

13 August 2015

Fitzroy to acquire Silicon Valley based Next Generation Memory Developer, 4D-S

Highlights

- Off market scrip takeover of 4D-S Limited (**4D-S**), a public unlisted company with operations in California's "Silicon Valley".
- 4D-S is developing emerging non-volatile memory called "ReRAM" (or RRAM) with demonstrated technological advantages to other known ReRAM cells in development making it a realistic candidate to replace the current standard, NAND "Flash" Memory as the dominant standard of the future.
- 4D-S has a Joint Development Agreement (JDA) with HGST, who helps organizations harness the power of data through a broad portfolio of proven, smarter storage solutions.
- 2015 worldwide memory market forecast is more than US\$80bn annually with a CAGR of 15%. Non-volatile memory (**NVM**) is the fastest growing segment of this market and today is mostly based on Flash memory. Flash is used in billions of mobile devices and solid-state drives (**SSDs**), which are quickly replacing hard disk drives.
- Both consumers and enterprises are producing a staggering amount of data – technology users regularly run out of storage. The rate of advance in current Flash memory technology is becoming less and less able to fit more storage on a chip and therefore less able to scale to meet growing storage needs.
- 4D-S' cutting edge disruptive technology is maturing at the ideal time, addressing the fastest growing segment of the massive global memory storage market.
- US\$10m over a period of 8 years has been invested in 4D-S' ReRAM technology to reach an advanced state of development. 4D-S is working with its JDA partner to refine consistency and scale of cells on a wafer prior to the next step: testing of a full working prototype.
- The 4D-S opportunity was introduced and facilitated by Forrest Capital who have also subsequently acted as Lead Manager to a capital raising of up to \$2.75m.

13 August 2015 - The Board of Fitzroy Resources Ltd (**Fitzroy** or the **Company**), is pleased to announce that the Company has signed a Bid Implementation Agreement (**BIA**) to merge with 4D-S Limited (**4D-S**), an unlisted public company. 4D-S has a wholly owned subsidiary, 4DS, Inc., based in Fremont, California, which is developing next generation non-volatile memory, ReRAM (or RRAM) for mobile and cloud storage applications. The worldwide memory market is large, essential and growing fast. More information about the industry background, the memory technology and the 4D-S company are provided in Schedule 1.

The transaction is proposed to be effected by means of scrip for scrip off market takeover offers by the Company to acquire all the voting shares in 4D-S.

Both parties have completed legal and financial due diligence and the transaction has the unanimous support and recommendation of both boards of directors. As a result of the takeover bids (and the private treaty offers described below), 4D-S will become a wholly owned subsidiary of the Company, and security holders in 4D-S will become security holders in the Company. Under the terms of the BIA the company has agreed to pay 4D-S a \$50,000 exclusivity fee upon announcement of the transaction.

Overview of the Transaction

Under the terms of the BIA:

- The Company will make the takeover bids and private treaty offers for 100% of the issued capital of 4D-S. Total consideration for all classes of 4D-S securities is 385,604,174 Fitzroy shares, 67,604,168 Performance Shares and 36,458,333 unlisted options each with an exercise price of \$0.02 and expiry date of 30 June 2020.
- The performance shares will convert into ordinary Fitzroy shares upon the company announcing that a suitable independent expert has delivered a report to the company confirming that 4D-S has achieved endurance consistency, as defined in the BIA.

Full details of the transaction are included in the BIA (Schedule 3).

Capital Raising

In connection with the merger, the Company has received firm commitments to place 90,000,000 fully paid ordinary shares in the Company to sophisticated and professional investor clients of Forrest Capital each at an issue price of A\$0.025 to raise A\$2.25 million (before costs), with oversubscriptions of up to a further 20,000,000 shares to raise up to an additional A\$500,000. 30 million Advisor Options will be issued to Forrest Capital (or its nominees) each exercisable at A\$0.05 on or before 30 June 2020. The issue of the shares and options is subject to shareholder approval.

Completion

Completion of the transaction will be subject to the satisfaction of certain bid conditions which must be satisfied or waived by Fitzroy, including:

- Fitzroy having a relevant interest in at least 90% of each class of 4D-S voting shares at the end of the offer period applicable to that class;
- Fitzroy shareholders approving various matters relating to the transaction, which will be included in a in the Notice of Meeting to be dispatched to shareholders;
- Fitzroy obtaining subscriptions for at least A\$2,250,000 pursuant to the capital raising; and
- Fitzroy receiving written confirmation from ASX that ASX will re-admit the Company's securities to quotation, subject to the satisfaction of such terms and conditions (if any) as are prescribed by ASX or the Listing Rules.
- Full conditions of the takeover offers are detailed in the BIA in Schedule 3.

Following shareholder approval and with effect from completion of the transaction, Fitzroy proposes to change its name to "4D-S Holdings Limited" and has reserved ticker symbol (ASX: 4DS).

The Fitzroy securities to be issued as part of the transaction to 4D-S security holders will be subject to any applicable escrow restrictions in accordance with the ASX Listing Rules.

Implementation of the BIA has the unanimous endorsement of the 4D-S Board and in support of the transaction, major shareholders of 4D-S holding 19.9% of the voting shares in the company have entered into pre bid agreements with Fitzroy agreeing to accept the bid.

New board and management

On the takeover bids becoming unconditional, it is proposed that the company will appoint the following directors:

- Dr Guido Arnout, CEO of 4D-S, founder of multiple Silicon Valley technology ventures.
- Mr Jim Dorrian, current chairman of 4D-S, former partner of US VC firm Crosspoint Ventures, successful CEO and board member of multiple Silicon Valley technology firms.

- Mr David McAuliffe, current director of 4D-S, experienced company director and founder of several international companies in Australia, France and the UK.
- Mr Howard Digby, director of ASX listed firms, senior management background in technology and media (IBM, Adobe, Gartner and The Economist Group).

Pro forma capital structure

Following the capital raising and completed takeover, the indicative effect on the Company's capital structure will be as follows:

	Shares	Existing Performance Shares⁽¹⁾	Performance Shares	Unlisted Options
Balance at the date of this Notice	163,552,872	6,666,669	-	29,666,668 ⁽²⁾
To be issued pursuant to the Takeover Bids and Private Treaty Offers	385,604,174	-	67,604,168	36,458,333 ⁽³⁾
To be issued pursuant to the Capital Raising	90,000,000 ⁽⁴⁾	-	-	-
Adviser Options to be issued	-	-	-	30,000,000 ⁽⁵⁾
Balance following completion of the transaction and Capital Raising	639,157,046	6,666,669	67,604,168	96,125,001

- (1) These performance shares relate to the Company's previous assets (which the Company has relinquished).
- (2) Existing Options: 26,666,668 each exercisable at A\$0.024 on or before 10 May 2018, 3,000,000 each exercisable at A\$0.042 on or before 25 June 2018.
- (3) Unlisted options each with an exercise price of \$0.02 and expiry date of 30 June 2020.
- (4) Oversubscriptions of \$500,000 may be raised through the issue of an additional 20,000,000 Fitzroy shares.
- (5) Unlisted options each with an exercise price of \$0.05 and expiry date of 30 June 2020.

Financial effect of the transaction

If the transaction completes, it is expected to have the effect on Fitzroy's total assets, equity, revenue and profit before tax and extraordinary items set out in Schedule 2.

Indicative timetable

An indicative timetable for the completion of the Merger and re-compliance with Chapters 1 and 2 of the Listing Rules is in the table below.

Event	Date
Notice of Shareholder Meeting sent to Fitzroy shareholders	3 September 2015
Bidder's Statement lodged with ASIC and served on 4D-S	9 September 2015
Target's Statement lodged with ASIC and served on Fitzroy	9 September 2015
Takeover offer period commences	9 September 2015
Prospectus lodged with ASIC	25 September 2015
Fitzroy shareholder meeting	5 October 2015
Prospectus Offer closes	5 October 2015
End of Takeover offer period (unless extended)	12 November 2015
Anticipated date for re-instatement to trading on ASX	16 November 2015

*Dates in the above table are indicative only.

Chapter 11 of the ASX Listing Rules

The transaction constitutes a change in the nature and scale of Fitzroy's activities pursuant to Chapter 11 of the ASX Listing Rules. Fitzroy will accordingly be required to obtain shareholder approval for the change and also to re-comply with the admission requirements of Chapters 1 and 2 of the ASX Listing Rules. Fitzroy shares will be suspended from the commencement of trading on the day of the shareholder meeting convened for the purposes of shareholder approval of the change in the nature and scale of Fitzroy's activities, pending re-compliance with the ASX Listing Rules.

For and on behalf of Fitzroy Resources Limited

Riccardo Vittino
Director.

Tel: +61 8 9481 7111

Advisers: Forrest Capital
 AFSL 298311
 Unit 8-9, 88 Forrest Street, Cottesloe
 Western Australia 6011

-Ends-

Schedule 1: 4D-S Overview and an introduction to the next generation non-volatile memory opportunity

4D-S, which has operations in California, is developing next generation (or emerging) non-volatile memory (**NVM**) for use in any application, including computers, mobile devices and solid-state storage devices (**SSDs**). The market opportunity is to develop a replacement for NAND Flash Memory (**Flash**), which is the most widely used non-volatile memory today. 4D-S believes its memory technology to be transformative and disruptive and has the potential to replace Flash and address the massive memory storage demands of the future.

The market opportunity

Currently the entire memory market is almost US\$80bn and growing at 15% CAGR. The emerging NVM memory is forecast to grow to almost US\$7bn by 2020, according to independent analyst research including surveys of user trends, memory usage and industry participants.

The convergence of two profound megatrends drives the opportunity for 4D-S:

- Exponential increase in data storage capacity needed in the world.
- Current memory technology, including state of the art NAND Flash (used in smart phones, computers and as solid state storage) is approaching the technological limits of capacity on a chip.

90% of the data in the world was produced in the last two years. Amazon Web services, the world's largest cloud provider, adds more storage capacity *every day*, than its e-commerce parent, Amazon.com, had *in total* when it started. Users regularly run out of server storage or memory on devices. Current technology will soon be unable to cope with the demand. Therefore, a new technology is needed to take over from Flash.

The technology

Resistive RAM (ReRAM or RRAM) is widely held to be the technology most likely to replace Flash memory, which is becoming harder to scale down to smaller cell sizes, as the dominant standard for NVM.

- ReRAM is disruptive to Flash because it will be better in many ways including reliability, data retention, endurance, access speed, cost and ability to scale further.
- The industry has no choice but to find a replacement for Flash in order to supply faster more reliable memory at increasing levels of capacity.

How it works

A ReRAM cell consists of a switching material sandwiched between two electrodes. These cells are then arranged in a cell matrix to form a memory array. A voltage is applied to the memory cell causing the resistance to change. The resistive change is reversible by changing the applied voltage. The change in resistance establishes the "On" and "Off" states (or "1" and "0" states). Cell switching materials range from simple (binary) metal oxides to multiple element composites; even carbon nano-tubes and organic materials are known to show switching behaviour.

Most ReRAM technologies switch through the formation and elimination of a conductive "**filament**". This filament is either the creation of oxygen vacancies in the switching material or injection of metal from one of the electrode in to the switching material, allowing the current to flow. While filamentary switching is a strong mechanism, cell current is dictated by the conduction of the filament – independent of cell size – leading to potential future cell scaling issues. Poor state retention occurs when less than a full filament is formed.

The 4D-S ReRAM technology is **non-filamentary** – without the filamentary scaling and retention shortcomings.

4D-S MOHJO™ - Disruptive and Transformative Technology

What sets 4D-S apart is its MOHJO™ hetero-junction. The hetero-junction is comprised of a multi-layer switching material. 4D-S is developing its ReRAM technology to be up to 1000x faster than conventional NAND Flash. This has major implications for storage system performance – a major constraint in modern computing systems. In addition, the underlying technology is inherently more reliable than Flash, with improved endurance (ability to re-write cell) and better data retention. With its ability to scale further than current memory cells and be readily configured for future 3-D implementation, 4D-S ReRAM could potentially lead to capacity in the order of 2TB (which equates to 500 hours of HD movies for example) on a chip the size of a thumbnail.

Advanced Stage of Development

US\$10m has been invested in developing 4D-S' ReRAM technology since 2007.

4D-S owns 14 US and international patents for material composition and deposition process and mechanism of action.

4D-S has already demonstrated a functional cell and lot-to-lot consistency of different wafers with high yield. The next steps:

- Demonstrate endurance while still maintaining consistency
- Further rounds of scaling down cell size

4D-S intends to take the technology to a point where all major hurdles have been resolved and only time and money are required to build and ship a product.

Why does 4D-S have a unique opportunity?

The development of commercial, next generation memory has been elusive with many announcements by major players that have not amounted to viable shipping product. While ReRAM is highly regarded as among the most likely technologies to succeed, most serious players are promoting technology that has **filament-based** switching mechanisms. The current mechanism of filament-based ReRAM technologies makes it difficult to scale to super high-density memory chips. In contrast, the 4D-S current mechanism is **non filament-based** and is expected to scale well with smaller geometries. The 4D-S MOHJO™ technology therefore has the potential to stand out among the pack as the first viable ReRAM product for major storage applications. Having access to this technology is potentially game changing for mobile device manufacturers and solid-state storage (SSD) device producers.

Schedule 2 – Financial effect of the Transaction

If the transaction completes, it is expected to have the effect on Fitzroy's total assets, equity, revenue and profit before tax and extraordinary items as follows:

	Fitzroy Accounts (Pre-Acquisition) 30 June 2015 (unaudited)	Consolidated Pro-Forma Accounts (Post-Acquisition) 30 June 2015 (unaudited)
Total Assets	\$1,596,478	\$3,895,267
Total Equity	\$1,479,719	\$3,725,858

Fitzroy currently has limited revenue and is loss making. Following completion of the transaction Fitzroy does not expect that revenue will increase significantly as 4D-S is a development company with no history of revenue. Fitzroy expects that the level of expenditure of Fitzroy will increase significantly as the Company transitions to a high tech non-volatile memory business. Accordingly Fitzroy expects that losses may increase as a result of the new operations post completion of the transaction.

The pro-forma financial information contains the following pro-forma adjustments:

- 1 Capital raising of \$2,250,000 plus oversubscriptions of \$500,000, less costs of 6%.
- 2 Transaction costs of \$356,000, exclusive of capital raising fees, relating to the acquisition of 4D-S.
- 3 The issue of 385,604,174 ordinary fully paid shares and the issue of 67,604,168 performance shares at a deemed issue price of \$0.05 (the last closing price on the ASX) to the holders of securities in 4D-S
- 4 The issue of 36,458,333 unlisted options exercisable at \$0.02 each on or before 30 June 2020 to certain option holders of 4D-S.
- 5 The issue of 30,000,000 unlisted options exercisable at \$0.05 each on or before 30 June 2020 to the corporate adviser to the capital raising.
- 6 The adoption of reverse acquisition accounting in accordance with the Accounting Standards which results in the legal parent (in this case Fitzroy Resources Ltd) being accounted for as the subsidiary, whilst the legal acquiree (in this case 4D-S) being accounted for as the parent.

Notes:

This information is unaudited and preliminary. It contains estimates of various items as at 30 June 2015 based on Fitzroy and 4D-S internal unaudited accounts and has been prepared on the basis of the accounting policies normally adopted by Fitzroy and 4D-S. The information is presented in an abbreviated form in that it does not include all of the disclosures required by Australian Accounting Standards applicable to financial statements.

Detailed information regarding the financial effect of the transaction will be contained in the further transaction documents that will be prepared in due course, including the notice of meeting and prospectus.

Schedule 3 - Bid Implementation Agreement

Bid Implementation Agreement

Fitzroy Resources Limited ACN 145 590 110

Bidder

4D-S Limited ACN 124 234 395

Company

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Parties **Fitzroy Resources Limited ACN 145 590 110** of Suite 1, Level 1, 35 Havelock St, West Perth WA 6005 of party (**Bidder**)

and

4D-S Limited ACN 124 234 395 of c/- Bennett+Co, Ground Floor, BGC Centre, 28 The Esplanade, Perth WA 6000 (**Company**)

Recitals

- A. The Bidder is proposing to make Takeover Bids for all the Shares and the Directors are proposing to recommend the Takeover Bids in the absence of a Superior Proposal.
- B. The parties have agreed to implement the Takeover Bids on the terms and conditions set out in this agreement.

This Agreement provides

1. Definitions, Interpretation and Governing Law

1.1 Definitions

In this Agreement the following terms shall bear the following meanings:

A Class Share means an A Class share in the capital of the Company on the terms set out in the notice of annual general meeting issued by the Company to the Shareholders dated 29 June 2015.

A Class Share Offer means the offer to each A Class Shareholder by private agreement to acquire all of their A Class Shares in return for the issue of 95.01187648 Bidder Shares per A Class Share.

A Class Shareholder means a registered holder of A Class Shares.

Adviser Options means up to 30,000,000 options to acquire a Bidder Share, each exercisable at \$0.05 on or before 30 June 2020 and otherwise have the same terms and conditions as the Bidder Options.

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

Announcement Date means the date of the announcement of the Takeover Bids by the Bidder.

ASIC means the Australian Securities and Investments Commission.

associate has the meaning given in Division 2 of Part 1.2 of the Corporations Act as if section 12(1) of the Corporations Act included a reference to this agreement.

ASX means ASX Limited ABN 98 008 624 691 or the exchange operated by it, as the context requires.

Bid Conditions means the conditions to the Takeover Bids included in section 3 of Schedule 1.

Bidder Board means the board of directors of the Bidder as constituted from time to time.

Bidder Group means the Bidder and its related bodies corporate.

Bidder Material Adverse Change means between the Announcement Date and the end of the Offer Period (each inclusive) none of the following occurs:

- (a) an event, change, condition, matter or thing occurs or will or is reasonably likely to occur;
- (b) information is disclosed or announced by the Bidder concerning any event, change, condition, matter or thing that has occurred or is reasonably likely to occur; or
- (c) information concerning any event, change, condition, matter or thing that has occurred or is reasonably likely to occur becomes known to the Company (whether or not becoming public),

(each of (a), (b) and (c) a **Bidder Specified Event**) which, whether individually or when aggregated with all such events, changes, conditions, matters or things of a like kind that have occurred or are reasonably likely to occur, has had or would be considered reasonably likely to have:

- (d) a material adverse effect on the business, assets, liabilities, financial or trading position, profitability or prospects of the Bidder Group, taken as a whole; or
- (e) without limiting the generality of paragraph (d) above, the effect of a diminution in the value of the consolidated net assets of the Bidder Group, taken as a whole, by at least \$500,000 against what it would reasonably have been expected to have been but for such Bidder Specified Event,

other than:

- (f) an event, matter, change or circumstance caused, or materially contributed to, by the Company;
- (g) anything required or permitted to be done or not done under this agreement or otherwise required to be done in connection with the legal obligations for the implementation of the Takeover Bids, the Prospectus Offer or the Re-Compliance Process;
- (h) any event, matter, change or circumstance:
 - (i) fairly disclosed by the Bidder to the Company or any Related Person of the Company;
 - (ii) disclosed in public filings by the Bidder to ASX or ASIC; or
 - (iii) otherwise known by the Company or any Related Person of the Company, at any time prior to the date of this agreement;
- (i) an event, matter, change or circumstance in or relating to:
 - (i) economic, business, regulatory or political conditions in general;

- (ii) credit, financial or currency markets in general, or the state of securities markets in general (including any reduction in market indices);
- (iii) any change affecting the resources industry generally (including junior exploration companies, as well as fluctuations in commodity prices);
- (j) the portion of any event, matter, change or circumstances which is as a consequences of losses, expenses, damages or other costs covered by insurance which the Bidder's insurers have agreed to pay; or
- (k) anything done with the prior written consent of the Company.

Bidder Option means an option to acquire a Bidder Share, each exercisable at \$0.02 on or before 30 June 2020 and otherwise on the terms and conditions set out in Schedule 8.

Bidder Share means an ordinary fully paid share in the capital of the Bidder.

Bidder Shareholder means a holder of one or more Bidder Shares.

Bidder Shareholder Meeting means a meeting of Bidder Shareholders to consider and (if thought fit) approve:

- (a) the change to the nature and/or scale of the Bidder's activities as a result of the Takeover Bids, for the purposes of Listing Rule 11.1.2;
- (b) the Prospectus Offer for the purposes of Listing Rule 7.1;
- (c) the change of the name of the Bidder to 4D-S Holdings Limited or such other name as determined by the Company;
- (d) the election of the persons appointed under clause 8.6 as Directors;
- (e) the issue of the Adviser Options;
- (f) the issue of Class 1 Performance Shares to Shareholders under the Takeover Bids;
- (g) the issue of Bidder Shares, Class 1 Performance Shares and the Bidder Options to Optionholders under the Option Offers; and
- (h) the issue of Bidder Shares to A Class Shareholders under the A Class Share Offers.

Bidder's Statement means the bidder's statement to be prepared by the Bidder in relation to the Takeover Bids in compliance with Part 6.5 of the Corporations Act.

Board means the board of Directors of the Company.

Business Day means a day on which banks are open for business in Perth, other than a Saturday, Sunday or public holiday.

Class 1 Performance Share means a Class 1 performance share in the capital of the Bidder subject to the terms and conditions set out in Schedule 6.

Company Group means the Company and its related bodies corporate.

Competing Proposal means:

- (a) in relation to the Company, a bona fide proposal or offer that, if successfully completed, would result in a person other than the Bidder or its associates:
 - (i) directly or indirectly acquiring a relevant interest or an economic interest in 15% or more of the Shares or of the share capital of any of the Company's related bodies corporate;
 - (ii) directly or indirectly acquiring control of the Company;
 - (iii) directly or indirectly acquiring or becoming the holder of any interest in all or a substantial part of the business or assets of the Company or any of its related bodies corporate; or
 - (iv) otherwise acquiring or merging with the Company; and
- (b) in relation to the Bidder, a bona fide proposal or offer that, if successfully completed, would result in a person other than the Company or its associates:
 - (i) directly or indirectly acquiring a relevant interest or an economic interest in 15% or more of the Bidder Shares or of the share capital of any of the Bidder's related bodies corporate;
 - (ii) directly or indirectly acquiring control of the Bidder; or
 - (iii) otherwise acquiring or merging with the Bidder;

whether by way of takeover offer, scheme of arrangement, shareholder-approved acquisition, capital reduction, buy back, sale or purchase of shares or assets, joint venture, dual listed company structure (or other synthetic merger) or other transaction or arrangement.

Confidentiality Agreement means the confidentiality agreement dated on or about 30 July 2015 between the Bidder and the Company.

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

Convertible Note means a note issued by the Company under a Convertible Note Agreement.

Convertible Note Agreement means an agreement (in the form approved by the Bidder) entered into by the Company pursuant to which the Company agrees to issue loan notes, with a face value of (in aggregate with any other Convertible Note Agreements) up to \$700,000, convertible into Ordinary Shares.

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

Director means a director of the Company.

Essential Bid Conditions means the Bid Conditions set out in paragraphs (a) to (d) in section 3 of Schedule 1.

Essential Bidder Resolutions means each of the resolutions referred to in the definition of Bidder Shareholder Meeting in this clause 1.1 (other than those resolutions referred to in paragraph (c) of that definition).

Exclusivity Agreement means the exclusivity agreement dated on or about 18 June 2015 between the Bidder and the Company.

Exclusivity Period means the period from the date of this agreement until:

- (a) the end of the Offer Period; or
- (b) 31 December 2015, whichever is earlier.

Government Agency means any government or governmental, semi-governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

Joint Development Agreement means the collaboration agreement between HGST Netherlands B.V. and 4DS, Inc dated 17 June 2014 as amended effective as of 1 July 2015.

Listing Rules means the official listing rules of ASX.

Minimum Acceptance Condition means the Bid Condition set out in paragraph (c) in section 3 of Schedule 1.

Offer means each offer to acquire Ordinary Shares made in connection with the Ordinary Share Offer and each offer to acquire Preference Shares made in connection with the Preference Share Offer.

Offer Period means the period that the Offers are open for acceptance.

Option means an option to acquire a Share.

Option Offer means the offer to each Optionholder by private agreement to cancel all of their Options in return for the consideration specified in Schedule 3.

Optionholder means a registered holder of Options.

Ordinary Share means an ordinary share in the capital of the Company.

Ordinary Share Offer has the meaning given in clause 2.1(a).

Ordinary Shareholder means a registered holder of Ordinary Shares.

Preference Share means a fully paid preference share in the capital of the Company on the terms set out in Schedule A of the Company's Constitution (as amended at the Company's 2014 annual general meeting).

Preference Share Offer has the meaning given in clause 2.1(b).

Preference Shareholder means a registered holder of Preference Shares.

Prescribed Occurrences means those occurrences listed in section 652C of the Corporations Act.

Prospectus means the prospectus proposed to be issued by the Bidder in connection with the Prospectus Offer.

Prospectus Offer means an offer by the Bidder of not less than 90,000,000 Bidder Shares at \$0.025 per Bidder Share made pursuant to a prospectus prepared in accordance with Chapter

6D of the Corporations Act, with a minimum subscription requirement of \$2,250,000 and potential for over-subscriptions of up to \$500,000 (before the costs of the Prospectus Offer).

Re-Compliance Process means the process and actions undertaken by the Bidder to re-comply with Chapters 1 and 2 of the Listing Rules, including preparation of the Prospectus.

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

related body corporate has the meaning given in section 50 of the Corporations Act.

Related Person means in relation to a party:

- (a) a related body corporate;
- (b) its advisers or an adviser of a related body corporate of that party; or
- (c) an officer or employee of any entity referred to in items 1 or 2 of this definition.

relevant interest has the meaning given in sections 608 and 609 of the Corporations Act.

Security Interest has the same meaning as in section 51A of the Corporations Act.

Share means an Ordinary Share or a Preference Share.

Shareholder means an Ordinary Shareholder or a Preference Shareholder.

Subsidiary has the meaning given in Division 6 of Part 1.2 of the Corporations Act.

Superior Proposal means a Competing Proposal in relation to the Company that the Company's Board determines in good faith is:

- (a) reasonably capable of being valued and completed in a timely manner, taking into account all aspects of the Competing Proposal and the person making it; and
- (b) more favourable to Shareholders as a whole than the Takeover Bids, taking into account all the terms and conditions of the Competing Proposal.

Takeover Bids means the Ordinary Share Offer and the Preference Share Offer.

Target's Statement means the target's statement to be prepared by the Company in relation to the Takeover Bids in compliance with Part 6.5 of the Corporations Act.

Third Party means a party other than the Company, the Bidder and any of their Subsidiaries,

Timetable means the indicative timetable set out in Schedule 2.

Unacceptable Circumstances has the meaning set out in section 657A of the Corporations Act.

Unconditional means, subject to the Bidder complying with clause 4 of this agreement, the Bidder issuing a notice in accordance with section 630(3) of the Corporations Act, declaring that a Takeover Bid is free or freed (as the case may be) from all defeating conditions otherwise applicable to the Takeover Bid other than the Prescribed Occurrence Condition, subject to compliance with section 650F(1)(a) of the Corporations Act.

1.2 Interpretation

In this Agreement:

- (a) headings are for convenience only and do not affect interpretation;
- (b) specifying anything after the words 'including', 'includes', 'for example' or any similar expression does not limit what else is included unless there is express wording to the contrary;

and unless the context indicates a contrary intention:

- (c) the expression 'person' includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (e) a reference to any document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (g) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (h) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Agreement, and a reference to this Agreement includes any schedule, exhibit or annexure to this Agreement;
- (i) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) the word 'includes' in any form is not a word of limitation;
- (k) a reference to '\$' or 'dollar' is to Australian currency;
- (l) if any day appointed or specified by this Agreement for the payment of any money or doing of any thing falls on a day which is not a Business Day, the day so appointed or specified shall be deemed to be the next Business Day.

2. The Takeover Bids

2.1 Making the Takeover Bids

The Bidder agrees to make offers pursuant to:

- (a) an off-market takeover bid under Chapter 6 of the Corporations Act to acquire all the Ordinary Shares on terms and conditions no less favourable to Ordinary Shareholders than the Agreed Bid Terms (the **Ordinary Share Offer**); and
- (b) an off-market takeover bid under Chapter 6 of the Corporations Act to acquire all the Preference Shares on terms and conditions no less favourable to Preference Shareholders than the Agreed Bid Terms (the **Preference Share Offer**).

2.2 Directors' recommendation and acceptance

The Company represents and warrants that:

- (a) the Board has met and considered the possibility of the Bidder agreeing to make the Takeover Bids; and
- (b) all of the Directors have informed the Company that, if the Bidder complies with clause 2.1, they will:
 - (i) unanimously recommend that Shareholders accept the Offers to be made to them under the Takeover Bids in the absence of a Superior Proposal; and
 - (ii) accept, or procure the acceptance of, the Offers in respect of any Shares, the Option Offers in respect of any Options and the A Class Share Offers in respect of any A Class Shares, that they, or their associates, own or control.

2.3 Shares issued during the Offer Period

The Bidder agrees that, subject to section 617 of the Corporations Act, it will extend its Offers under the Ordinary Share Offer to all Ordinary Shares that are issued on conversion of Convertible Notes or exercise of Options during the period from the Record Date to the end of the Offer Period.

2.4 Option Offer and A Class Share Offer

- (a) As soon as practicable after the Takeover Bids are announced, the Bidder must make an Option Offer to each Optionholder conditional on the Offers becoming or being declared Unconditional.
- (b) As soon as practical after the issue of A Class Shares, the Bidder must make an A Class Share Offer to each A Class Shareholder.

2.5 Fractional entitlements

- (a) If the number of Shares held by a Shareholder means that their aggregate entitlement to Bidder Shares or Class 1 Performance Shares under an Offer is not a whole number, then any fractional entitlement will be rounded down to the nearest whole number.

- (b) If the number of Options held by an Optionholder, or A Class Shares held by an A Class Shareholder, means that their aggregate entitlement to Bidder Shares or Class 1 Performance Shares under an Option Offer or an A Class Share Offer is not a whole number, then any fractional entitlement will be rounded down to the nearest whole number.

3. Public Announcement of Takeover Bids

Immediately after the execution and exchange of this agreement, the Bidder and the Company must issue a joint public announcement concerning the Takeover Bids substantially in the form set out in Schedule 4, or as otherwise agreed between the parties.

4. Facilitating the Takeover Bids

4.1 Bidder's Statement and Target's Statement

- (a) The Bidder will ensure that the Bidder's Statement (including any documentation dispatched together with the Bidder's Statement) is consistent with the Agreed Bid Terms and complies with all applicable legal requirements.
- (b) The Bidder will, to the extent practicable, give the Company a reasonable opportunity to review an advanced draft of the Bidder's Statement at least 5 Business Days before the Bidder is required to lodge the Bidder's Statement with ASIC, and will consult in good faith with the Company with respect to any comments the Company may have.
- (c) The Company will ensure that the Target's Statement (including any documentation dispatched together with the Target's Statement) complies with all applicable legal requirements.
- (d) The Company will, to the extent practicable, give the Bidder a reasonable opportunity to review an advanced draft of the Target's Statement at least 5 Business Days before the Company is required to lodge the Target's Statement with ASIC, and will consult in good faith with the Bidder in relation to any comments the Bidder may have.

4.2 Dispatch of Offers

- (a) The Company agrees that the Offers and accompanying documents to be sent by the Bidder under item 6 of section 633(1) of the Corporations Act may be sent on a date nominated by the Bidder that is earlier than the date prescribed by item 6 of section 633(1) of the Corporations Act.
- (b) Each party agrees to use reasonable endeavours to implement the Takeover Bids as quickly as reasonably permitted in the circumstances, having regard to the Timetable.
- (c) Provided that a Superior Proposal has not been received by the Company in the interim, each party agrees to use reasonable endeavours to send the Bidder's Statement and Target's Statement to Shareholders together.

4.3 Access to information

Each party agrees to provide the other party, on a timely basis, with information that may be reasonably required to assist in the preparation of the Bidder's Statement and the Target's Statement (as applicable).

4.4 Promoting the Takeover Bids

- (a) During the Offer Period, in the absence of a Superior Proposal, the Board will support the Takeover Bids and participate in efforts reasonably required by the Bidder to promote the merits of the Takeover Bids, including meeting with key Shareholders, analysts, management, customers and press if requested to do so by the Bidder, but only to the extent that the Board has determined, in good faith and acting reasonably after receiving written legal advice from external lawyers, that it can comply with this clause 4.4 without breaching the Directors' fiduciary or statutory duties.
- (b) During the Offer Period, in the absence of a Superior Proposal, the Company agrees:
 - (i) to include in all public statements relating to the Takeover Bids (following the initial announcement of the Takeover Bids made pursuant to clause 3), a statement to the effect that:
 - (A) the Directors unanimously recommend that Shareholders accept the Offers to be made to them in the absence of a Superior Proposal; and
 - (B) each Director intends to accept, or procure the acceptance of, the Offers, the Option Offers and the A Class Share Offers made to them in respect of all Shares, Options and A Class Shares (respectively) they own or control;
 - (ii) not to make any public statement or take any other public action which would suggest that the Takeover Bids are not unanimously recommended by the Directors unless a Superior Proposal emerges; and
 - (iii) to procure that the Directors do not withdraw their recommendation subsequently unless a Superior Proposal emerges.

4.5 Company assistance with Prospectus Offer

The Company will provide on a timely basis any assistance and information that is reasonably requested by the Bidder to enable the Bidder to complete the Prospectus Offer.

4.6 Bid Conditions

- (a) Subject to clause 4.6(c), each party must use all reasonable endeavours to satisfy the Bid Conditions as soon as practicable after the date of this agreement.
- (b) Subject to clause 4.6(c), each party agrees not to do, or omit to do, anything which will, or is likely to, result in any of the Bid Conditions being breached.
- (c) Nothing in this clause 4.6 prevents the Company or the Board from taking, or failing to take, action where to do otherwise would, in the opinion of the Board (determined in good faith), constitute a breach of the Directors' fiduciary or statutory duties.

- (d) Each party must promptly notify the other if it becomes aware that any Bid Condition has been satisfied. If any event occurs or becomes apparent which would cause any of the Bid Conditions to be breached or cause satisfaction of them to be unreasonably delayed, each party must, to the extent that the party is actually aware of such information, immediately notify the other party of that event.
- (e) A reference in this clause 4.6 to a Bid Condition being breached includes a reference to the Bid Condition not being, or not being capable of being, satisfied.

4.7 No independent expert

The parties agree that an independent expert's report for the Target's Statement is not required by section 640 of the Corporations Act. The parties acknowledge and agree that the Company does not currently intend to commission the preparation of an independent expert's report for the Target's Statement.

5. Takeover Bids – Variation and Waiver

5.1 Variation

Subject to clause 5.3, the Bidder may vary the terms and conditions of either Takeover Bid in any manner which is permitted by the Corporations Act, provided that the varied terms and conditions are not less favourable to Shareholders than the Agreed Bid Terms.

5.2 Waiver of Bid Conditions and extension

Subject to the Corporations Act and clause 5.3, the Bidder may declare either Takeover Bid to be free from any Bid Condition or extend either Takeover Bid at any time.

5.3 Essential Bid Conditions

The Bidder may only waive or vary an Essential Bid Condition with the prior written consent of the Company, not to be unreasonably withheld or delayed.

6. Escrow by ASX

The parties agree that any Bidder Shares, Class 1 Performance Shares and/or Bidder Options issued to:

- (a) Shareholders on completion of the Takeover Bids;
- (b) Optionholders under the Option Offers; and
- (c) A Class Shareholders under the A Class Share Offers,

(including any Bidder Shares issued upon satisfaction of the performance hurdle under the terms of the Class 1 Performance Shares), may be the subject of escrow by ASX. The Company agrees to use its reasonable endeavours to procure execution of all necessary ASX escrow agreements as soon as is reasonably practicable.

7. Exclusivity

7.1 Exclusivity fee

- (a) On execution of this agreement, the Bidder will pay a non-refundable exclusivity fee of \$50,000 to the Company.
- (b) With effect from execution of this agreement, the parties agree to extend the term of the Exclusivity Agreement to the end of the Exclusivity Period.

7.2 No existing discussions

Each party represents and warrants that, other than the discussions with the other party in respect of the Takeover Bids, it is not as at the date of this agreement in negotiations or discussions in respect of any Competing Proposal with any person.

7.3 No shop

During the Exclusivity Period, each party must not, and must ensure that each of its Related Persons does not, directly or indirectly, solicit, invite, encourage or initiate any inquiry, expression of interest, offer, proposal or discussion by any person in relation to, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or communicate to any person an intention to do anything referred to in this clause 7.3, but nothing in this clause 7.3 prevents either party from making normal presentations to brokers, portfolio investors and analysts in the ordinary course of business or promoting the merits of the Takeover Bids.

7.4 Bidder matching right

Without limiting clause 7.2 during the Exclusivity Period, the Company:

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

unless:

- (c) the Board acting in good faith and in order to satisfy what the members of the Board consider to be their statutory or fiduciary duties determines that the Competing Proposal would be or would be likely to be an actual, proposed or potential Superior Proposal;
- (d) the Company has provided the Bidder with the material terms and conditions of the actual, proposed or potential Competing Proposal, including price and the identity of the Third Party making the actual, proposed or potential Competing Proposal;
- (e) the Company has given the Bidder at least 5 Business Days after the date of the provision of the information referred to in clause 7.4(d) to provide a matching or

superior proposal to the terms of the actual, proposed or potential Competing Proposal; and

- (f) the Bidder has not announced a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal by the expiry of the 5 Business Day period in clause 7.4(e).

7.5 Cease discussions

Each party must cease any discussions or negotiations existing as at the date of this agreement relating to:

- (a) any actual, proposed or potential Competing Proposal; or
- (b) any transaction that would, or would reasonably be expected to, reduce the likelihood of success of either Takeover Bid.

7.6 Provision of information

During the Exclusivity Period, each party must as soon as possible provide the other party with:

- (a) in the case of written materials, a copy of; and
- (b) in any other case, a written statement of,

any material non-public information about its business or affairs disclosed or otherwise provided to any Third Party in connection with an actual, proposed or potential Competing Proposal that has not previously been provided to the other party.

8. Other Obligations During the Offer Period

8.1 Conduct of Company during Offer Period

Until the end of the Offer Period:

- (a) the Company must, and must procure that each of its related bodies corporate:
 - (i) conduct their business in its usual and ordinary course and on a basis consistent with past practice or as may be required in order to satisfy a specific requirement of a Government Agency; and
 - (ii) preserve and maintain the value of their business and assets, and their relationships with customers, suppliers, employees and others with whom they have business dealings; and
- (b) the Company must not issue any Shares except the issue of A Class Shares or as a consequence of the conversion of Convertible Notes or exercise of Options.

8.2 Conduct of Bidder during Offer Period

Until the end of the Offer Period:

- (a) the Bidder must comply with its obligations under Part 6.9 of the Corporations Act;

- (b) the Bidder must, and must procure that each of its related bodies corporate, conduct its business in its usual and ordinary course and on a basis consistent with past practice or as may be required in order to satisfy a specific requirement of a Government Agency;
- (c) the Bidder must not issue any securities except as a consequence of the exercise of options on issue as at the date of this agreement;
- (d) the Bidder must not, and must procure that each of its related bodies corporate do not, incur or commit to incur an amount of capital expenditure in excess of \$50,000 other than capital expenditure in the day to day operating activities of the business of the Bidder and its subsidiaries conducted in the same manner as before the Announcement Date; and
- (e) the Bidder must ensure that no Prescribed Occurrences occur in relation to any member of the Bidder Group.

8.3 Notification

Each party must promptly notify the other party in writing if it becomes aware of a matter which is a breach of or inconsistent with clause 8.1 or 8.2.

8.4 Permitted conduct

The obligations of the parties under clauses 8.1 and 8.2 do not apply in respect of:

- (a) any matter required to be done or procured by the other party pursuant to, or which is otherwise contemplated by, this agreement, the Prospectus Offer or the Re-Compliance Process;
- (b) any matter which has been fairly disclosed by the Bidder to the Company or by the Company to the Bidder respectively prior to the date of this agreement;
- (c) any matter which is required to be done by law or by an order of a court or a Government Agency; and
- (d) any matter the undertaking of which the other party has approved in writing (which approval must not be unreasonably withheld or delayed).

8.5 Intellectual Property

The Company covenants and agrees that, during the Offer Period:

- (a) other than pursuant to the Joint Development Agreement, it shall not, other than with the prior written consent of the Bidder:
 - (i) sell, assign or dispose of any legal or beneficial interest in any of the Intellectual Property; or
 - (ii) create or permit the creation of any Encumbrance over any of the Intellectual Property;
- (b) it shall maintain and renew its existing Intellectual Property under applicable intellectual property laws to the extent required to keep the Intellectual Property in good standing; and

- (c) promptly pass to Bidder any notice or communication from any Government Agency or third party in any way affecting or potentially affecting the Intellectual Property.

8.6 Company representation on the Bidder Board

Subject to the Minimum Acceptance Condition being satisfied, the Bidder must, as soon as is practicable thereafter, take all actions necessary to ensure:

- (a) the appointment of Dr Guido Arnout, David McAuliffe and James Dorrian as directors of the Bidder, subject to the receipt of necessary consents from the individuals to act as directors of the Bidder;
- (b) the appointment of Mr Howard Digby as a director of the Bidder, subject to the receipt of the necessary consent from Mr Digby to act as a director of the Bidder; and
- (c) the resignation of the existing members of the Bidder Board,

with effect from the date of the Offers becoming Unconditional (or such later date as agreed by the Bidder and the Company).

8.7 Employee Incentive Plan

The parties acknowledge that:

- (a) it is the intention of the Bidder following completion of the Takeover Bids to put in place an appropriate employee incentive scheme; and
- (b) due to the Company having US employees, the Bidder will seek to include the use of Restricted Stock Units in such an employee incentive scheme.

9. Confidentiality

9.1 Confidentiality Agreement

- (a) The Company releases the Bidder from its confidentiality obligations owed to the Company under the Confidentiality Agreement to the extent necessary for the Bidder to make the Takeover Bids provided always that the Bidder consults with the Company regarding the form and content of any proposed disclosure of Company confidential information and takes all reasonable steps to restrict that disclosure to the maximum extent possible.
- (b) The Bidder releases the Company from its confidentiality obligations owed to the Bidder under the Confidentiality Agreement to the extent necessary for the Company to issue the Target's Statement provided always that the Company consults with the Bidder regarding the form and content of any proposed disclosure of Bidder confidential information and takes all reasonable steps to restrict that disclosure to the maximum extent possible.
- (c) Each party acknowledges and agrees that, except as provided for in clause 9.1(a) and (b), it continues to be bound by the Confidentiality Agreement in respect of all information received by it from the other party before or after the date of this agreement.

9.2 Survival of obligations

The rights and obligations of the parties under the Confidentiality Agreement survive termination of this agreement.

10. Warranties

10.1 Mutual warranties

Each party represents and warrants to the other that, as at the date of this agreement and until the close of the Offer Period:

- (a) it is validly incorporated, organised and subsisting under the laws of the place of its incorporation;
- (b) it has full power and capacity to enter into and perform its obligations under this agreement;
- (c) this agreement has been duly executed and is a legal, valid and binding agreement, enforceable against the party in accordance with its terms;
- (d) all necessary authorisations for the execution, delivery and performance by it of this agreement in accordance with its/their terms have been obtained;
- (e) it is not bound by any agreement that would prevent or restrict it from entering into and performing its obligations under this agreement or the transaction contemplated by it;
- (f) no resolutions have been passed or steps taken, and no petition or other process has been presented or threatened in writing against it, for winding-up or dissolution, and no receiver, receiver and manager, liquidator, administrator or like official has been appointed, or is threatened or expected to be appointed, over the whole or any part of its assets; and
- (g) no regulatory action of any nature has been taken that would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this agreement.

10.2 Company warranties

- (a) In addition to the warranties set out in clause 10.1, the Company represents and warrants that, as at the date of this agreement:
 - (i) the information contained in Schedule 3 is complete and accurate, and there are no other securities on issue, or that might be issued as a result of the exercise of any options, convertible securities or other rights; and
 - (ii) it has, so far as it is aware, fairly disclosed to the Bidder all material information in relation to the Company and its business, and has not knowingly withheld any material information.
- (b) For the purposes of clause 10.2(a)(ii), the Company will be deemed to know or be aware of a particular fact, matter or circumstance if the Company or a Director or

officer of the Company is actually aware of that fact, matter or circumstance as at the date of this agreement.

10.3 Bidder warranties

- (a) In addition to the warranties set out in clause 10.1, the Bidder represents and warrants that, as at the date of this agreement:
 - (i) the Bidder Shares and Class 1 Performance Shares to be issued to Shareholders under the Takeover Bids will be fully paid, and (subject to clause 6) issued free from any encumbrances or other third party interests;
 - (ii) other than the approvals referred to in defeating condition to the Agreed Bid Terms set out in paragraph 3(a) and (d) of Schedule 1, no approvals are required to be obtained by the Bidder under any law, rule or regulation (including under the Listing Rules) to perform and observe its obligations under this agreement and to consummate the transaction contemplated by this agreement;
 - (iii) the information contained in Schedule 5 is complete and accurate, and there are no other securities on issue, or that might be issued as a result of the exercise of any options, convertible securities or other rights;
 - (iv) it is not in breach of its continuous disclosure obligations under the Listing Rules; and
 - (v) it has, so far as it is aware, fairly disclosed to the Company all material information in relation to the Bidder and its business, and has not knowingly withheld any material information.
- (b) For the purposes of clause 10.3(a)(v), the Bidder will be deemed to know or be aware of a particular fact, matter or circumstance if the Bidder or one of its directors or officers is actually aware of that fact, matter or circumstance as at the date of this agreement.

10.4 Reliance on representations and warranties

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this agreement.
- (c) Each party acknowledges and confirms that clauses 10.4(a) and 10.4(b) do not prejudice any rights a party may have in relation to information which has been filed by the other party with ASIC or ASX.

10.5 Notification

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance that constitutes or may constitute a breach of any of the representations and warranties given by it under this clause 10.

10.6 Release of officers

- (a) Subject to the Corporations Act, none of the Directors or officers of the Company will be liable for anything done or purported to be done in connection with either Takeover Bid or any transaction contemplated by this agreement, but nothing in this clause excludes any liability that may arise from wilful misconduct, fraud, wilful misrepresentation (including by omission) or bad faith on the part of such a person. The Company receives and holds the benefit of this clause as agent for its Directors and officers.
- (b) Subject to the Corporations Act, none of the directors or officers of the Bidder will be liable for anything done or purported to be done in connection with either Takeover Bid or any transaction contemplated by this agreement, but nothing in this clause excludes any liability that may arise from wilful misconduct, fraud, wilful misrepresentation (including by omission) or bad faith on the part of such a person. The Bidder receives and holds the benefit of this clause as agent for its directors and officers.

11. Termination

11.1 Termination rights

A party may terminate this agreement by written notice to the other party if at any time after the date on which the Takeover Bids are announced under clause 3 and before the end of the Offer Period:

- (a) the Board changes its recommendation in relation to either Takeover Bid as a result of the Board determining that it has received a Superior Proposal;
- (b) the other party is in material breach of this agreement and, to the extent that the breach is capable of remedy, that breach is not remedied by that other party within 5 Business Days of it receiving notice from the first party of the details of the breach and the first party's intention to terminate;
- (c) a representation or warranty given by the other party under clause 10 is or becomes untrue in any material respect and the breach of the representation or warranty is of a kind that, had it been disclosed to the first party before its entry into this agreement, could reasonably be expected to have resulted in that first party either not entering into this agreement or entering into it on materially different terms;
- (d) a court or Government Agency has issued an order, decree or ruling, or taken other action, that permanently restrains or prohibits either Takeover Bid, and the action is final and cannot be appealed or reviewed or the party, acting reasonably, believes that there is no realistic prospect of a successful appeal or review; or
- (e) the Bidder withdraws either Takeover Bid or either Takeover Bid lapses for any reason, including non-satisfaction of a condition to either Takeover Bid.

11.2 Company specific termination rights

The Company may terminate this agreement by written notice to the Bidder if at any time after the date of this agreement and before the end of the Offer Period, a Bidder Material Adverse Change occurs.

11.3 Effect of termination

If this agreement is terminated by a party under this clause 11:

- (a) each party will be released from its obligations under this agreement, except its obligations under clauses 9.1(c), 11, 12 and 13.1;
- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this agreement; and
- (c) in all other respects, all future obligations of the parties under this agreement will immediately terminate and be of no further force or effect, including, without limitation, any further obligations in respect of the Takeover Bids.

12. GST

12.1 Interpretation

In this clause 12, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

12.2 GST gross up

- (a) Subject to clause 12.2(b), if a party makes a supply under or in connection with this agreement in respect of which GST is payable, the consideration for the supply but for the application of this clause 12.2 (GST exclusive consideration) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.
- (b) Clause 12.2(a) does not apply to any consideration that is expressed in this agreement to be inclusive of GST.

12.3 Reimbursements and indemnifications

If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 12.2.

12.4 Tax invoice

A party need not make a payment for a taxable supply made under or in connection with this agreement until it receives a tax invoice for the supply to which the payment relates.

13. General

13.1 Notices

- (a) Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a party to this Agreement:
 - (i) must be in legible writing and in English addressed as shown below:
 - (A) if to the Bidder:

Address: Fitzroy Resources Limited
Level 1, Suite 1
35 Havelock Street
West Perth WA 6005

Attention: the Company Secretary

Facsimile: +61 8 9320 7501

Email: peter.webse@pcscorporate.com.au

with a copy to gpaterson@gtplegal.com
 - (B) if to the Company:

Address: 4D-S Limited
Ground Floor, BGC Centre
28 The Esplanade
Perth WA 6000

Attention: Dr Guido Arnout

Facsimile: +61 8 6316 2211

Email: guido.arnout@4-d-s.com
 - or as specified to the sender to the other Parties by notice;
- (ii) where the sender is a company, must be signed by an officer or under the common seal of the sender;
- (iii) is regarded as being given by the sender and received by the addressee:
 - (A) if by delivery in person, when delivered to the addressee;
 - (B) if by post, 3 Business Days from and including the date of postage;
 - (C) if by facsimile transmission, when a facsimile confirmation receipt is received indicating successful delivery; or
 - (D) if by email, when received by the addressee's server,

but if the delivery or receipt is on a day that is not a Business Day or is after 5.00 pm (addressee's time) it is regarded as received at 9.00 am on the following Business Day; and

- (iv) can be relied on 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) A facsimile transmission is regarded as legible unless the addressee telephones the sender within 2 hours after the transmission is received or regarded as received under clause 13.1(a)(iii) and informs the sender that it is not legible.
- (c) In this clause 13.1, reference to an addressee includes a reference to an addressee's officers, agents or employees.

13.2 Governing law and jurisdiction

- (a) This agreement is governed by the law in force in Western Australia.
- (b) Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

13.3 Duty, costs and expenses

- (a) The Bidder must pay all stamp duty in respect of the execution, delivery and performance of any transaction evidenced by this agreement.
- (b) Except as otherwise provided in this agreement, each party must pay its own legal costs and expenses in respect of the negotiation, preparation, execution, delivery and completion of this agreement.

13.4 Invalidity and enforceability

- (a) If any provision of this agreement is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 13.4(a) does not apply where enforcement of the provision of this agreement in accordance with clause 13.4(a) would materially affect the nature or effect of the parties' obligations under this agreement.

13.5 Waivers and variation

- (a) A provision of, or a right, discretion or authority created under, this agreement may not be:
 - (i) waived except in writing signed by the party granting the waiver; and
 - (ii) varied except in writing signed by the parties.

- (b) A failure or delay in exercise, or partial exercise, of a power, right, authority, discretion or remedy arising from a breach of, or default under this agreement does not result in a waiver of that right, power, authority, discretion or remedy.

13.6 Assignment of rights

- (a) Rights arising out of or under this agreement are not assignable by a party without the prior written consent of the other party.
- (b) A breach of clause 13.6(a) by a party entitles the other party to terminate this agreement.
- (c) Clause 13.6(b) does not affect the construction of any other part of this agreement.

13.7 Further assurances

Each party must do all things and execute all further documents necessary to give full effect to this agreement.

13.8 Counterparts

This agreement may be executed in any number of counterparts.

13.9 Severability

Any provision in this agreement that is invalid or unenforceable in any jurisdiction is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and enforceable, and otherwise shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

13.10 Attorneys

Each of the attorneys executing this agreement (if any) states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

13.11 Time of the essence

Time is of the essence of this agreement.

13.12 Entire understanding

- (a) This agreement, the Confidentiality Agreement and the Exclusivity Agreement contain the entire understanding between the parties as to the subject matter of this agreement. To the extent of any inconsistency between them, this agreement prevails.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this agreement are merged in and superseded by this agreement and are of no effect. No party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this agreement; or

- (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

13.13 Relationship of parties

This agreement is not intended to create a partnership, joint venture or agency relationship between the parties.

Schedule 1 – Agreed Terms

1. Consideration

The consideration under the Ordinary Share Offer is:

- (a) 110.4400015 Bidder Shares; and
- (b) 20.5905086 Class 1 Performance Shares,

for every Ordinary Share held.

The consideration under the Preference Share Offer is:

- (a) 110.4400015 Bidder Shares; and
- (b) 20.5905086 Class 1 Performance Shares,

for every Preference Share held.

If the number of Shares held by a Shareholder means that their aggregate entitlement to Bidder Shares or Class 1 Performance Shares is not a whole number, then any fractional entitlement will be rounded down to the nearest whole number.

The Bidder will apply to the ASX for the quotation of Bidder Shares within 7 days of serving the Bidder's Statement on the Company.

2. Offer Period

9 weeks from the date of the Offers.

3. Bid Conditions

(a) Approval of Essential Bidder Resolutions

Bidder Shareholders approve the Essential Bidder Resolutions in accordance with the Corporations Act, the Listing Rules and the constitution of the Bidder before the end of the Offer Period.

(b) Prospectus Offer Condition

The Prospectus Offer closes and, as at the close of the Prospectus Offer, the Bidder receives or becomes entitled to receive, in immediately available funds, gross proceeds of no less than \$2,250,000 (before the costs of the Prospectus Offer) as a result of subscriptions made under the Prospectus Offer.

(c) Minimum acceptance

At the end of the Offer Period:

- (i) the Bidder has a relevant interest in at least 90% of the Ordinary Shares then on issue and is entitled to proceed to compulsory acquisition of all outstanding Ordinary Shares under the Corporations Act; and

- (ii) the Bidder has a relevant interest in at least 90% of the Preference Shares then on issue and is entitled to proceed to compulsory acquisition of all outstanding Preference Shares under the Corporations Act.

(d) **ASX consent to re-admission**

The Bidder receives from ASX written confirmation that ASX will terminate the suspension of Bidder Shares from official quotation, subject to the satisfaction of such terms and conditions (if any) as are prescribed by ASX or the Listing Rules and such conditions being capable of being satisfied.

(e) **Option Offers**

All Optionholders accepting an Option Offer in relation to their Options.

(f) **A Class Share Offers**

All A Class Shareholders accepting an A Class Share Offer in relation to their A Class Shares.

(g) **Regulatory approvals**

Before the end of the Offer Period, all approvals or consents that are required by law, by any public authority, or by any other third party as are necessary to permit:

- (i) the Offers to be lawfully made to and accepted by the Shareholders;
- (ii) the transactions contemplated by the Bidder's Statement to be completed; and
- (iii) the Company to be in material compliance with each of its and its subsidiaries' contracts, permits, licences and other agreements,

are granted, given, made or obtained on an unconditional basis, remain in full force and effect in all respects, and do not become subject to any notice, intimation or indication of intention to revoke, suspend, restrict, modify or not renew the same.

(h) **No regulatory action and consents**

Between the Announcement Date and the end of the Offer Period (each inclusive):

- (i) there is not in effect any preliminary or final decision, order or decree issued by any Government Agency;
- (ii) no action or investigation is announced, commenced or threatened by any Government Agency; and
- (iii) no application is made to any Government Agency (other than by the Bidder or any associate of the Bidder),

in consequence of or in connection with the Offers (other than an application to, or a decision or order of, ASIC or the Takeovers Panel in exercise of the powers and discretions conferred by the Corporations Act) which restrains, prohibits or impedes, or threatens to restrain, prohibit or impede, or materially impact upon, the making of the Offers and the completion of any transaction contemplated by the Bidder's

Statement or which requires the divestiture by the Bidder of any Shares or any material assets of the Company or any subsidiary of the Company.

(i) **No material adverse change**

Between the Announcement Date and the end of the Offer Period (each inclusive) none of the following occurs:

- (i) an event, change, condition, matter or thing occurs or will or is reasonably likely to occur;
- (ii) information is disclosed or announced by the Company concerning any event, change, condition, matter or thing that has occurred or is reasonably likely to occur; or
- (iii) information concerning any event, change, condition, matter or thing that has occurred or is reasonably likely to occur becomes known to the Bidder (whether or not becoming public),

(each of (i), (ii) and (iii) a **Specified Event**) which, whether individually or when aggregated with all such events, changes, conditions, matters or things of a like kind that have occurred or are reasonably likely to occur, has had or would be considered reasonably likely to have:

- (iv) a material adverse effect on the business, assets, liabilities, financial or trading position, profitability or prospects of the Company Group taken as a whole; or
- (v) without limiting the generality of clause 3(i)(iv), the effect of a diminution in the value of the consolidated net assets of the Company Group, taken as a whole, by at least \$500,000 against what it would reasonably have been expected to have been but for such Specified Event,

other than:

- (vi) an event, matter, change or circumstance caused, or materially contributed to, by the Bidder;
- (vii) anything required or permitted to be done or not done under this agreement or otherwise required to be done in connection with the legal obligations for the implementation of the Takeover Bids;
- (viii) any event, matter, change or circumstance:
 - (A) fairly disclosed by the Company to the Bidder or any Related Person of the Bidder;
 - (B) disclosed in public filings by the Company to ASX or ASIC; or
 - (C) otherwise known by the Bidder or any Related Person of the Bidder,

at any time prior to the date of this agreement;

- (ix) an event, matter, change or circumstance in or relating to:

- (A) economic, business, regulatory or political conditions in general;
 - (B) credit, financial or currency markets in general, or the state of securities markets in general (including any reduction in market indices);
 - (C) any change affecting the industry in which the Company operates generally;
- (x) the portion of any event, matter, change or circumstances which is as a consequences of losses, expenses, damages or other costs covered by insurance which the Company's insurers have agreed to pay; or
- (xi) anything done with the prior written consent of the Bidder.
- (j) **Capital expenditures**

Between the Announcement Date and the end of the Offer Period (each inclusive), the Company does not incur or commit to incur an amount of capital expenditure in excess of \$50,000 other than:

 - (i) capital expenditure incurred on existing projects in which the Company has an interest as at the Announcement Date; or
 - (ii) capital expenditure in the day to day operating activities of the business of the Company and its subsidiaries conducted in the same manner as before the Announcement Date.
- (k) **No litigation on foot or pending**

Between the Announcement Date and the end of the Offer Period (each inclusive), no litigation against the Company which may reasonably result in a judgment of \$50,000 or more is commenced, is threatened to be commenced, is announced, or is made known to the Bidder (whether or not becoming public) or the Company, other than that which is in the public domain as at the Announcement Date.
- (l) **Equal access**

Between the Announcement Date and the end of the Offer Period, the Company promptly, and in any event within 2 Business Days, provides to the Bidder a copy of all information that is not generally available (within the meaning of the Corporations Act) relating to the Company or any of its subsidiaries, or their respective assets, liabilities or operations, that has been provided by the Company or any of its directors, officers, agents or representatives to any person other than the Bidder, other than in the ordinary course of ordinary business, for the purposes of soliciting, encouraging or facilitating any proposal with respect to:

 - (i) a takeover bid for, or scheme of arrangement proposed by, the Company, under the Corporations Act;
 - (ii) the acquisition by that person or an associate of substantially all the assets and operations of the Company; or
 - (iii) any transaction having a similar economic effect.

(m) **No prescribed occurrences**

Between the Announcement Date and the date 3 business days after the end of the Offer Period (each inclusive), none of the following prescribed occurrences (being the occurrences listed in section 652C of the Corporations Act) happen:

- (i) the Company converting all or any of the Shares into a larger or smaller number of shares under section 254H of the Corporations Act;
- (ii) the Company or a subsidiary of the Company resolving to reduce its share capital in any way;
- (iii) the Company or a subsidiary of the Company entering into a buyback agreement or resolving to approve the terms of a buyback agreement under section 257C(1) or 257D(1) of the Corporations Act;
- (iv) the Company or a subsidiary of the Company making an issue of Shares (other than the issue of A Class Shares or the issue of Shares on the exercise of Options or conversion of Convertible Notes) or granting an option over the Shares or agreeing to make such an issue or grant such an option;
- (v) the Company or a subsidiary of the Company issuing, or agreeing to issue, convertible notes;
- (vi) the Company or a subsidiary of the Company disposing or agreeing to dispose, of the whole, or a substantial part, of its business or property;
- (vii) the Company or a subsidiary of the Company granting, or agreeing to grant, a Security Interest in the whole, or a substantial part, of its business or property;
- (viii) the Company or a subsidiary of the Company resolving that it be wound up (other than the Japanese subsidiary);
- (ix) the appointment of a liquidator or provisional liquidator of the Company or of a subsidiary of the Company;
- (x) the making of an order by a court for the winding up of the Company or of a subsidiary of the Company;
- (xi) an administrator of the Company or of a subsidiary of the Company being appointed under section 436A, 436B or 436C of the Corporations Act;
- (xii) the Company or a subsidiary of the Company executing a deed of company arrangement; or
- (xiii) the appointment of a receiver, receiver and manager, other controller (as defined in the Corporations Act) or similar official in relation to the whole, or a substantial part, of the property of the Company or of a subsidiary of the Company.

(n) **No distributions**

Between the Announcement Date and the end of the Offer Period (each inclusive), the Company does not announce, make, declare or pay any distribution to its

Shareholders (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie).

(o) **No redemption of Preference Shares**

Between the Announcement Date and the end of the Offer Period (each inclusive), no Preference Shareholder seeks to redeem any Preference Shares they hold.

(p) **Escrow**

Each Shareholder, Optionholder and A Class Shareholder entering into such form of restriction agreement in respect of the Bidder Shares, Class 1 Performance Shares and Bidder Options issued to them:

(a) on completion of the Takeover Bids;

(b) under the Option Offers; or

(c) under the A Class Share Offers,

(as applicable) (including any Bidder Shares issued upon satisfaction of the performance hurdle under the terms of the Class 1 Performance Shares) as ASX may require.

(q) **Joint Development Agreement**

Between the Announcement Date and the end of the Offer Period (each inclusive) the Joint Development Agreement remains on foot and has not been terminated for any reason.

Schedule 2 – Indicative Timetable

Event	Date
Joint announcement of Takeover Bids	13 August 2015, being the date of this Agreement
Draft Notice of Bidder Shareholder Meeting lodged with ASX	21 August 2015
Notice of Bidder Shareholder Meeting sent to Bidder Shareholders	3 September 2015
Bidder lodges Bidder's Statement with ASIC and serves it on Company	9 September 2015
Company lodges Target's Statement with ASIC and serves it on Bidder	9 September 2015
Offer Period commences (begin dispatch of Bidder's Statement and Target's Statement to Shareholders)	9 September 2015
Completion of joint dispatch of Bidder's Statement and Target's Statement to Shareholders	10 September 2015
Prospectus lodged with ASIC	25 September 2015
Bidder holds Bidder Shareholder Meeting	5 October 2015
Prospectus Offer closes	5 October 2015
Bidder to issue notice under section 630(3) (unless Offer Period extended beforehand)	2 November 2015
End of Offer Period	12 November 2015
Anticipated date for re-instatement to trading on ASX	16 November 2015

Schedule 3 – Company's Capital Structure

Number	Class	Consideration to be offered under Option Offer	
893,417	Ordinary Shares on issue	N/A	
311,632	Ordinary Shares to be issued on conversion of Convertible Notes	N/A	
1,865,970	Preference Shares	N/A	
242,075	A Class Shares to be issued on the Offers becoming Unconditional	N/A	
53,500	options to acquire an Ordinary Share (each exercisable at US\$36.00 on or before 31 March 2017)	(a)	0.9040560 Bidder Shares; and
		(b)	0.1685528 Class 1 Performance Shares,
		per Option	
5,000	options to acquire a Preference Share (each exercisable at US\$10.00 on or before 31 March 2017)	(a)	8.7827354 Bidder Shares; and
		(b)	1.6374591 Class 1 Performance Shares,
		per Option	
340,000	options to acquire an Ordinary Share (each exercisable at US\$1.00 on or before 31 December 2017)	36,458,333 Bidder Options in total	
410,000	options to acquire an Ordinary Share (each exercisable at US\$5.00 on or before 31 December 2017)	(a)	31.4014999 Bidder Shares; and
		(b)	31.4014999 Class 1 Performance Shares,
		per Option	
10,000	options to acquire a Preference Share (each exercisable at US\$5.00 on or before 31 December 2017)	(a)	31.4014999 Bidder Shares; and
		(b)	31.4014999 Class 1 Performance Shares,
		per Option	
15,000	options to acquire a Preference Share (each exercisable at US\$10.00 on or before 31 December 2017)	(a)	17.2679740 Bidder Shares; and
		(b)	3.2194528 Class 1 Performance Shares,
		per Option	
22,500	options to acquire an Ordinary Share (each	(a)	21.1047213 Bidder Shares; and

Number	Class	Consideration to be offered under Option Offer	
	exercisable at US\$10.00 on or before 30 April 2018)	(b)	3.9347785 Class 1 Performance Shares, per Option
217,258	options to acquire a Preference Share (each exercisable at US\$10.00 on or before 30 June 2018)	(a)	23.0683812 Bidder Shares; and
		(b)	4.3008846 Class 1 Performance Shares, per Option
164,524	options to acquire an Ordinary Share (each exercisable at US\$10.00 on or before 31 October 2018)	(a)	26.8275206 Bidder Shares; and
		(b)	5.0017411 Class 1 Performance Shares, per Option

Schedule 4 – Form of Initial Joint Announcement

Schedule 5 – Bidder's Capital Structure

Number	Class
163,552,872	Bidder Shares
6,666,669	performance shares (on the terms set out in a Notice of Meeting dated 13 November 2013)
26,666,668	\$0.024 unlisted options expiring on 10 May 2018
3,000,000	\$0.042 unlisted options expiring on 25 June 2018

Schedule 6 - Terms and Conditions of Class 1 Performance Shares

For the purpose of these terms and conditions:

4DS means 4D-S Limited ACN 124 234 395.

ASX means ASX Limited ACN 008 624 691 or, as the context permits, the securities exchange operated by that entity.

Company means Fitzroy Resources Limited ACN 145 590 110.

Expert means a suitably qualified independent expert, selected and appointed by the Board of the Company for the purposes of confirming that 4DS has achieved "endurance consistency" for the purposes of the Milestone.

Expiry Date has the meaning given in clause 1(c).

Holder means a holder of a Class 1 Performance Share.

Listing Rules means the Listing Rules of the ASX.

Milestone has the meaning given in clause 1(b).

Performance Share or **Class 1 Performance Share** means a performance share convertible into a Share upon achievement of the Milestone on or before the Expiry Date, issued on these terms and conditions.

Share means a fully paid ordinary share in the Company.

1. Conversion and expiry of Performance Shares

(a) For the purposes of the Milestone:

- (i) **cell** means a 4DS ReRAM cell;
- (ii) **current window** means the difference between the lowest "Set" state current and the highest "Reset" state current measured during an endurance test at the read voltage of -1.5V;
- (iii) **cycle** means applying the appropriate voltages across a cell to either: (a) change its state from the "Set" state to the "Reset" state and back to the "Set" state, or (b) change its state from the "Reset" state to the "Set" state and back to the "Reset" state;
- (iv) **decade** means a series of cycles where the ratio between the sequence of the last cycle in the series and the first cycle in the series is 10 (in this context, 4 current measurements per decade for example means measuring currents after cycles 1, 2, 4, 7 in the first decade from 1 to 10 and after cycles 100, 200, 400, 700 in the third decade from 100 to 1,000);
- (v) **die** means a section of cells within a wafer;
- (vi) **endurance test** in relation to a cell means alternating the "Set" and "Reset" voltage across the cell and either: (a) reading the state currents at the read voltage of -1.5V after each "Set" or "Reset", or (b) reading the state currents a limited number of times during each decade on a close to logarithmic scale. For a cell to **qualify an endurance test**, the highest

"Reset" state current at the read voltage of -1.5V read during the endurance test must be no higher than 10nA and the current window must be at least 10nA;

- (vii) **linear scale endurance yield** in relation to a wafer means the percentage of cells tested on the wafer that qualify the endurance test for the first 400 cycles;
 - (viii) **logarithmic scale endurance yield** in relation to a wafer means the percentage of cells tested on a wafer that qualify the endurance test for each cycle where the state is read (4 times per decade or 17 times for 10,000 cycles);
 - (ix) **lot** means a set of test wafers;
 - (x) **POR** means the "process of record", i.e., the best known process for manufacturing a wafer at the relevant time;
 - (xi) **POR cell** means a cell which is manufactured in the then current "cell structure of record" and POR;
 - (xii) **state** means the current level measured at the read voltage of -1.5V which determines whether the cell is in the "Set" state (the high current state representing a logical "1") or the "Reset" state (the low current state representing a logical "0");
 - (xiii) **state current** means the current measured at the read voltage of -1.5V; and
 - (xiv) **wafer** means a very thin slice of a semiconductor crystal used as the substrate for solid-state circuitry.
- (b) **(Conversion on achievement of Milestone)** Upon the Company announcing that the Expert has delivered a report to the Company confirming that 4DS has achieved endurance consistency (the **Milestone**), each Class 1 Performance Share will convert into a Share on a one for one basis. **Endurance consistency** will be achieved on the first successful duplication of POR cells in two wafers on one or more lots (that are different lots from the lot that defines the POR), as measured by either:
- (i) linear scale endurance yields for 400 cycles where the state current is read after each cycle; or
 - (ii) logarithmic scale endurance yields for 10,000 cycles where the state current is read 4 times per decade,
- that are higher than or equal to 90% for each of the 2 wafers when including all POR cells with sizes up to 3 times the smallest cell size in at least 2 die per wafer.
- (c) **(Class 1 Performance Share Expiry Date)** The Milestone must be achieved on or before 5.00pm (WST) on 31 December 2018 (the **Expiry Date**).
- (d) **(No conversion)** To the extent that the Class 1 Performance Shares have not converted into Shares on or before the Expiry Date, then all such unconverted Class 1

Performance Shares held by each Holder will automatically consolidate into one Class 1 Performance Share and will then convert into one Share.

- (e) **(Conversion procedure)** The Share or Shares issued on conversion of a Performance Share will be issued to the Holder and the Company will issue the Holder with a new holding statement for the Share or Shares as soon as practicable following the conversion of each Performance Share.
- (f) **(Ranking of shares)** Each Share into which the Performance Share will convert will upon issue:
 - (i) rank equally in all respects (including, without limitation, rights relating to dividends) with other issued Shares;
 - (ii) be issued credited as fully paid;
 - (iii) be duly authorised and issued by all necessary corporate action; and
 - (iv) be issued free from all liens, charges and encumbrances whether known about or not including statutory and other pre-emptive rights and any transfer restrictions.

2. **Rights attaching to Performance Shares**

- (a) **(Share capital)** Each Performance Share is a share in the capital of the Company.
- (b) **(General meetings)** Each Performance Share confers on a Holder the right to receive notices of general meetings and financial reports and accounts of the Company that are circulated to shareholders. A Holder has the right to attend general meetings of shareholders of the Company.
- (c) **(No voting rights)** A Performance Share does not entitle a Holder to vote on any resolutions proposed at a general meeting of shareholders of the Company.
- (d) **(No dividend rights)** A Performance Share does not entitle a Holder to any dividends.
- (e) **(Rights on winding up)** Each Performance Share entitles a Holder to participate in the surplus profits or assets of the Company upon winding up of the Company, but only to the extent of \$0.0001 per Performance Share.
- (f) **(Not transferable)** A Performance Share is not transferable.
- (g) **(Reorganisation of capital)** If the Company undertakes a bonus issue or there is a reorganisation (including, without limitation, consolidation, sub-division, reduction or return) of the issued capital of the Company, the number of Shares to which the Performance Shares of a Holder can convert will be increased or decreased (as applicable) to the number of Shares which the Holder would hold if the Performance Shares had been converted to Shares before the record date for the bonus issue or reorganisation.
- (h) **(Quotation of shares on conversion)** An application will be made by the Company to ASX for official quotation of the Shares issued upon the conversion of each Performance Share within the time period required by the Listing Rules.

- (i) **(Participation in entitlements and bonus issues)** A Performance Share does not entitle a Holder to participate in new issues of capital offered to holders of Shares, such as bonus issues and entitlement issues.
- (j) **(No other rights)** A Performance Share does not give a Holder any rights other than those expressly provided by these terms and those provided at law where such rights at law cannot be excluded by these terms.

Schedule 7 - Intellectual Property

	Title	US Patent Numbers	Foreign applications listed on EPO database
1	Back-biased face target sputtering	6,962,648	EP 1670968 (Europe), JP 2008542525 (Japan), KR 20060089207 (Korea)
2	Systems and methods for plasma etching	7,425,504	
3	Systems and methods for fabricating self-aligned memory cell	7,932,548, 8,367,513, 8,395,199, 8,466,032, 8,884,401 and application US 13/759077	
4	Voltage excited piezoelectric resistance memory cell system	7,985,960	
5	Systems and methods for magnetron deposition	8,308,915	
6	Heterojunction oxide non-volatile memory device	8,378,345, 8,698,120 and application US 14/186273	CN 102365746 (China), EP 2465140 (Europe), JP 2012525016 (Japan), KR 20110134458 (Korea)
7	Dual hexagonal shaped plasma source	8,454,810, 8,911,602	
8	Method and system for utilizing perovskite material for charge storage and as a dielectric	8,709,891	

Schedule 8 – Terms and Conditions of Bidder Options

1. Entitlement

Each Bidder Option (**Option**) entitles the holder to subscribe for one Bidder Share upon exercise of the Option.

2. Exercise Price and Expiry Date

The Options have an exercise price of \$0.02 (**Exercise Price**) and an expiry date of 30 June 2020 (**Expiry Date**).

3. Exercise Period

The Options are exercisable at any time on or prior to 5.00pm (Perth time) on the Expiry Date.

4. Notice of Exercise

The Options may be exercised by notice in writing to the Bidder (**Notice of Exercise**) and payment of the Exercise Price for each Option being exercised. Any Notice of Exercise of an Option received by the Bidder will be deemed to be a notice of the exercise of that Option as at the date of receipt.

5. Bidder Shares issued on exercise

Bidder Shares issued on exercise of the Options will rank equally with the then shares of the Bidder.

6. Quotation of Shares on exercise

Application will be made by the Bidder to ASX for quotation of the Bidder Shares issued upon the exercise of the Options.

7. Timing of issue of Shares

After an Option is validly exercised, the Bidder must, within, 15 Business Days of the notice of exercise and receipt of cleared funds equal to the sum payable on the exercise of the Option:

- (a) issue the Bidder Share; and
- (b) do all such acts, matters and things to obtain the grant of official quotation of the Bidder Share on ASX no later than 5 Business Days after issuing the Shares.

8. Participation in new issues

There are no participation rights or entitlements inherent in the Options and holders will not be entitled to participate in new issues of capital offered to Bidder Shareholders during the currency of the Options. However, the Bidder will give holders of the Options notice of the proposed issue prior to the date for determining entitlements to participate in any such issue.

9. Adjustment for bonus issues of Bidder Shares

If the Bidder makes a bonus issue of Bidder Shares or other securities to existing Bidder Shareholders (other than an issue in lieu or in satisfaction of dividends or by way of dividend reinvestment):

- (a) the number of Bidder Shares which must be issued on the exercise of an Option will be increased by the number of Bidder Shares which the Optionholder would have received if the Optionholder had exercised the Option before the record date for the bonus issue; and
- (b) no change will be made to the Exercise Price.

10. Adjustment for entitlement issue

If the Bidder makes an issue of Bidder Shares pro rata to existing Bidder Shareholders (other than an issue in lieu or in satisfaction of dividends or by way of dividend reinvestment) the Exercise Price of an Option will be reduced according to the following formula:

$$\text{New exercise price} = O - \frac{E[P-(S+D)]}{N+1}$$

O = the old Exercise Price of the Option.

E = the number of underlying Bidder Shares into which one Option is exercisable.

P = average market price per Bidder Share weighted by reference to volume of the underlying Bidder Shares during the 5 trading days ending on the day before the ex rights date or ex entitlements date.

S = the subscription price of a Bidder Share under the pro rata issue.

D = the dividend due but not yet paid on the existing underlying Bidder Shares (except those to be issued under the pro rata issue).

N = the number of Bidder Shares with rights or entitlements that must be held to receive a right to one Bidder Share.

11. Adjustments for reorganisation

If there is any reconstruction of the issued share capital of the Bidder, the rights of the Optionholders may be varied to comply with the Listing Rules which apply to the reconstruction at the time of the reconstruction.

12. Options not quoted

The Bidder will not apply to ASX for quotation of the Options.

13. Options transferable

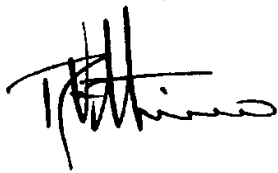
The Options are transferable.

14. Lodgement Instructions

Cheques shall be in Australian currency made payable to the Bidder and crossed "Not Negotiable". The application for Bidder Shares on exercise of the Options with the appropriate remittance should be lodged at the Bidder's share registry.

Executed as an Agreement.

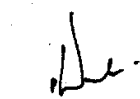
Executed by Fitzroy Resources Limited
ACN 145 590 110 in accordance with section
127 of the *Corporations Act*:



Signature of Director

Riccardo Vittino

Name of Director in full



Signature of Secretary/other Director

Peter Webse

Name of Secretary/other Director in full

Executed by 4D-S Limited ACN 124 234 395
in accordance with section 127 of the
Corporations Act:



Signature of Director

Guido Arnout

Name of Director in full



Signature of Secretary/other Director

Kurt Pfuger

Name of Secretary/other Director in full