



Vital

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## Receipt of Takeover Notice

On 19 August 2024, Vital Limited (NZX:VTL) announced that Empire Technology Limited (“**Empire**”) had given formal notice of Empire’s intention to make a partial takeover offer for 50.01% of the fully paid ordinary shares in Vital for \$0.375 per share (“**first takeover notice**”).

### **Empire’s proposed offer terms may not have complied with the Takeovers Code**

On 23 August 2024, the Takeovers Panel held a division meeting in connection with the first takeover notice. At that meeting, the Panel division formed the view that certain of the offer conditions contained in the proposed offer terms attached to the first takeover notice may not comply with the Takeovers Code.

Earlier today, Empire advised that it had withdrawn the first takeover notice and provided Vital with a new notice of Empire’s intention to make a partial takeover offer for 50.01% of the fully paid ordinary shares in Vital for \$0.375 per share (“**second takeover notice**”). The second takeover notice restarts the takeover offer process, including the various takeover offer dates set out in Vital’s 23 August letter to shareholders (see “Timing” below).

### **Take no action**

The Vital Board strongly recommends that Vital shareholders **DO NOT TAKE ANY ACTION** in respect of the second takeover notice or Empire’s proposed partial offer until they receive further guidance from the Board.

Shareholders who are considering taking action before receiving the Board’s guidance should seek professional advice.

### **Board’s response**

The Board is committed to acting in the best interests of all shareholders. It will consider and respond to Empire’s second takeover notice and proposed partial offer in accordance with its directors’ duties and its obligations under the Takeovers Code.

### **Second takeover notice – proposed offer terms**

The second takeover notice is not a takeover offer and it is not currently capable of acceptance by shareholders. If Empire proceeds to make the partial offer contemplated by the second takeover notice, it must do so on the proposed offer terms attached to the second takeover notice.<sup>1</sup>

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<sup>1</sup> Empire may make certain amendments to the proposed offer terms as permitted, or required, by the Takeovers Code.



The proposed offer terms attached to the second takeover notice are the same, in most respects, as the proposed offer terms attached to the first takeover notice. Two key changes to the proposed offer terms are to the conditions that the Panel considered may not comply with the Takeovers Code, being the conditions in clauses 5.2 and 5.3(a) of the offer terms. The Vital Board will consider those changes as part of its consideration of the second takeover notice.

### **Due diligence**

In the second takeover notice, Empire has re-iterated and updated its request for due diligence information (subject to the parties entering into a confidentiality agreement). Empire continues to seek the disclosure of all prospective commercial transactions having a value of more than \$500,000 revenue or expenses per annum that Vital is considering entering into. In addition, Empire has added two new due diligence items. First, Empire is seeking a copy of Vital's management forecasts for FY2025. Second, Empire is seeking a copy of each contract having a value in excess of \$500,000 revenue or expenses per annum which may trigger a change of control consent requirement as a consequence of the acquisition of 50.01% of the shares in Vital by Empire.

As previously communicated to Empire and shareholders, the Vital Board considers that the proposed offer price materially undervalues Vital, which, along with the partial nature of the proposed offer, therefore, does not warrant the disclosure of commercially sensitive information, such as the above requested due diligence information, to Empire.

### **Nature of a partial offer**

It is important for shareholders to be aware that Empire is **not** proposing a full takeover offer to acquire all of the shares in Vital. Under the second takeover notice (as was the case under the first takeover notice), Empire proposes to acquire just 50.01% of Vital's shares. The partial nature of the offer would not provide all Vital shareholders with the ability to sell all of their shares at the proposed offer price. If you were to accept the partial offer in respect of all of your shares, you would be able to sell at least 50.01% of your shares if the offer becomes unconditional; however, you may not be able to sell more shares. If Empire were to make a partial takeover offer and receives acceptances to the offer that result in a greater than 50.01% shareholding, acceptances to the offer will be subject to scaling.

Due to the scaling referred to above, the Vital Board cautions shareholders about making a direct comparison of the proposed offer price to the current share price. Shareholders are encouraged to seek financial advice regarding any such comparison.



## **Timing**

If Empire were to proceed with the partial offer that was notified in the second takeover notice, then it must make the offer, by sending an offer document to all shareholders, by no earlier than 9 September 2024 and by no later than 23 September 2024. If Empire makes the offer, it must be open for acceptance by shareholders for at least 20 working days from the date of the offer. Vital will release an electronic copy of its target company statement, including the Board's recommendation on the offer and an independent adviser's report on the merits of the offer, within 10 working days after Empire sends the offer document to shareholders.

## **Conclusion**

**Shareholders and other persons who may be considering buying or selling Vital shares, or who are asked by Empire to sign a lock up agreement to pre-commit to accept the partial offer, before the Board provides further guidance are recommended to seek their own professional advice.**

Vital is scheduled to deliver its FY24 results tomorrow and the Board looks forward to addressing any issues raised by shareholders on this matter. Shareholders can submit questions for the Board by email: [investors@vital.co.nz](mailto:investors@vital.co.nz).

A copy of the second takeover notice, and the documents that accompanied it under Rule 41 of the Takeovers Code, are attached.

John McMahon  
Vital Chair

ENDS