office, minister, commission, board, delegate or agency of any such government or authority;
- (c) any fiscal, judicial, quasi-judicial or administrative entity or authority within the Commonwealth of Australia or any of its states and territories; or
- (d) any other authority, commission, board, agency or other entity established or having power under statute within the Commonwealth of Australia or any of its states and territories.

**Bid Conditions** means the conditions of the Takeover Bid set out in clause 4 of Schedule 1.

**Bidder Disclosure Materials** means the information and documents disclosed in writing by Bidder or its Representatives about the Bidder to Target or its Representatives or otherwise disclosed by Bidder on its website or to ASIC prior to the Execution Date.

**Bidder Group** means Bidder and its Related Bodies Corporate, and **Bidder Group Member** means any one of them.

**Bidder Indemnified Parties** means Bidder, its Related Bodies Corporate and Representatives.

**Bidder Share** means an ordinary share in the capital of Bidder.

**Bidder's Statement** means the bidder's statement to be issued by Bidder to Target Shareholders in relation to the Offer in compliance with Part 6.5 of the Corporations Act.

**Bidder Warranties** means each of the warranties made by Bidder in clause 8.3.

**Business Day** means a day other than a Saturday, Sunday or public holiday in Sydney, Australia.

**Claim** means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise.

**Compatible Proposal** means a Competing Proposal where a person and/or its Associates would:

- (a) acquire, become the holder of, or otherwise have a right to acquire or have an economic interest in, all or a substantial part of the business, or any of the material assets, of Target or the Target Group (where a material asset of Target includes a right in respect of assets representing 20% or more of the value of Target or the Target Group's total assets); or
- (b) following completion of the Mobile Sale:
  - (i) acquire a legal, equitable or economic interest or Relevant Interest in 50.1% or more of all Target Shares (whether by way of acquisition of existing Target Shares or issue of new Target Shares);
  - (ii) acquire control of Target, within the meaning of section 50AA of the Corporations Act; or

- (iii) otherwise acquire or merge with Target (including by reverse takeover bid or takeover bid, or by establishing a dual listed company structure or stapled security structure),

whether by takeover bid, scheme of arrangement, shareholder approved acquisition, capital reduction, share buy-back or repurchase, sale or purchase of assets or interests, joint venture, reverse takeover bid, dual-listed company structure, recapitalisation, establishment of new holding company for Target (or other synthetic merger) or other transaction or arrangement.

**Competing Proposal** means any expression of interest, offer or proposal by a Third Party in respect of a transaction under which, if the transaction were completed, a person (whether alone or together with one or more Associates) would:

- (a) acquire a legal, equitable or economic interest or Relevant Interest in 50.1% or more of all Target Shares (whether by way of acquisition of existing Target Shares or issue of new Target Shares);
- (b) excluding the Mobile Sale but including any Counterproposal by Optus to amaysim in accordance with the provisions of the Share Sale Agreement, acquire, become the holder of, or otherwise have a right to acquire or have an economic interest in, all or a substantial part of the business, or any of the material assets, of Target or the Target Group (where a material asset of Target includes a right in respect of assets representing 20% or more of the value of Target or the Target Group's total assets);
- (c) acquire control of Target, within the meaning of section 50AA of the Corporations Act; or
- (d) otherwise acquire or merge with Target (including by reverse takeover bid or takeover bid, or by establishing a dual listed company structure or stapled security structure),

whether by takeover bid, scheme of arrangement, shareholder approved acquisition, capital reduction, share buy-back or repurchase, sale or purchase of assets or interests, joint venture, reverse takeover bid, dual-listed company structure, recapitalisation, establishment of new holding company for Target (or other synthetic merger) or other transaction or arrangement.

**Confidentiality Agreement** means the Confidentiality Agreement between the Target and Bidder dated on or around 7 December 2020.

**Consideration** has the meaning given to the term in clause 1 of Schedule 1.

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

**Counterproposal** has the meaning given in the Share Sale Agreement as disclosed in the Notice of Meeting.

**Court** means a court of competent jurisdiction under the Corporations Act.

**End Date** means the date which is three months following the commencement of the Offer Period or such later date as Bidder and Target agree in writing.

**Exclusivity Period** means the period commencing on the Execution Date and ending on the first to occur of:

- (a) the date of termination of this Agreement as provided in clause 9;

- (b) Target receiving a Competing Proposal and Bidder not matching or beating that proposal within five Business Days after being notified of the Competing Proposal; and
- (c) the end of the initial Offer Period or any earlier date on which the Offer lapses or is withdrawn with Target's consent under clause 2.2.

**Execution Date** means the date on which the last party to this Agreement executes this Agreement.

**Fairly Disclosed** means, in relation to a matter, event or circumstance, publicly disclosed to ASX, ASIC or disclosed to the relevant party or its Representatives to the extent, and in reasonably sufficient detail, so as to allow a reasonable and sophisticated bidder (or one of its Representatives) experienced in transactions similar to the Transaction and experienced in a business similar to the business conducted by the Target Group to identify or otherwise determine the nature and scope of the relevant matter, event or circumstance.

**Foreign Target Shareholder** means a Target Shareholder whose address shown in the Register is a place outside of Australia and its external territories or New Zealand, unless Bidder determines that:

- (a) it is lawful, not unduly onerous and not unduly impractical to make the Offer to a Target Shareholder in the relevant jurisdiction and to issue that Target Shareholder with Bidder Shares on completion of the Offer; and
- (b) it is lawful under the law of the relevant jurisdiction for that Target Shareholder to participate in the Offer by the Bidder.

**GST** has the meaning given in the GST Act.

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

**Increased Distribution** has the meaning given in clause 5.1(b)(iii)(A).

**Insolvency Event** means the occurrence of any one or more of the following events in relation to any party:

- (a) an application or an order is made for the winding up of the party, the declaration of bankruptcy of a party or the appointment of a provisional liquidator or receiver or receiver and manager and, in the case of an application, it is not stayed, dismissed, struck out or withdrawn within 14 days of it being made;
- (b) a resolution is passed for the winding up of the party which resolution is other than for the purposes of reconstruction or amalgamation the terms of which have previously been approved in writing by the other party;
- (c) a liquidator, provisional liquidator, administrator or official manager is appointed to the party;
- (d) a receiver or manager (or both) is appointed to, or a mortgagee takes possession of, all or any part of the business or the assets of the party;
- (e) the party makes any composition or arrangement or assignment with or for the benefit of its creditors;
- (f) the party is or states that it is insolvent;
- (g) the party enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors;

- (h) Bidder proposes a winding-up or dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (i) the party is insolvent as disclosed in its accounts, or otherwise states that it is insolvent, or it is deemed or presumed to be insolvent under an applicable law;
- (j) the party is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act;
- (k) a notice is issued under sections 601AA or 601AB of the Corporations Act;
- (l) a writ of execution is levied against the party or its property and is not removed within 14 days of notification of the levy; or
- (m) Bidder ceases to carry on business or threatens to do so; or
- (n) something having a substantially similar effect to paragraphs (a) to (m) happens in connection with that party under the law of any jurisdiction.

**Langfrist** means Investmentaktiengesellschaft für langfristige Investoren TGV.

**Liabilities** mean all liabilities, losses, damages, outgoings, costs and expenses of whatever description.

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

**Major Distribution** has the meaning given in the Notice of Meeting.

**Mobile Sale** means Target's sale of its mobile business to Optus, as set out in the Notice of Meeting.

**Notice of Meeting** means Target's notice of meeting to Target Shareholders in relation to the Mobile Sale, announced on ASX on 2 December 2020.

**Offer** means the offer by Bidder to acquire each Target Share (including all rights attaching to them) under the Takeover Bid for the Consideration.

**Offer Date** means:

- (a) the offer date as set out in the Timetable; or
- (b) any other date agreed in writing by the parties.

**Offer Period** means the period the Offer is open for acceptance, as specified in clause 2 of Schedule 1, unless it is extended.

**Optus** means Optus Mobile Pty Limited (ACN 054 365 696).

**Performance Rights** means any performance right issued by Target in respect of Target Shares, whether vested or unvested.

**Prescribed Occurrence** means:

- (a) Target converts all or any of its shares into a larger or smaller number of shares;
- (b) Target or a subsidiary resolves to reduce its share capital in any way, other than the reduction of capital proposed in the Notice of Meeting;
- (c) Target or a subsidiary:
  - (i) enters into a buy-back agreement; or

- (ii) resolves to approve the terms of a buy-back agreement under section 257C(1) or 257D(1) of the Corporations Act;
- (d) Target or a subsidiary issues shares, or grants an option over its shares, or agrees to make such an issue or grant such an option, other than pursuant to the conversion of any Performance Rights on issue prior to the Execution Date;
- (e) Target or a subsidiary issues or agrees to issue convertible notes;
- (f) Target or a subsidiary disposes or agrees to dispose, of the whole, or a substantial part of its business or property (other than in relation to the Mobile Sale);
- (g) Target or a subsidiary grants, or agrees to grant, a security interest in the whole, or a substantial part, of its business or property;
- (h) Target or a subsidiary resolves to be wound up, other than in accordance with the intention in clause 4.9(a)(iii);
- (i) a liquidator or provisional liquidator of Target or of a subsidiary is appointed;
- (j) a court makes an order for the winding up of Target or of a subsidiary;
- (k) an administrator of Target, or of a subsidiary, is appointed under section 436A, 436B or 436C of the Corporations Act;
- (l) Target or a subsidiary executes a deed of company arrangement; or
- (m) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of Target or of a subsidiary.

**Recommendation** means the recommendation given in accordance with clause 5.1(a) that Target Shareholders accept the Offer in respect of all their Target Shares in the absence of a Superior Proposal.

**Register** means the register of Target Shares maintained by Computershare Investor Services Pty Limited on behalf of Target.

**Register Date** means:

- (a) the register date as set out in the Timetable; or
- (b) any other date agreed in writing by the parties.

**Regulatory Guidance** means ASIC regulatory guides, Takeovers Panel decisions and guidance notes, and any other relevant regulatory guidance.

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

**Relevant Interest** has the meaning given in the Corporations Act.

**Representative** means, in respect of a party, its Related Bodies Corporate and each director, officer, employee, advisor, agent or representative of that party and its Related Bodies Corporate.

**Security Interest** means any:

- (a) "security interest" as defined in the *Personal Properties Securities Act 2009* (Cth);
- (b) security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or

title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements); or

- (c) a thing or preferential interest or arrangement of any kind giving a person priority or preference over claims of other persons or creditors with respect to any property or asset,

and includes any agreement to create any of them or allow them to exist.

**Share Sale Agreement** means the share sale agreement between Target and Optus dated 2 November 2020.

**Subsidiary** has the meaning given in the Corporations Act.

**Superior Proposal** means a written bona fide Competing Proposal which the Target Board, acting in good faith and having obtained corresponding written advice from its financial advisers and/or lawyers, determines:

- (a) is reasonably capable of being valued and completed, taking into account all aspects of the Competing Proposal, including any timing considerations, any conditions precedent and the identity of the proponent; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to Target Shareholders (as a whole) than the Takeover Bid (as the Takeover Bid may be amended or varied following application of the matching right set out in clause 6.6), taking into account all terms and conditions of the Competing Proposal.

**Takeover Bid** means the off-market takeover bid to be made by Bidder for all Target Shares under Chapter 6 of the Corporations Act, on the Agreed Bid Terms and otherwise in accordance with the terms of this Agreement.

**Takeovers Panel** means the Takeovers Panel constituted under the *Australian Securities and Investments Commission Act 2001* (Cth).

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

**Target Director** means a director of Target.

**Target Disclosure Materials** means the information and documents disclosed in writing by Target or its Representatives about the Target Group and its businesses to Bidder or its Representatives or otherwise disclosed by Target on its website or to ASX or ASIC prior to the Execution Date.

**Target Group** means Target and its Related Bodies Corporate, and **Target Group Member** means any one of them.

**Target Indemnified Parties** means Target, its Related Bodies Corporate and Representatives.

**Target Share** means a fully paid ordinary share in the capital of Target that:

- (a) exists at the Register Date; or
- (b) is issued during the period from the Register Date to the end of the Offer Period due to the conversion of, or exercise of the right attached to, any security which confers on the holder the right to have a Target Share issued to them.

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

**Target Shareholder Approval Condition** has the meaning given in paragraph 4.1 of Schedule 1.

**Target's Statement** means the target's statement to be issued by Target to Target Shareholders in relation to the Takeover Bid in compliance with Part 6.5 of the Corporations Act.

**Target Warranties** means each of the warranties made by Target in clause 8.1.

**Third Party** means a person other than Bidder or its Related Bodies Corporate.

**Timetable** means the indicative timetable set out in Schedule 2.

**Transaction** means the acquisition of Target by Bidder under the Takeover Bid.

## 1.2 Interpretation

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

- (a) all references to time are references to Sydney, Australia;
- (b) words importing the singular include the plural and vice versa;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (d) an expression importing a natural person includes any individual, company, partnership, joint venture, association, corporation or other body corporate and any Authority;
- (e) no provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision;
- (f) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (g) if a party must do something under this Agreement on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next Business Day;
- (h) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (i) in determining the time of day where relevant to this Agreement, the relevant time of day is the time of day in the place where the party required to perform the obligation is located; and
- (j) a reference to:
  - (i) any thing (including any right) includes a part of that thing but nothing in clause 1.2 implies that performance of part of an obligation constitutes performance of the obligation;
  - (ii) a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this Agreement and a reference to this Agreement includes any annexure, exhibit and schedule;

- (iii) a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (iv) a document (including this Agreement) includes all amendments or supplements to, or replacements or novations of, that document;
- (v) a party to a document includes that party's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (vi) "including", "for example" or "such as" when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (vii) "law" includes legislation, the rules of the general law, including common law and equity, and any judgment order or decree, declaration or ruling of a court of competent jurisdiction or Authority binding on a person or the assets of that person;
- (viii) a monetary amount is a reference to Australian dollars; and
- (ix) a term defined in or for the purposes of the Corporations Act, and which is not defined in this Agreement, has the same meaning when used in this Agreement.

### **1.3 Payment**

Unless otherwise expressly provided in this Agreement, where an amount is required to be paid to one party by another party, that amount must be paid in immediately available and irrevocable funds by electronic transfer to a bank account notified by the party receiving the funds in writing on or before the due date for payment (or in such other immediately payable funds as the parties agree) and without deduction, withholding or set-off.

## **2 Agreement to propose Takeover Bid**

---

### **2.1 Agreement to bid**

- (a) Bidder agrees to make the Offer to Target Shareholders on and subject to the Agreed Bid Terms and otherwise in accordance with the terms of this Agreement and otherwise in accordance with all applicable provisions of the Corporations Act and Listing Rules.
- (b) The Offer will apply to all Target Shares which are on issue prior to the close of the Offer Period.
- (c) Bidder may vary the terms of the Offer (including the Bid Conditions) in any manner permitted by the Corporations Act, but only if the varied terms are no less favourable to Target Shareholders than the Agreed Bid Terms.
- (d) Bidder must:
  - (i) announce the Takeover Bid in the form of the Agreed Announcement no later than the time provided in the Timetable or such other time as agreed by the parties in writing;

- (ii) use its best endeavours to lodge its Bidder's Statement with ASIC and provide a copy of the lodged Bidder's Statement to Target in accordance with the Timetable or such other time as agreed by the parties; and
- (iii) by no later than the Offer Date, make an Offer to all Target Shareholders in respect of all their Target Shares for the Consideration and otherwise consistent with the terms of this Agreement and in accordance with the Corporations Act and the Listing Rules.

## **2.2 No withdrawal of Offer without Target's consent**

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

## **3 Bid Conditions**

### **3.1 Bid Conditions**

- (a) The Offer will be subject to the Bid Conditions.
- (b) Each party must use reasonable endeavours to ensure that each Bid Condition is satisfied as soon as practicable after the Execution Date (if applicable) and that no Bid Condition is breached or not satisfied.
- (c) If a party becomes aware of any fact or event which would cause, or would be reasonably likely to cause, any Bid Condition to be breached or not satisfied, that party must immediately notify the other party in writing of the relevant fact or event.
- (d) Nothing in this clause 3.1 prevents Target or the Target Directors from taking, or failing to take, action where to do otherwise would, in the opinion of the Target Board (determined in good faith and acting reasonably after receiving written legal advice from its external legal adviser) would be likely to constitute a breach of any of the Target Board's fiduciary or statutory obligations.

### **3.2 Declaring Offer free or unconditional**

- (a) Subject to the Corporations Act, clause 3.2(b) and clause 4.9(b), Bidder may at any time (but is not obliged to) declare the Takeover Bid to be free from any Bid Condition, or declare the Takeover Bid unconditional, on such terms (if any) as it may determine.
- (b) Immediately after completion of the Mobile Sale, Bidder will give a notice in accordance with section 650F of the Corporations Act declaring the Offer to be free from each of the Bid Conditions.

### **3.3 Target undertakings: Langfrist statement and no Prescribed Occurrences**

Target undertakes:

- (a) to use reasonable endeavours to secure Langfrist's agreement to give a voting intention statement on resolutions to be put to Target Shareholders in connection with the Mobile Sale, and a public statement undertaking to accept the Offer, in each case subject to a Superior Proposal; and

- (b) that between the Announcement Date and the end of the Offer Period, no Prescribed Occurrence will occur.

## **4 Takeover Bid**

---

### **4.1 Compliance with Timetable**

Each party must use reasonable endeavours to do all acts and things within its power that may be reasonably necessary for the implementation and performance of the Takeover Bid in accordance with the Timetable.

### **4.2 Bidder's Statement**

- (a) Bidder must:
- (i) prepare the Bidder's Statement and an acceptance form for the Offer in compliance with the Corporations Act, Regulatory Guidance and Listing Rules;
  - (ii) at least a reasonable time (and in any event no later than four Business Days) prior to lodgement of the Bidder's Statement with ASIC, provide an advanced and reasonably complete draft of the Bidder's Statement to Target and its Representatives for review; and
  - (iii) consider in good faith the comments of Target and its Representatives when finalising the Bidder's Statement.
- (b) Bidder and Target acknowledge that Bidder will make disclosures in the Bidder's Statement to comply with the Corporations Act, Regulatory Guidance and Listing Rules and that, prior to lodgement of the Bidder's Statement with ASIC, Bidder must obtain Target's written consent to the inclusion of information relating to the Target Group in the Bidder's Statement in the form and context in which it appears (such consent not to be unreasonably withheld or delayed).

### **4.3 Target assistance**

Target must provide, on a timely basis, any assistance and information that is reasonably requested by Bidder to enable Bidder to fulfil its obligations under this Agreement, including, but not limited to, preparing and finalising the Bidder's Statement.

### **4.4 Dispatch of Bidder's Statement**

For the purposes of item 6 of section 633(1) of the Corporations Act, Target agrees that Bidder may dispatch the Offer documents to Target Shareholders up to 14 days earlier than the earliest date for sending.

### **4.5 Target's Statement**

- (a) Target must dispatch the Target's Statement to Target Shareholders no later than 15 days after Target receives a notice that all Offers have been sent as required by item 7 of section 633(1) of the Corporations Act.
- (b) Target must:
- (i) prepare the Target's Statement in compliance with the Corporations Act, Regulatory Guidance and Listing Rules;
  - (ii) at least a reasonable time (and in any event no later than four Business Days) prior to lodgement of the Target's Statement with ASIC, provide

- an advanced and reasonably complete draft of the Target's Statement to Bidder and its Representatives for review; and
- (iii) consider in good faith the comments of Bidder and its Representatives when finalising the Target's Statement.
- (c) Bidder and Target acknowledge that Target will make disclosures in the Target's Statement to comply with the Corporations Act, Regulatory Guidance and Listing Rules.
  - (d) Target must ensure that the Target's Statement:
    - (i) prominently displays the Recommendation of the Target Directors (including on the cover of the Target's Statement); and
    - (ii) includes a statement that each Target Director will accept the Offer in respect of all Target Shares held or controlled by them no later than five Business Days before the end of the Offer Period, in the absence of a Superior Proposal.

#### **4.6 Bidder assistance**

Bidder must provide, on a timely basis, any assistance and information that is reasonably requested by Target to enable Target to fulfil its obligations under this Agreement, including, but not limited to, preparing and finalising the Target's Statement.

#### **4.7 No Independent Expert's Report**

Bidder and Target acknowledge that:

- (a) an independent expert's report in connection with the Takeover Bid is not required by section 640 of the Corporations Act; and
- (b) Target will not engage an independent expert to provide an opinion on whether or not the Offer is fair and reasonable.

#### **4.8 Register**

From the Execution Date until the end of the Offer Period, the Target must:

- (a) provide Bidder with a copy of the Register in an electronic form requested by Bidder promptly after request by Bidder (including any request under section 641 of the Corporations Act); and
- (b) provide Bidder with a copy of the Register in electronic form promptly after the Target receives a copy from its registry, each time a copy is received.

#### **4.9 Bidder undertakes to support Target's intentions**

- (a) Bidder undertakes to, and to procure that its Representatives and any nominee directors it appoints to the Target Board, do all acts and things within their power that may be reasonably necessary for the implementation and performance of the following intentions of the Target:
  - (i) completion of the Mobile Sale or a Superior Proposal, subject to:
    - (A) that completion occurring no later than 1 February 2021; and
    - (B) the record date for the Major Distribution being no earlier than 31 March 2021;

- (ii) completing the transitional arrangements in place for remaining operations of Target;
  - (iii) delisting the Target from the ASX and voluntary wind-up of the Target Group, including by not objecting or interfering with the winding up process;
  - (iv) selling, closing and/or winding-up the Target's Manila operations; and
  - (v) effecting budgeted payments to, and redundancies of, Target's employees.
- (b) Bidder undertakes to not waive the Shareholder Approval Condition prior to the Offer Date.

#### **4.10 Treatment of Performance Rights**

- (a) Bidder and Target agree that the Performance Rights will vest upon completion of the Mobile Sale.
- (b) Target must take all steps to:
- (i) accelerate the vesting of any unvested Performance Rights on issue as at the date of the completion of the Mobile Sale on the condition that such Performance Rights will be deemed exercised upon vesting;
  - (ii) notify the holders of such Performance Rights of the acceleration and deemed exercise; and
  - (iii) issue such number of Target Shares as are required to be issued by Target to the holders of such Performance Rights upon the vesting of the Performance Rights.

## **5 Recommendation of Takeover Bid**

### **5.1 Target Directors' recommendation**

Target represents and warrants to Bidder that each Target Director has informed Target prior to its entry into this Agreement that the director:

- (a) will publicly recommend that Target Shareholders accept the Offer in respect of all their Target Shares in the absence of a Superior Proposal (**Recommendation**); and
- (b) will not withdraw, revise, revoke, change or qualify the Recommendation (and, for the avoidance of doubt, the form of Recommendation set out in the Agreed Announcement will not be considered a qualification of the Recommendation) unless:
  - (i) the Target Board has obtained legal advice from its external legal adviser and determined that not to withdraw, revise, revoke, change or qualify the Recommendation would constitute, or would be likely to constitute, a breach of any of the fiduciary or statutory duties of the Target Board;
  - (ii) each of the Target Directors determines that a Superior Proposal has emerged or that a Competing Proposal constitutes a Superior Proposal; or

- (iii) if before the Major Distribution:
  - (A) Target announces a revised estimate for the cash distributions per Target Share following the Mobile Sale that is higher than \$0.695 (allocating zero value to any franking credits attributable to the distribution) (**Increased Distribution**); and
  - (B) Bidder does not within four Business Days of the date that the announcement of the Increased Distribution is made, vary its Offer in accordance with section 650D of the Corporations Act to increase the Cash Consideration to be equal to or greater than the Increased Distribution.

## 5.2 Target Directors' intentions

Target represents and warrants to Bidder that each Target Director has informed Target prior to its entry into this Agreement that the director intends to accept the Offer in respect of all Target Shares which the director holds or controls within the Offer Period, in the absence of a Superior Proposal.

## 5.3 Joint promotion of Takeover Bid

- (a) Unless each of the Target Directors withdraws their Recommendation in accordance with clause 5.1(b), Target must support the Offer made under the Takeover Bid during the Offer Period in the absence of a Superior Proposal or termination of this Agreement and must jointly promote the Takeover Bid to Target Shareholders with Bidder, including:
  - (i) participating in efforts reasonably requested by Bidder to promote the merits of the Takeover Bid;
  - (ii) participating in joint conference calls and investor presentations; and
  - (iii) meeting key Target Shareholders, analysts, management, customers, press and other parties mutually agreed by Bidder and Target.
- (b) To avoid doubt, Target's obligation under this Agreement to promote the Offer includes:
  - (i) an obligation to ensure that each Target Director and other senior executives of Target reasonably requested by Bidder participate in offers to promote the merits of the Offer; and
  - (ii) an obligation not to make any announcement or statement to a Third Party which directly or indirectly implies that the Offer will not be successful.
- (c) Bidder must not make any announcement or statement to a Third Party which concerns Target unless the announcement or statement is consistent with the communications made by the parties jointly in accordance with this clause 5 and Bidder has given Target prior written notice of the proposed announcement or statement and its content.

## 6 Exclusivity

### 6.1 Termination of existing discussions

Other than in relation to the discussions with:

- (a) Bidder in connection with the proposed Offer and this Agreement; and
- (b) Optus in connection with the Mobile Sale;

Target represents and warrants to Bidder that, as at the Execution Date, neither Target nor any of its Representatives is participating in any continuing discussions with a Third Party that concerns, or that could reasonably be expected to lead to, a Competing Proposal.

## **6.2 No-shop**

During the Exclusivity Period, Target must ensure that neither it nor any of its Related Bodies Corporate or its Representatives, except with the prior written consent of Bidder, directly or indirectly solicits, invites, initiates or encourages any Competing Proposal or any enquiries, negotiations or discussions with any Third Party in relation to, or that could reasonably be expected to lead to, a Competing Proposal, or communicate any intention to do any of these things.

## **6.3 No-talk**

Subject to clause 6.8, during the Exclusivity Period, Target must ensure that neither it nor any of its Related Bodies Corporate or its Representatives directly or indirectly except without the prior written consent of Bidder:

- (a) negotiates or enters into or participates in negotiations or discussions with any person; or
- (b) communicates an intention to do any of these things,

in relation to, or which may reasonably be expected to lead to a Competing Proposal, even if that person's Competing Proposal was not directly or indirectly solicited, encouraged or initiated by Target or any of its Related Bodies Corporate or its Representatives or the person has publicly announced the Competing Proposal.

## **6.4 No due diligence**

Subject to clause 6.8, during the Exclusivity Period Target must ensure that neither it nor any of its Related Bodies Corporate or its Representatives, except with the prior written consent of Bidder:

- (a) solicits, initiates, facilitates or encourages any person to undertake due diligence on Target or any member of the Target Group in connection with a Competing Proposal; or
- (b) makes available to any person or permits any person to receive any non-public information with a view to obtaining, or which would reasonably be expected to lead to, a Competing Proposal.

## **6.5 Notification of approaches**

- (a) During the Exclusivity Period, Target must promptly notify Bidder in writing if it proposes, by virtue of clause 6.8, to take, or is approached by a person to take, any action of a kind that is set out in clause 6.3 or 6.4.
- (b) During the Exclusivity Period, Target must promptly notify Bidder in writing if, by virtue of clause 6.8:

- (i) Target enters into negotiations or discussions with a party that has proposed (or may be reasonably expected to propose) a Competing Proposal and disclose details of the proposed bidder or acquirer, except for details where that communication would constitute a breach by the Target Directors of their fiduciary or statutory duties; or
  - (ii) Target makes available to any person, or permits any person to receive, any non-public information relating to the Target Group in connection with that person formulating, developing or finalising a Competing Proposal and, subject to consent being obtained from that person, disclose the identity of that person.
- (c) During the Exclusivity Period, Target must promptly provide Bidder with:
- (i) in the case of written materials, a copy of; and
  - (ii) in any other case, a written statement of, any non-public information relating to the Target Group's operations made available or received by any person in connection with the formulation, development or finalisation of a Competing Proposal which has not previously been provided to Bidder.
- (d) Subject to clause 6.8, a notice given under this clause 6.5 must be accompanied by all material details of the relevant event.

## **6.6 Matching right**

During the Exclusivity Period, Target:

- (a) must not, and must procure that each of its Related Bodies Corporate, Representatives or Associates do not, enter into, or agree to enter into, any legally binding agreement, arrangement or understanding (whether or not in writing) under which a Third Party, Target (or any of its subsidiaries) or both proposes or propose to undertake or give effect to a Competing Proposal; and
- (b) must use its reasonable endeavours to ensure that no Target Director publicly recommends or otherwise endorses a Competing Proposal as a Superior Proposal or recommends against the Takeover Bid,

unless:

- (c) Target Board, acting in good faith and after consultation with its financial advisers and external legal advisors, determines that:
  - (i) failure to take that action would likely be inconsistent with the directors' fiduciary or statutory duties owed by any Target Director; and
  - (ii) the proposed Competing Proposal would constitute an actual, proposed or potential Superior Proposal;
- (d) Target has provided Bidder the information contemplated by clause 6.5; and
- (e) if the Competing Proposal is a Compatible Proposal or, if for any reason Optus has not exercised any matching rights in relation to the Competing Proposal it is entitled to under the Share Sale Agreement:
  - (i) Target has first given Bidder five Business Days after the date of the provision of the information contemplated by clause 6.5 to provide Bidder with an irrevocable offer of matching or superior proposal to the

Competing Proposal on terms which Bidder considers in good faith to be no less favourable to the terms of the relevant Competing Proposal alone (**Bidder Counter Proposal**); and

- (ii) Bidder has not provided, in the reasonable opinion of the Target Board, a Bidder Counter Proposal by the end of the period contemplated in clause 6.6(e)(i).

For the avoidance of doubt, the five Business Day period contemplated in clause 6.6(e)(i) can run simultaneously with Optus' matching right period under the Share Sale Agreement.

## **6.7 Bidder Counter Proposal**

- (a) If Bidder provides Target with a Bidder Counter Proposal by the end of the five Business Day period as contemplated in clause 6.6(e), Target must procure that the Target Board considers the Bidder Counter Proposal to determine if the Bidder Counter Proposal would provide an equivalent or superior outcome for Target Shareholders as a whole compared with the Competing Proposal alone, taking into account all of the terms and conditions of the Bidder Counter Proposal.
- (b) Despite clause 6.6(b), to the extent required to discharge what the Target Directors have determined in good faith to be their fiduciary or statutory obligations, the Target Directors may release a public announcement acknowledging the receipt of a Competing Proposal and:
  - (i) recommending that Target Shareholders take no action in relation to the Competing Proposal; or
  - (ii) reserving the Target Directors' position in relation to its recommendation of the Offer,

so long as the announcement does not disclose the person from whom the Competing Proposal has been received nor any of the material terms of the Competing Proposal.
- (c) If Bidder provides Target with a Bidder Counter Proposal by the end of the five Business Day period contemplated in clause 6.6(e) and the Target Board determines that the Bidder Counter Proposal would provide an equivalent or superior outcome for Target Shareholders as a whole compared with the Competing Proposal alone:
  - (i) Bidder and Target must use reasonable endeavours to agree any amendments to this Agreement as reasonably necessary to reflect Bidder's Counter Proposal as soon as reasonably practicable; and
  - (ii) Target must use its reasonable endeavours to procure that each of the Target Board members continues to recommend the Offer (as modified by the Bidder's Counter Proposal) to Target Shareholders.
- (d) Each successive amendment to any proposal from Bidder that is a Bidder Counter Proposal constitutes a new Bidder Counter Proposal for the purposes of this clause 6.7, and clause 6.5 and this clause 6.7 will apply in relation to that Bidder Counter Proposal.

**6.8 Exceptions to no-talk and no due diligence**

Clauses 6.3, 6.4 and 6.5(d) do not prohibit any action or inaction by Target, any of its Related Bodies Corporate or any of their respective Associates, following an actual or proposed Competing Proposal (including, to avoid doubt, any conduct required to determine whether a Competing Proposal could reasonably be expected to become a Superior Proposal) if compliance with those clauses would, in the documented opinion of the Target Directors, formed in good faith after receiving written legal advice (of which Target must maintain a copy), constitute or would be reasonably likely to constitute a breach of any of the fiduciary or statutory duties of the Target Directors, provided that the actual or proposed Competing Proposal was not directly or indirectly brought about by, or facilitated by, a breach of clause 6.1 or 6.2.

**7 Conduct of business**

---

**7.1 Conduct of Target's business**

Other than with the prior approval of Bidder or as contemplated by this Agreement, from the Execution Date up to the earlier of Target Board comprising a majority of Bidder nominated directors, the end of the Exclusivity Period and the date that this agreement is terminated, Target must conduct, and must procure that each member of the Target Group conducts, its business substantially consistent with the plans disclosed in the Notice of Meeting, subject to the terms of the Share Sale Agreement and any transitional arrangements in place for remaining operations of Target.

**7.2 Permitted Acts**

Nothing in clause 7.1 prevents Target or a Target Group Member doing anything:

- (a) which it is required to do or is necessarily required to undertake or complete the Transaction or the Mobile Sale;
- (b) expressly required or contemplated to be done or not done in this Agreement;
- (c) is Fairly Disclosed prior to the Execution Date;
- (d) in response to a Competing Proposal as permitted by this Agreement;
- (e) that is reasonable and prudent to respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property);
- (f) which is necessary for each Target Group Member to meet its legal or contractual obligations; or
- (g) approved by Bidder, such approval not to be unreasonably withheld, delayed or conditioned.

**7.3 Notification to Bidder**

Target must promptly notify Bidder in writing after it becomes aware of a matter which is in breach of or inconsistent with clause 7.1 as qualified by clause 7.2.

**7.4 Access and information**

Between the Execution Date and the earlier of the end of the Offer Period and the date this Agreement is terminated, Target must, to the extent reasonably required to implement the Takeover Bid, following a written request from Bidder giving a reasonable period of prior notice, provide Bidder with reasonable access during business hours to Target's Representatives, documents, records, and other information reasonably requested by Bidder (in each case subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws). Where the consent of a third party is required to disclose any document, record or other information to Bidder, Target must use reasonable endeavours to obtain that consent as soon as is practicable after receiving the Bidder's request for that document, record or other information.

**7.5 Bidder representation on Target Board**

- (a) Target undertakes to use reasonable endeavours to maintain Target Board as it is composed on the Execution Date.
- (b) Notwithstanding paragraph 7.5(a) above, in the event that Bidder acquires a Relevant Interest in at least 75% of Target Shares and the Offer becomes unconditional, Target must, as soon as reasonably practicable, cause the appointment of such number of persons nominated by Bidder which is commensurate with Bidder's economic interest in Target (if Bidder so elects) to:
  - (i) the Target Board; and
  - (ii) the board of directors of each Target Group Member.

---

**8 Representations and warranties**

---

**8.1 Target warranties**

- (a) Target represents and warrants to Bidder (on its own behalf and separately as trustee for each of the other Bidder Indemnified Parties) that each of the warranties set out in clause 8.1(b) is true, accurate and not misleading:
  - (i) as at the execution of this Agreement; and
  - (ii) in the case of all Target Warranties other than those in clauses 8.1(b)(ix), 8.1(b)(x) and 8.1(b)(xi), at all times on each subsequent day of the Exclusivity Period (including the last day of that period).
- (b) Target represents and warrants that:
  - (i) Target and each Target Group Member is a corporation validly existing under the laws of its place of incorporation;
  - (ii) Target has the power to execute, deliver and to perform its obligations under this Agreement, and has taken all necessary corporate actions to authorise such execution, delivery and the performance of such obligations;
  - (iii) Target's obligations under this Agreement are legal, valid and binding obligations enforceable in accordance with their terms;
  - (iv) except in relation to change of control clauses, the execution and delivery by Target of this Agreement do not and will not conflict with or constitute a material default under any provision of:

- (A) any material agreement or instrument to which it is a party; or
  - (B) its constitution; or
  - (C) any law, writ, order, judgment, award, injunction, decree, rule or regulation by which it is bound;
- (v) no Target Group Member:
- (A) is in default under any material document, agreement or instrument binding on it or its assets; nor
  - (B) is aware of anything that has occurred which is or would with the giving of notice or lapse of time constitute such an event of default, prepayment event or similar event, or give another party to those arrangements a termination right or right to accelerate any right or obligation, under any such document or agreement with such an effect,
- in each case where that default, occurrence or event would have, or is reasonably likely to have, a material adverse effect on Target;
- (vi) it is not subject to an Insolvency Event;
  - (vii) it is not in breach of its continuous and periodic disclosure obligations under the Listing Rules and is not relying on the carve out in Listing Rule 3.1A to withhold any information from public disclosure, other than in relation to the Takeover Bid;
  - (viii) all material tax, levies, assessments, contributions, fees, rates, duties and other governmental or municipal charges or impositions which are due and payable by any Target Group Member, including any penalty or interest, have been paid;
  - (ix) as at the Execution Date there are no existing or threatened Claims of more than \$1,000,000, in each case where written notice has been given or proceedings have been brought against any Target Group Member or their officers;
  - (x) as at the Execution Date, there are 295,110,421 Target Shares and 19,573,225 Performance Rights on issue and it has not offered or agreed to issue any other Target Shares or other securities, options, performance rights or instruments which may convert into, or give the holder the right to be issued, Target Shares;
  - (xi) as at the Execution Date, Target is not aware of any act, omission, event, fact or circumstance that would result in or is reasonably likely to result in:
    - (A) any of the Bid Conditions being breached or not satisfied, or becoming incapable of satisfaction; or
    - (B) the Transaction not being implemented in accordance with the Timetable and the terms of this Agreement;
  - (xii) it has not withheld from the Bidder any material information that is material to the Target or its business which is not already in the public domain and which a buyer of the Target would reasonably require or

- expect to know to make an informed assessment of the Target's business; and
- (xiii) Target has not denied Bidder access to any information with the intention of misleading Bidder;
  - (xiv) to the best of Target's knowledge, all Target Group Members and their officers have complied in all material respects with all Australian and foreign laws and regulations applicable to them (including in relation to anti-bribery and corruption) and orders of Australian and any foreign governmental agencies having jurisdiction over them and have all material licenses and permits necessary for it to conduct its business as it is presently being conducted. The concerns raised by the ACCC in infringement notice number 2021/05 were resolved by payment of the penalty by amaysim in respect of the infringement notice, and ACCC has raised no other concerns with any Target Group Member.
- (c) Each of Target's Warranties in clauses 8.1(a) and 8.1(b) is subject to:
- (i) any matter Fairly Disclosed in the Target Disclosure Materials;
  - (ii) any matter disclosed to or lodged with ASX or ASIC or available on Target's website or the PPSR, before the Execution Date;
  - (iii) any matter known to Bidder or its Representatives before the Execution Date;
  - (iv) any matter contemplated, permitted or required under this Agreement; or
  - (v) any matter which may arise from a matter, event of circumstance which was disclosed in accordance with clauses 8.1(c)(i), 8.1(c)(ii) or 8.1(c)(iii).

## **8.2 Target's indemnity**

Target must indemnify the Bidder Indemnified Parties against any Claim or Liability however arising that any of the Bidder Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Target Warranties.

## **8.3 Bidder warranties**

- (a) Bidder represents and warrants to Target (on its own behalf and separately as trustee for each of the other Target Indemnified Parties) that each of the warranties in clause 8.3(b) is true, accurate and not misleading:
  - (i) as at the execution of this Agreement; and
  - (ii) in the case of all Bidder Warranties other than those in clause 8.3(b)(vi) and 8.3(b)(xi), at all times on each subsequent day of the Exclusivity Period (including the last day of that period).
- (b) Bidder represents and warrants that:
  - (i) Bidder is a corporation validly existing under the laws of its place of incorporation;
  - (ii) Bidder has the power to execute, deliver and to perform its obligations under this Agreement, and has taken all necessary corporate action to

- authorise such execution, delivery and the performance of such obligations;
- (iii) Bidder's obligations under this Agreement are legal, valid and binding obligations enforceable in accordance with their terms;
  - (iv) the execution and delivery by Bidder of this Agreement does not and will not conflict with or constitute a default under any provision of:
    - (A) any agreement or instrument to which it is a party; or
    - (B) its constitution; or
    - (C) any law, writ, order, judgment, award, injunction, decree, rule or regulation by which it is bound;
  - (v) Bidder is not subject to an Insolvency Event;
  - (vi) as at the Execution Date, there are no discussions, negotiations or agreements in relation to any proposal involving a change of control transaction relating to Bidder;
  - (vii) other than as contemplated by the Agreed Bid Terms, Bidder does not require any further approvals to undertake or complete the Takeover Bid;
  - (viii) Bidder will comply during the Offer Period with its obligations under Part 6.9 of the Corporations Act;
  - (ix) the Bidder Shares to be offered as consideration under the Offer will be duly authorised and validly issued, fully paid, not liable to the imposition of any duty and be free of all encumbrances, security interests and third party rights and will rank equally with all other Bidder Shares;
  - (x) it is not in breach of its continuous and periodic disclosure obligations under the Listing Rules and is not relying on the carve out in Listing Rule 3.1A to withhold any information from public disclosure, other than in relation to the Takeover Bid;
  - (xi) as at the Execution Date, there are 721,264,927 Bidder Shares on issue and as at the Execution Date it has not offered or agreed to issue any other Bidder Shares or other securities, options, performance rights or instruments which may convert into, or give the holder the right to be issued, Bidder Shares;
  - (xii) to the best of Bidder's knowledge, all Bidder Group Members and their officers have complied in all material respects with all Australian and foreign laws and regulations applicable to them (including in relation to anti-bribery and corruption) and orders of Australian and any foreign governmental agencies having jurisdiction over them and have all material licenses and permits necessary for it to conduct its business as it is presently being conducted;
  - (xiii) Bidder has a reasonable basis to believe it will have sufficient cash amounts available to it on an unconditional and immediately available basis to pay the Cash Consideration for all Target Shares in accordance with its obligations under this Agreement and the Takeover Bid.
- (c) Each of Bidder's Warranties in clauses 8.3(a) and 8.3(b) is subject to:

- (i) any matter Fairly Disclosed in the Bidder Disclosure Materials;
- (ii) any matter disclosed to or lodged with ASX or ASIC or available on Bidder's website or from the registers maintained by the High Court and the Federal Courts of Australia, the Supreme Courts of each Australian State and Territory and the PPSR, before the Execution Date;
- (iii) any matter known to Target or its Representatives before the Execution Date;
- (iv) any matter contemplated, permitted or required under this Agreement; or
- (v) any matter which may arise from a matter, event of circumstance which was disclosed in accordance with clauses 8.3(c)(i), 8.3(c)(ii) or 8.3(c)(iii).

#### **8.4 Bidder's indemnity**

Bidder must indemnify the Target Indemnified Parties against any Claim or Liability however arising that any Target Indemnified Party suffers, incurs or is liable for arising out of any breach of any of the Bidder Warranties.

#### **8.5 Liability of directors and officers**

- (a) Each party releases its rights against, and will not make or commence any claim against, any past or present director or employee of the other party in relation to information provided to it by the other party in connection with the Takeover Bid containing any statement which is false or misleading to the extent that the past or present director or employee of the other party has not engaged in wilful misconduct or fraud. In this clause 8.5(a), the reference to any past or present director or employee of the other party refers to any past or present director or employee of Target or Bidder.
- (b) Each party holds the releases in clause 8.5(a) in respect of its directors and employees as trustee for its past and present directors and employees.
- (c) This clause 8.5 is subject to any restriction at law (including the Corporations Act) and will be read down accordingly.

#### **8.6 Limitations on claims by Bidder**

- (a) Target is not liable to Bidder for any claim under clauses 8.1 and 8.2 unless and until the aggregate amount of all claims exceeds \$1 million.
- (b) Bidder may not make any claim for a breach of warranty unless the claim has been notified to Target (including reasonable detail, to the extent known to Bidder at the time of giving such notice) within 5 months from the start of the Offer Period.
- (c) Notwithstanding anything else in this Agreement, the maximum aggregate amount of all claims for breach of warranties under this Agreement is an amount equal to \$60 million.
- (d) Target excludes all liability for indirect and consequential loss or damage (including for loss of profit (whether direct, indirect, anticipated or otherwise), loss of expected savings, opportunity costs, loss of business (including loss or reduction of goodwill), damage to reputation and loss or corruption of data regardless of whether any or all of these things are considered to be indirect or

consequential losses or damage) in contract, tort (including negligence), under any statute or otherwise arising from or related in any way to any breach of warranty.

- (e) Bidder must take, and use reasonable endeavours to procure that Target and each of Target's Subsidiaries takes, reasonable steps to mitigate any Liability that may give rise to a claim under this Agreement.
- (f) In calculating the liability of Target for a claim arising for a breach of any warranty, any tax benefit or reduction received by Bidder as a result of the loss or damage arising from that breach must be taken into account.

## **8.7 Notice**

If Bidder or Target becomes aware of a matter or circumstance which results in or is likely to result in any of the representations or warranties given by that party in this clause 8 being untrue, inaccurate or misleading, it must give written notice to the other, specifying that matter or circumstance in reasonable detail as soon as reasonably practicable after it becomes aware of that matter or circumstance. Any failure by Bidder or Target to give notice as contemplated by this clause 8.7 in relation to any matter or circumstance does not, for the avoidance of doubt, prevent it from making any claim arising from that matter or circumstance.

## **8.8 Survival of representations and warranties**

Each representation or warranty made or given in clauses 8.1 and 8.3:

- (a) is severable;
- (b) survives the termination of this Agreement; and
- (c) is given with the intention that liability under it is not confined to breaches that are discovered before the date of termination of this Agreement.

## **8.9 Survival of indemnities**

Each indemnity in this Agreement (including those in clauses 8.2 and 8.4):

- (a) is severable;
- (b) a continuing obligation that survives the termination of this Agreement; and
- (c) constitutes a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this Agreement.

# **9 Termination**

---

## **9.1 Material breach**

- (a) Either Bidder or Target (**Terminating Party**) may terminate this Agreement at any time by giving written notice to the other if:
  - (i) the other is in breach of a material term of this Agreement or any representation or warranty given by the other under this Agreement is untrue, inaccurate or misleading in any respect that is material in the context of the Takeover Bid, other than as a result of a breach of this Agreement by the Terminating Party;
  - (ii) the Terminating Party has given notice to the other of its intention to terminate this Agreement under this clause 9.1 and setting out the

details of the matters or circumstances giving rise to the termination right; and

- (iii) in the case of a breach of a material term of this Agreement, that breach has not been remedied within five Business Days after that date.
- (b) On receipt of a notice under clause 9.1(a)(ii), the recipient of that notice must use its reasonable endeavours for the five Business Days referred to in clause 9.1(a)(iii) to remedy the breach that is set out in the notice.

## **9.2 Bidder termination events**

Bidder may terminate this Agreement at any time by giving written notice to Target if:

- (a) the Target Board (or any one or more members of the Target Board) do not make, adversely change, or withdraw their Recommendation, or their intention to accept the Offer in respect of all of their Target Shares, or make a public statement indicating that they no longer support the Offer or that they support a Competing Proposal;
- (b) a Prescribed Occurrence occurs or any event occurs which causes a Bid Condition to be breached or be incapable of being satisfied;
- (c) if a Competing Proposal is proposed by a person and is endorsed, recommended or otherwise supported by any of the Target Directors.

## **9.3 Target termination events**

Target may terminate this Agreement at any time by giving written notice to Bidder if the Target Board (or a majority of the directors of Target) change or withdraw their Recommendation in accordance with clause 5.1(b).

## **9.4 Other termination events**

Either Bidder or Target may terminate this Agreement by giving written notice to the other if, during the Offer Period:

- (a) a court of competent jurisdiction or Authority issues a final and non-appealable order or ruling or takes an action which permanently restrains or prohibits the Offer;
- (b) Bidder withdraws the Offer for non-satisfaction of a Bid Condition or because a Competing Proposal has been announced and it has been recommended by the Target Board;
- (c) the Offer lapses without the Bid Conditions being satisfied or waived; or
- (d) the End Date is reached and the Offer Period has not concluded.

## **9.5 Effect of termination**

If this Agreement is terminated under this clause 9, then:

- (a) except for this clause 9.5 and clauses 8.8, 8.9, 10, 11, 12 and 13, all the provisions of this Agreement will lapse and cease to have effect; and
- (b) neither the lapsing of those provisions nor their ceasing to have effect will affect any accrued rights or liabilities of either party in respect of damages for non-performance of any obligation under this Agreement falling due for performance before such lapse and cessation.

## **10 Announcements and confidentiality**

---

### **10.1 Announcements**

Immediately after signing this Agreement, Target and Bidder must issue the Agreed Announcement in substantially the form set out in Annexure A.

### **10.2 Other announcements**

Subject to clause 10.3, each party must not make, and must procure that its Representatives do not make:

- (a) any public announcement concerning the Transaction or the terms of or the negotiations relating to, this Agreement, other than the announcement referred to in clause 10.1; or
- (b) any announcement or statement to a Third Party which directly or indirectly implies that the Offer made under the Takeover Bid will not be successful.

### **10.3 Permitted announcements**

Nothing in clause 10.2(a) prevents any announcement being made:

- (a) with the written consent of Bidder and Target, which must not be unreasonably withheld or delayed;
- (b) to the extent required by law, the Corporations Act, the Listing Rules or any court of competent jurisdiction or any Authority, but if any party is required to make any such announcement, it must promptly notify the other party, where reasonably practicable and lawful to do so, before the announcement is made and must co-operate with the other party regarding the timing and content of such announcement or any action which the other party may reasonably elect to take to challenge the validity of such requirement; or
- (c) relating to a Competing Proposal in accordance with clause 6.7(b) or a Superior Proposal.

### **10.4 Confidentiality**

Each party acknowledges and agrees that it continues to be bound by the Confidentiality Agreement in respect of all information received by it from the other party on, before or after the Execution Date.

## **11 GST**

---

### **11.1 Definitions**

Words and expressions defined in the GST Act have the same meaning in this clause 11.

### **11.2 Payments exclusive of GST**

Unless expressly stated otherwise, all amounts payable under or in connection with this Agreement are exclusive of GST. If GST is payable on a taxable supply made under or in connection with this Agreement, the recipient of the supply must pay the supplier an additional amount equal to the GST payable on that supply provided that the supplier first issues a tax invoice for that supply.

**11.3 Input tax credits**

Without limiting clause 11.2, if an amount payable under or in connection with this Agreement is calculated by reference to a liability incurred by a party, then the amount of the liability must be reduced by the amount of any input tax credit to which that party is entitled in respect of the acquisition of the supply to which the liability relates. A party will be assumed to be entitled to a full input tax credit unless it demonstrates that its entitlement is otherwise before the date on which payment must be made.

**12 Duty, costs and expenses**

---

**12.1 Stamp duty**

Bidder:

- (a) must pay all stamp duties and any related fines and penalties in respect of this Agreement and any transaction contemplated by it (including the Offers); and
- (b) indemnifies Target against any liability arising from or in connection with any failure by it to comply with clause 12.1(a).

**12.2 Costs and expenses**

Each party must pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this Agreement and the proposed, attempted or actual implementation of the Transaction.

**13 General**

---

**13.1 Notices**

- (a) Form of communication
  - (i) Unless expressly stated otherwise in this Agreement, any notice, certificate, consent, request, demand, approval, waiver or other communication (**Notice**) must be:
    - (A) in legible writing and in English;
    - (B) signed by the sender (if an individual) or where the sender is a company, signed by an officer or in accordance with section 127 of the Corporations Act; and
    - (C) marked for the attention of and addressed to the addressee.
  - (ii) A Notice can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.
- (b) Delivery of Notices
  - (i) Notices must be hand delivered or sent by prepaid express post (next day delivery), email or facsimile to the addressee's address for notices specified in the notice details in the Parties section of this Agreement or to any other address, email or facsimile number a party notifies to the other parties under this clause 13.1.

- (ii) Reference in this clause to an addressee includes a reference to an addressee's officers, agents or employees or any person reasonably believed by the sender to be an officer, agent or employee of the addressee.
- (c) When Notice is effective  
Notices take effect from the time they are received or taken to be received under subclause 13.1(d) (whichever happens first) unless a later time is specified.
- (d) When Notice taken to be received  
Notice is taken to be received by the addressee if by:
  - (i) delivery in person, when delivered to the addressee;
  - (ii) prepaid express post, on the second Business Day after the date of posting;
  - (iii) post three Business Days from and including the date of postage; or
  - (iv) subject to clause 13.1(e), facsimile transmission, at the time shown in the transmission report generated by the machine from which the facsimile was sent; and
  - (v) subject to clause 13.1(e), electronic mail (e-mail), the earliest of:
    - (A) four hours after the sent time (as recorded on the sender's e-mail server), unless the sender receives a notice from the recipient's email server or internet service provider that the message has not been delivered to the recipient;
    - (B) when the sender receive an automated message confirming delivery; or
    - (C) when the sender receives a reply message from the recipient confirming receipt.
- (e) Legible Notices and receipt outside business hours
  - (i) A facsimile transmission or e-mail is regarded as legibly received unless the addressee telephones the sender within four hours after the transmission or e-mail is received or regarded as received under clause 13.1(d) and informs the sender that it is not legible.
  - (ii) If a Notice is received or taken to be received under clause 13.1 after 5:30pm in the place of receipt or on a non-Business Day, it is taken to be received at 9:00am (recipient's time) on the following Business Day and take effect from that time unless a later time is specified in the Notice.

### **13.2 Governing law and jurisdiction**

- (a) This Agreement is governed by the laws of New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts which have jurisdiction to hear appeals from any of those courts in respect of any proceedings in connection with this Agreement.

- (c) Each party waives any right it has to object to an action being brought in the courts of New South Wales including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

**13.3 Prohibition or enforceability**

- (a) Any provision of, or the application of any provision of this Agreement, which is prohibited, void, illegal or unenforceable in any jurisdiction:
  - (i) is, in that jurisdiction, ineffective only to the extent to which it is void, illegal, unenforceable or prohibited;
  - (ii) does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions of this Agreement in that or any other jurisdiction; and
  - (iii) is severable from this Agreement and will not affect the remaining provisions of this Agreement.
- (b) The application of clause 13.3 is not limited by any other provision of this Agreement in relation to severability, prohibition or enforceability.

**13.4 Waivers**

- (a) A waiver of any right, power, authority, discretion or remedy arising upon a breach of or default under this Agreement must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in the exercise, or partial exercise, of a right, power, authority, discretion or remedy arising from a breach of or default under this Agreement, does not prevent the exercise of or result in a waiver of that right, power, authority, discretion or remedy at a later time.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this Agreement or default under this Agreement as constituting a waiver of that right, power, authority, discretion or remedy.
- (d) A party may not rely on any conduct of another party as a defence to the exercise of a right, power, authority, discretion or remedy by that other party.
- (e) A waiver is only effective in the specific instance and for the specific purpose for which it is given.

**13.5 Variation**

A provision of this Agreement or a right or obligation created under it may not be varied except in writing and signed by all the parties.

**13.6 Cumulative rights**

The powers, rights and remedies of a party under this Agreement are in addition to and do not exclude any other power, right or remedy provided by law or otherwise.

**13.7 Further assurances**

Each party must do all things reasonably necessary to give full effect to this Agreement and the transactions contemplated by this Agreement.

**13.8 Entire agreement**

- (a) Except for the Confidentiality Agreement, this Agreement embodies the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes any prior negotiation, arrangement, understanding or agreement with respect to the subject matter or any term of this Agreement.
- (b) Any statement, representation, term, warranty, condition, promise or undertaking made, given or agreed to in any prior negotiation, arrangement, understanding or agreement, other than the Confidentiality Agreement, has no effect except to the extent expressly set out or incorporated by reference in this Agreement.

**13.9 Third party rights**

No person other than the parties have or is intended to have any right, power or remedy or derives or is intended to derive any benefit under this Agreement.

**13.10 Counterparts**

- (a) This Agreement may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this Agreement by signing any counterpart.
- (d) This Agreement is binding on the parties on exchange of counterparts. A copy of a counterpart sent by facsimile machine or that is electronically scanned and emailed:
  - (i) must be treated as an original counterpart;
  - (ii) is sufficient evidence of the execution of the original; and
  - (iii) may be produced in evidence for all purposes in place of the original.

**13.11 Non-merger**

No provision of this Agreement merges on execution, completion or termination.

**13.12 Continuing indemnities and survival of indemnities**

- (a) Each indemnity contained in this Agreement is a continuing obligation despite a settlement of account or the occurrence of anything, and remains in full force and effect until all money owing, contingently or otherwise, under an indemnity has been paid in full.
- (b) Each indemnity contained in this Agreement is an additional, separate and independent obligation of the party giving the indemnity and no one indemnity limits the generality of any other indemnity.

**13.13 No assignment or novation**

A party may not assign or novate this Agreement or otherwise transfer the benefit of this Agreement or an obligation, right or remedy under it, without the prior written consent of the other party.

**13.14 Costs**

Each party will bear its own legal and other costs and expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this Agreement except as otherwise expressly provided in this Agreement.

**13.15 Legal advice**

Each party acknowledges that it has received legal advice in respect of this Agreement or has had the opportunity of receiving legal advice about this Agreement.

**13.16 Supervening legislation**

Any present or future legislation which operates to vary the obligations of a party in connection with this Agreement with the result that a party's rights, powers or remedies are adversely affected (including by way of a delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

**13.17 Consents**

Except as otherwise expressly provided in this Agreement, a party may give or withhold its consent to any matter referred to in this Agreement in its absolute discretion. A party that gives its consent to any matter referred to in this Agreement is not taken to have made any warranty or representation as to any matter or circumstance connected with the subject matter of that consent.

## Schedule 1 Agreed Bid Terms (clause 3)

### 1 Consideration

- (a) The consideration under the Offer is a choice of:
- (i) cash, at \$0.695 for each Target Share (**Cash Consideration**);
  - (ii) scrip, of one new Bidder Shares for every 2.7 Target Shares (**Scrip Consideration**); or approximately \$0.833 worth of scrip value as at the date the parties issue the Agreed Announcement; or
  - (iii) a combination of both, (**Consideration**).
- (b) If no election is made, the default consideration will be Scrip Consideration.
- (c) If the Offer remains open past the record date for the Major Distribution following Target Shareholder approval of the Mobile Sale, the consideration will be reduced for Target Shareholders who accept the Offer after that record date, by an amount reflecting the value of that Major Distribution as set out below:
- Scrip Consideration adjustment example*
- For example, on \$0.50 per Target Share Major Distribution and assuming the value of WAM shares of \$2.26/share, the \$0.833 per Target Share would reduce by the \$0.50 per Target Share and the Scrip Consideration would reduce as follows:
- Value:  $\$0.833 \text{ less } \$0.50 = \$0.333$
- $\$0.833 / \$0.333 = 2.5015$
- $2.5015 \times 2.7$  (Target scrip component) (being the 1 for 2.7 scrip formula) = 6.75
- New scrip formula is 1 Bidder Share for 6.75 Target Shares
- The value of the scrip formula based on the revised Target scrip component is then \$0.333 per Target Share.
- Cash Consideration*
- The cash value would be \$0.195 per share (\$0.695 less the \$0.50 distribution).
- (d) Bidder's payment terms will be no more than five Business Days after the processing of valid acceptances into the Offer, once the Offer is unconditional.
- (e) If the number of Target Shares held by a Target Shareholder means that their aggregate entitlement to Bidder Shares is not a whole number, then any fractional entitlement will be rounded to the nearest whole number.
- (f) Target Shareholders will continue to be entitled to all dividends or other distributions, and all rights to receive any dividends or other distributions, declared or paid by Target in respect of the Target Shares they hold until they accept the Offer and it becomes unconditional.

## 2 Offer Period

The Offer will open on the later of the Offer Date and the Business Day after the day on which completion of the Mobile Sale occurs and will:

- (a) remain open for at least eight weeks; and
- (b) close no earlier than the day before the record date for the Major Distribution to be paid by Target following Target Shareholder approval of the Mobile Sale,

unless extended by the Bidder, or under any automatic extension of the Offer Period in accordance with the Corporations Act. In the event that the Offer opens later than 2 February 2020, Target will extend the record date (and, if required under the Listing Rules or any other regulatory obligation, the payment date) of the Major Distribution by the number of days by which the Offer Period opens later than 2 February 2020.

## 3 Foreign Target Shareholders

- (a) Subject to the Corporations Act, Bidder will, unless satisfied that the laws of a Foreign Target Shareholder's country of residence (as shown on the Register) permit the issue of Bidder Shares to Foreign Target Shareholder either unconditionally or after compliance with conditions which Bidder reasonably regards as not unduly onerous or unduly impractical, issue the Bidder Shares to which a Foreign Target Shareholder would otherwise be entitled to a nominee appointed by Bidder.
- (b) The nominee will:
  - (i) sell those Bidder Shares as soon as practicable following their issue, and in compliance with the nominee's best execution obligations, including during the Offer Period; and
  - (ii) pay to that Foreign Target Shareholder the net proceeds received (after deducting the applicable brokerage (applied at market standard rates), taxes and charges).
- (c) In the event that the nominee is not permitted to sell those Bidder Shares described in 3(a) and 3(b) above until the end of the Offer Period, the Offer must close no later than three months after the date the Offer opens.

## 4 Bid Conditions

### 4.1 Target Shareholder approval of the Mobile Sale

Target Shareholder approval of the Mobile Sale or alternative Superior Proposal (**Target Shareholder Approval Condition**);

### 4.2 Minimum Acceptance

Before the end of the Offer Period, Bidder has a Relevant Interest in at least 50.1% (by number) of Target Shares.

### 4.3 Major Distribution

The Major Distribution following Target Shareholder approval of the Mobile Sale will have a record date no earlier than 31 March 2021.

#### **4.4 No material adverse change**

Between the Announcement Date and the end of the Offer Period, there is no occurrence of any change which has or could reasonably be expected to have a material adverse effect on the assets, liabilities, financial position, performance or profitability of Target and/or its Subsidiaries, other than:

- (a) any change in relation to the Mobile Sale;
- (b) any matter, event or circumstance that is Fairly Disclosed, or actually known by Bidder on or before the Execution Date (including as a result of disclosures made to ASX and in documents lodged with ASIC);
- (c) any matter, event or circumstance arising from changes in law or economic, regulatory, political or business conditions in Australia or that affects or otherwise has an impact on Australia;
- (d) any matter, event or circumstance affecting the mobile industry generally;
- (e) any change in accounting policy required by law;
- (f) any change resulting directly from a general deterioration in equity markets, interest rates, exchange rates or credit spreads or a disruption to financial markets of Australia;
- (g) any change occurring directly or indirectly as a result of any matter, event or circumstance required by this Agreement, the Takeover Bid or the transactions contemplated by them; or
- (h) any change occurring with the written consent of Bidder.

#### **4.5 No litigation**

Between the Announcement Date and the end of the Offer Period, no litigation against any Target Group Member, or to which any Target Group Member is party, which may reasonably result in a judgment of \$1,000,000 or more is commenced, is threatened to be commenced, is announced, or is made known to Target or Bidder (whether or not becoming public), other than that which is in the public domain as at the Execution Date, or is disclosed in the Target Disclosure Materials.

#### **4.6 No market fall**

Between the Announcement Date and the end of the Offer Period, the ASX S&P 200 not closing at a level that is 10% or more below the level of that index at 5.00pm on the trading day immediately prior to the Announcement Date, and remaining at or below that level for at least two consecutive trading days.

#### **4.7 No material change to the business of Target and/or its Subsidiaries**

Between the date of the Bidder's Statement and the end of the Offer Period, none of the following occur, without the written consent of Bidder:

- (a) Target or a Subsidiary of Target, adopts a new constitution or makes any change to its constitution or passes any special resolution or proposes to do so;
- (b) Target or a Subsidiary of Target, gives or agrees to give any encumbrance (including a Security Interest or mortgage) over any of its material assets otherwise than in the ordinary course of business; or

- (c) Target or a Subsidiary of Target, appoints any additional Director to its Board of Directors whether to fill a casual vacancy or otherwise.

#### **4.8 Regulatory and third party approvals**

Between the Announcement Date and the end of the Offer Period, any approvals that are required by law, or by any Authority, that would otherwise impede the Mobile Sale or alternative Superior Proposal, are granted, given, made or obtained.

#### **4.9 No regulatory action**

Between the date of the Bidder's Statement and the end of the Offer Period:

- (a) no preliminary or final decision, order or decree is made or issued;
- (b) no action, proceeding or investigation is announced, commenced or threatened;  
and
- (c) no application is made (other than by Bidder or its Associates),

by or to any Authority (other than by Bidder or any of its Subsidiaries) in consequence of, or in connection with, the Offer which is likely to restrain, prohibit, impede or otherwise materially adversely affect the making of the Offer, the acquisition of the Target Shares by Bidder, the rights of Bidder in respect of Target and the Target Shares (other than any action or decision by or application to ASIC or the Takeovers Panel in exercise of the powers or discretions conferred by the Corporations Act).

## Schedule 2 Timetable (clause 4.1)

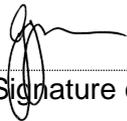
<b>Event</b>	<b>Date*</b>
<b>Announcement Date</b>	No later than 15 December 2020
<b>Bidder provides draft Bidder's Statement to Target</b>	No later than 18 January 2021
<b>Target provides draft Target's Statement to Bidder</b>	No later than 18 January 2021
<b>Lodgement Date</b> <i>Date Bidder lodges Bidder's Statement with ASIC and serves it on Target</i> <i>Date Target lodges Target's Statement with ASIC and serves it on Bidder</i>	No later than 25 January 2021
<b>Register Date</b>	25 January 2021
<b>Dispatch of Bidder's Statement to Target Shareholders</b>	No later than 29 January 2021
<b>Dispatch of Target's Statement to Target Shareholders</b>	No later than 29 January 2021
<b>Offer Date</b>	The later of 1 February 2021 and the first business day after completion of the Mobile Sale
<b>Offer Period ends (unless extended)</b>	30 March 2021

\* Dates are indicative only

## Execution Page

**EXECUTED** as an agreement on 14 December 2020

**EXECUTED** by **WAM CAPITAL LIMITED (ACN 086 587 395)** in accordance with section 127 of the *Corporations Act 2001* (Cth):



Signature of Director

Geoff Wilson  
Name of Director  
(Please print)



Signature of Company Secretary  
(delete as applicable)

Jesse Hamilton  
Company Secretary  
(Please print)

**EXECUTED** by **AMAYSIM AUSTRALIA LIMITED (ACN 143 613 478)** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of Director

Name of Director  
(Please print)

Signature of Director / Company Secretary  
(delete as applicable)

Name of Director / Company Secretary  
(Please print)

## Execution Page

**EXECUTED** as an agreement on 2020

**EXECUTED** by **WAM CAPITAL LIMITED (ACN 086 587 395)** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of Director

Signature of Director / Company Secretary  
(delete as applicable)

Name of Director  
(Please print)

Name of Director / Company Secretary  
(Please print)

**EXECUTED** by **AMAYSIM AUSTRALIA LIMITED (ACN 143 613 478)** in accordance with section 127 of the *Corporations Act 2001* (Cth):



Signature of Director

Signature of Director / Company Secretary  
(delete as applicable)

Peter O'Connell

Alexander Feldman

Name of Director  
(Please print)

Name of Director / Company Secretary  
(Please print)

## **Annexure A    Agreed Announcement (clause 10)**

**ASX ANNOUNCEMENT**

15 December 2020

**Recommended Takeover Offer for amaysim Australia Limited  
Complementary to Optus Mobile Sale**

amaysim Australia Limited (ASX: AYS) (**amaysim** or the **Company**) and WAM Capital Limited (ASX: WAM) (**WAM**) are pleased to announce that they have entered into a bid implementation agreement dated 14 December 2020 (**BIA**), under which it is proposed that WAM will make an agreed off-market takeover bid for 100% of the outstanding fully paid ordinary shares of amaysim, subject to certain conditions (the **WAM Offer**).

**The Board unanimously recommends shareholders accept the WAM Offer and the Directors have indicated that they each intend to accept the WAM Offer in respect of all amaysim shares they own or control, both in the absence of a superior proposal.**

The WAM Offer is conditional upon amaysim shareholder approval of the sale of amaysim's Mobile business (**Mobile Sale**) to Optus Mobile Pty Limited (**Optus**), which was announced on 2 November 2020 (**Mobile Sale Announcement**). On the basis that the WAM Offer relies on, and is supplemental to, the Mobile Sale, the amaysim Board considers that the **WAM Offer is complementary to the Mobile Sale and enhances the overall outcome for shareholders**. Optus has provided its consent to the making of this announcement.<sup>1</sup>

A copy of the BIA is attached as Annexure A for further information. Unless otherwise defined, capitalised terms used in this announcement will have the meaning given in the Mobile Sale Announcement as supplemented by amaysim's Notice of Extraordinary General Meeting and Explanatory Memorandum (**Notice of Meeting**) announced 3 December 2020.

**Summary of WAM Offer**

- Under the WAM Offer, each amaysim shareholder may elect to receive either:
  - o 1 WAM share for every 2.7 amaysim shares, representing A\$0.833<sup>2</sup> of implied value per amaysim share (the **Scrip Consideration**);
  - o cash consideration of A\$0.695 per amaysim share (the **Cash Consideration**); or
  - o a combination of cash and scrip.
- The WAM Offer is subject to customary conditions and WAM has provided an undertaking to amaysim that it will waive any remaining conditions immediately following completion of the Mobile Sale, expected to be on or around 1 February 2021.
- If the WAM Offer remains open past the Record Date for the major distribution of proceeds from the Mobile Sale (**Major Distribution**), the consideration will be reduced for shareholders whose acceptances of the WAM Offer take effect after that Record Date, by the amount of the Major Distribution (without any associated adjustment with respect to franking credits).

<sup>1</sup> Optus' consent was provided in connection with its rights in respect of the Mobile Sale only and it takes no responsibility in respect of this announcement.

<sup>2</sup> Based on WAM's closing price of \$2.25 per share on 14 December 2020. The implied value of the WAM Offer (measured by reference to the Scrip Consideration) depends on the value of WAM's share price at the time of any acceptance into the WAM Offer.

- As the WAM Offer is conditional on amaysim shareholders approving the Mobile Sale to Optus, or an alternative superior proposal, and opens subsequent to the completion of the Mobile Sale, the WAM Offer is considered complementary to the Mobile Sale by delivering enhanced value, optionality and faster payment for amaysim shareholders.
- The WAM Offer will open on the later to occur of 1 February 2021 and the first business day after completion of the Mobile Sale, at which point the WAM Offer will be declared unconditional and will remain open at least until the day prior to the Record Date for the Major Distribution. In order to facilitate the WAM Offer, the Record Date of the Major Distribution will be amended from 12 March 2021 as shown in the Notice of Meeting to 31 March 2021<sup>3</sup>. Accepting amaysim shareholders will be paid within 5 business days of the processing of valid acceptances into the WAM Offer.
- The implied value of the WAM Offer (Scrip Consideration) reflects a 28.4%<sup>4</sup> premium to amaysim's 1 month VWAP<sup>4</sup> up until 30 October 2020 (last trading day prior to the Mobile Sale being announced) and a 12.6% premium to amaysim's VWAP since the Mobile Sale was announced.<sup>5</sup>

### Update to Distribution range

As detailed in the Notice of Meeting, amaysim expected shareholders would receive Distributions from amaysim through its delisting and wind-up process, of between A\$0.67 per share and A\$0.73 per share, with a midpoint of A\$0.70 per share.

It is expected that amaysim will incur additional incremental transaction costs of approximately A\$1.5 million directly associated with the WAM Offer, should the WAM Offer open and become unconditional.

This will reduce the cash available for Distribution by amaysim through its wind-up process by approximately \$1.5 million or A\$0.005 per share. The A\$0.005 per share reduction is expected to reduce the Final Distribution (as detailed in the Notice Of Meeting) such that the Final Distribution is now expected to be in the range of A\$0.065 per share and A\$0.125 per share (with a midpoint of A\$0.095 per share) instead of the A\$0.07 per share to A\$0.13 per share (with a midpoint of A\$0.10 per share).

Accordingly, amaysim expects shareholders would receive Distributions from amaysim through its wind-up process, of between A\$0.665 per share and A\$0.725 per share with a midpoint of A\$0.695.

### Board Recommendation

The Board of amaysim views the WAM Offer as complementary to the Mobile Sale to Optus.

**The Board unanimously recommends shareholders accept the WAM Offer and the Directors have indicated that they each intend to accept the WAM Offer in respect of all amaysim shares they own or control, both in the absence of a superior proposal.**

---

<sup>3</sup> If the Mobile Sale completion date extends beyond 1 February 2021, the Record Date will also be extended by the corresponding delay

<sup>4</sup> amaysim's last close price on 30 October 2020, prior to Mobile Sale Announcement of A\$0.67 and 1 month VWAP up until 30 October 2020 of A\$0.65 and a 3 month VWAP up until 30 October 2020 of A\$0.67

<sup>5</sup> amaysim's VWAP from 2 November 2020 to 14 December 2020 (inclusive) of A\$0.74

Each shareholder should have regard to their own individual circumstances in determining whether to accept the Scrip Consideration or the Cash Consideration, however the Board's view is that:

- Ineligible Foreign Shareholders<sup>6</sup> should either:
  - accept the Cash Consideration on the basis that it is more beneficial to receive A\$0.695 per amaysim share now from WAM than total Distributions of between A\$0.665 and A\$0.725 per amaysim share over a period of time from amaysim through its windup process; or alternatively they may wish to sell their amaysim shares on market<sup>7</sup>; or
  - accept the Scrip Consideration under which a nominee will sell those new WAM shares issued under the WAM Offer and return the cash proceeds to them, in which case the Ineligible Foreign Shareholders may be better off; and
- all other shareholders should accept the Scrip Consideration and, subject to their risk profile and market conditions, may wish to either hold their WAM Shares or sell those WAM shares on market<sup>7</sup>.

Although the Board recommends that shareholders accept the WAM Offer in accordance with the above, it acknowledges that some amaysim shareholders may wish to retain their shareholding in amaysim until after the Record Date considering that the franked component of the Major Distribution could deliver additional value to shareholders who can make use of franking credits to differing degrees depending on their own personal tax circumstances.

The Scrip Consideration, however, already offers a premium<sup>8</sup> exceeding that value, and amaysim shareholders wanting access to the Major Distribution may not have access to the WAM Offer as a result. There is no certainty that the WAM Offer will remain open after the Record Date for that distribution, and shareholders who elect to retain their amaysim shares in order to obtain the franked dividend may have to retain their shares until all Distributions are completed, or sell on market if the WAM Offer is not open at that time. Provided that the Mobile Sale completes, amaysim shareholders not accepting the WAM Offer will not impact the WAM Offer as the minimum acceptance condition of 50.1% will be waived upon completion of the Mobile Sale.

---

<sup>6</sup> An Ineligible Foreign Shareholder is an amaysim shareholder whose registered address is outside of Australia and its external territories or New Zealand, unless WAM determines that it is lawful, not unduly onerous and not unduly impractical to issue WAM shares to that shareholder. In the case of shareholders in Germany, the WAM Offer has not been, and will not be, registered with or approved by any securities regulator in Germany or elsewhere in the European Union. Accordingly, the WAM Offer may not be made available, nor may the WAM shares be offered, in Germany except in circumstances that do not require a prospectus under Article 1(4) of Regulation (EU) 2017/1129 of the European Parliament and the Council of the European Union (the **Prospectus Regulation**). In accordance with Article 1(4) of the Prospectus Regulation, an offer of WAM shares in Germany is limited:

- to persons who are "qualified investors" (as defined in Article 2(e) of the Prospectus Regulation);
- to fewer than 150 natural or legal persons (other than qualified investors); or
- in any other circumstance falling within Article 1(4) of the Prospectus Regulation. In the case of shareholders in the United States, the WAM Offer does not constitute an offer to sell, or a solicitation of an offer to buy, any securities in the United States (US). The WAM shares to be issued under the Offer have not been, and will not be, registered under the US Securities Act of 1933, as amended (US Securities Act) or the securities laws of any state or other jurisdiction of the US. Accordingly, the WAM shares may not be offered or sold, directly or indirectly, to any person in the US or to, or for the account or benefit of, a US person (as defined in Regulation S under the US Securities Act), except in a transaction exempt from, or in a transaction not subject to, the registration requirements of the US Securities Act and applicable US securities laws.

<sup>7</sup> The closing price of amaysim shares on 14 December 2020 was A\$0.73. There can be no assurance that the amaysim share price will continue to trade above the Cash Consideration of A\$0.695.

<sup>8</sup> Based on WAM's closing price of A\$2.25 per share on 14 December 2020. The implied value of the WAM Offer (measured by reference to the Scrip Consideration) depends on the value of WAM's share price at the time of any acceptance into the WAM Offer.

**The Board maintains its unanimous recommendation to vote in favour of all resolutions contained in the Notice of Meeting issued on 3 December 2020 including the Mobile Sale and Distributions, subject to no superior proposal.**

### Overview of WAM Offer

Following announcement of the Mobile Sale to Optus on 2 November 2020, WAM approached amaysim with a proposal to acquire all of the shares in amaysim by way of an off-market takeover bid, conditional on amaysim's shareholders approving the Mobile Sale, and the Mobile Sale being completed.

### WAM Offer Consideration

Under the WAM Offer, WAM is offering amaysim shareholders the following:

- Scrip Consideration of 1 WAM share for every 2.7 amaysim shares, representing A\$0.833<sup>9</sup> of implied value per amaysim share;
- Cash Consideration of A\$0.695 cash per amaysim share; or
- a combination of scrip or cash.

If no election is made, the default option for accepting amaysim shareholders will be Scrip Consideration.

If the WAM Offer remains open past the Record Date for the Major Distribution, the consideration will be reduced for shareholders whose acceptances of the WAM Offer take effect after that Record Date, by the value of the Major Distribution (without any associated adjustment with respect to franking credits).

For example, a shareholder who accepts the WAM Offer after the Record Date for the Major Distribution of A\$0.50, and elects the Scrip Consideration, would receive share consideration of 1 WAM share for every 6.75 amaysim shares worth A\$0.333, being an equivalent A\$0.50 reduction from A\$0.833, whereas a shareholder who accepts the WAM Offer after the Record Date for the Major Distribution, and elects the Cash Consideration, would receive A\$0.195 per share (being A\$0.695 less the A\$0.50 Major Distribution).

In the event that amaysim announces a higher distribution than outlined in the Notice of Meeting, WAM has 4 business days to amend its Cash Consideration and match the new distribution forecast level announced by amaysim, or amaysim Directors may amend their recommendation of the WAM Offer.

The WAM Offer, assuming election of the default Scrip Consideration, delivers an attractive premium to amaysim shareholders when compared to the period before the Mobile Sale Announcement of:

- 24.4% premium to the closing price<sup>4</sup> on 30 October 2020;
- 12.4% premium to the closing price of amaysim shares on 14 December 2020;
- 28.4% premium to the 1 month VWAP<sup>4</sup> of amaysim shares;
- 24.4% premium to the 3 month VWAP<sup>4</sup> of amaysim shares; and
- 12.6% premium to amaysim's VWAP since the Mobile Sale was announced.<sup>10</sup>

<sup>9</sup> Based on WAM's closing price of A\$2.25 per share on 14 December 2020. The implied value of the WAM Offer (measured by reference to the Scrip Option) depends on the value of WAM's share price at the time of any acceptance into the WAM Offer.

<sup>10</sup> amaysim's VWAP from 2 November 2020 to 14 December 2020 (inclusive) of A\$0.74

In order to facilitate the WAM Offer, the Record Date of the Major Distribution will be amended from 12 March 2021 as shown in the Notice of Meeting to 31 March 2021, but the Major Distribution will continue to be paid on 27 April 2021. WAM has agreed to open the WAM Offer on the later to occur of 1 February 2021 and the business day after the day on which completion of the Mobile Sale occurs and declare it unconditional once the Mobile Sale completes.

### Rationale

Commenting on the WAM Offer, Geoff Wilson, Chairman and Chief Investment Officer of WAM said:

“We see a considerable opportunity to provide amaysim shareholders with a superior and complementary proposal. We look forward to welcoming the amaysim shareholders to the Wilson Asset Management family as we continue to grow WAM Capital”.

“We are pleased to receive the support of the amaysim Directors and senior management for the Offer and look forward to working with them to provide collective benefits to both WAM Capital and amaysim shareholders”.

For amaysim, the WAM Offer presents several important benefits:

- **Potential additional value above Mobile Sale cash Distributions:** Shareholders who elect to receive the Scrip Consideration will receive A\$0.833 per amaysim share of implied value, above the A\$0.695 per share midpoint of the anticipated updated cash Distribution forecast<sup>11</sup>;
- **Accelerated receipt of funds:** Accepting amaysim shareholders will receive cash or scrip consideration within 5 business days of the processing of valid acceptances into the WAM Offer rather than through the series of cash Distributions post the Mobile Sale which would be paid over the period from March to October 2021; and
- **Additional optionality:** Shareholders who elect to receive the Scrip Consideration will receive WAM Shares or can elect to receive a combination of cash and scrip.

Andrew Reitzer, amaysim Chairman commented: “The WAM Offer is complementary to the existing offer from Optus to acquire the Mobile business. It has no impact on the existing offer from Optus, but rather, provides amaysim shareholders with additional optionality to receive a higher return. It also removes the uncertainty in the current Distribution to shareholders that is dependent on the Company’s ability to cost efficiently wind-up and de-list.”

### Consideration Funding

As at 30 November 2020, the investment portfolio of WAM was comprised of 9.4% cash (A\$126.4million), with the remaining 90.6% predominantly comprised of liquid investments listed on the ASX. WAM's portfolio is predominately comprised of highly liquid investments, which WAM can liquidate at short notice if required to fund the cash component of the WAM Offer consideration and/or costs.

### BIA / Conditions

The BIA between amaysim and WAM contains certain terms that are customary for a transaction of

---

<sup>11</sup>Note that a portion of cash Distributions as contemplated in the Mobile Sale Announcement include a franked distribution component which could deliver additional value to shareholders who can make use of franking credits to differing degrees depending on their own personal tax circumstances (as an offset to their liability for Australian tax, although the franking credit itself needs to be included in taxable income and is therefore subject to tax in its own right). That benefit is not available to shareholders who accept the WAM Offer.

this nature. A copy of the BIA is annexed to this announcement.

These terms include deal protection mechanisms including "exclusivity", "no shop", "no talk" and "no due diligence" restrictions (subject to customary fiduciary duty carve-outs) as well as notification and matching rights in the event of a competing proposal. There is no break fee.

The WAM Offer will also be subject to the following defeating conditions:

- amaysim shareholder approval of the Mobile Sale (or alternative superior proposal) **(Shareholder Approval Condition)**;
- WAM has a relevant interest in at least 50.1% (by number) of amaysim shares;
- the Record Date for the Major Distribution following amaysim shareholder approval of the Mobile Sale will be no earlier than 31 March 2021;
- no prescribed occurrences in relation to amaysim (other than in relation to the Mobile Sale);
- no material adverse change in relation to amaysim (other than in relation to the Mobile Sale);
- no material litigation;
- no market fall of 10% or more;
- amaysim and its subsidiaries do not vary their constitutions, give any encumbrance over their assets, or appointing any additional directors to their board of directors;
- the grant of any regulatory or third party approvals which would otherwise impede the Mobile Sale or alternative superior proposal; and
- no regulatory action which materially affects the WAM Offer.

Under the terms of the BIA, WAM has agreed to waive each of the defeating conditions immediately upon completion of the Mobile Sale. WAM has undertaken not to waive the Shareholder Approval Condition until the date the offer opens (i.e. until after the completion of the Mobile Sale).

### Timetable

Event	Timing
Bidder Statement and Target Statement	Dispatched in January 2021
Extraordinary General Meeting (EGM)	3.00pm AEDT 21 January 2021
Completion of the Mobile Sale (pending approval at the EGM)	Expected to be 1 February 2021
WAM Offer opens	The latter of 1 February 2021 and the first business day after completion of the Mobile Sale
WAM Offer closes (unless extended)	30 March 2021
Record Date for Major Distribution	31 March 2021 (amended from 12 March 2021)
Major Distribution payment date	27 April 2021

Detailed information relating to the WAM Offer will be set out in the Bidder's Statement and Target's Statement, which are expected to be dispatched to amaysim shareholders in January 2021.

The WAM Offer will extend to all amaysim shares on issue during the offer period, including shares issued following the vesting of performance rights.<sup>12</sup>

<sup>12</sup> As announced in amaysim's notice of meeting dated 2 December 2020, amaysim intends to waive the vesting conditions for the 19,573,225 performance rights on issue so that they will vest on completion of the Mobile Sale. Instead of settling the performance rights in cash, amaysim's present intention is that all performance rights will be exercised on vesting and holders issued one amaysim share for

## Advisers

amaysim is being advised by Luminis Partners as financial adviser and King & Wood Mallesons as legal adviser.

**Investor & analyst contact:**

Rosa Smith

T: +61 475 305 047

E: [rosa.smith@amaysim.com.au](mailto:rosa.smith@amaysim.com.au)

**Media contact:**

Renée Bertuch, Cannings Strategic Communications

T: +61 409 550 389

E: [rbertuch@canningscomms.com.au](mailto:rbertuch@canningscomms.com.au)

WAM is being advised by Mills Oakley as legal adviser.

**Chief Financial Officer & Company Secretary**

Jesse Hamilton

T: +61 401 944 807

E: [jesse@wilsonassetmanagement.com.au](mailto:jesse@wilsonassetmanagement.com.au)

**Head of Corporate Affairs**

James McNamara

T: +61 416 734 080

E: [james@wilsonassetmanagement.com.au](mailto:james@wilsonassetmanagement.com.au)

## IMPORTANT NOTICES

### Disclaimer

To the maximum extent permitted by law, amaysim disclaims any responsibility for the accuracy or completeness of any forward-looking statements whether as a result of new information, future events or results or otherwise. amaysim disclaims any responsibility to update or revise any forward-looking statement to reflect any change in amaysim's financial condition, status or affairs or any change in the events, conditions or circumstances on which a statement is based, except as required by law or the ASX listing rules.

Forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause amaysim's actual results, performance or achievements to differ materially from any future results, performance or achievements expressed or implied by these forward-looking statements. A number of important factors could cause actual results or performance to differ materially from the forward-looking statements. Investors should consider the forward-looking statements contained in this announcement in light of those disclosures and not place reliance on such statements.

Statements made in this announcement are made only as at the date of this announcement.

### About amaysim

At amaysim, 10 years of being the least complained about telco comes with certain responsibilities. With award-winning customer service, amaysim goes above and beyond to show 'Crazy Customer Love' by providing great value, frictionless connection and what you need most: no lock-in contracts, more data for your buck, unrestricted 4G Plus network and surprising bonuses. In other words, the amaysim SIM is a little love machine, powered by customer love.

We're the fourth largest mobile service provider, servicing over 1.19 million subscribers. We exist to courageously champion our customers, giving them amazingly simple connectivity, smart tools, DIY account management, and transparent products. For more info about amaysim visit [amaysim.com.au](http://amaysim.com.au)

### About WAM Capital

WAM Capital Limited (ASX:WAM) is a listed investment company (LIC) managed by Wilson Asset Management. Listed in August 1999, WAM Capital provides investors with exposure to an actively managed, diversified portfolio of undervalued growth companies listed on the ASX, with a focus on small-to-medium sized businesses. The Company's investment objectives are to deliver a stream of fully franked dividends, provide capital growth and preserve capital.

---

each performance right they hold. It is also the Company's present intention to issue the 4,287,828 treasury shares which are held by the Company's employee share trust to holders of performance rights for the purpose of satisfying, in part, the equity settlement of the Performance Rights.

### **About Wilson Asset Management**

Wilson Asset Management has a track record of making a difference for shareholders and the community for more than 20 years. As the investment managers for seven leading LICs: WAM Capital, WAM Leaders, WAM Global, WAM Microcap, WAM Alternative Assets, WAM Research and WAM Active, Wilson Asset Management invests over A\$3.5 billion on behalf of more than 90,000 retail investors. Wilson Asset Management is the creator and lead supporter of Future Generation Australia (ASX: FGX) and Future Generation Global (ASX: FGG). Wilson Asset Management advocates and acts for retail investors, is a member of the global philanthropic Pledge 1% movement, is a significant funder of many Australian Charities and provides all team members with \$10,000 each year to donate to charities of their choice. All philanthropic investments are made by the Investment Manager.