



Vital

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23 August 2024

Dear Shareholder,

On behalf of the Board and ahead of Vital's annual results, to be published on 27 August, I am writing to provide you with an update regarding Empire Technology Limited's ("Empire") notice of its intention to make a partial takeover offer for 50.01% of the shares in Vital ("takeover notice").

#### Shareholders should take no action

The Vital Board strongly recommends that Vital Shareholders **should not take any action** in respect of the takeover notice or Empire's proposed partial takeover 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.

#### Key points

- On 12 August 2024, an affiliate of Empire provided Vital with a non-binding proposal in respect of a proposed partial takeover offer to acquire 50.01% of the shares in Vital for \$0.375 per share. Empire has now given formal notice of its intention to make that partial offer.
- The takeover notice says that Empire's decision as to whether to make the offer remains conditional on satisfactory completion of due diligence. However, Empire has also reserved the right to make the offer even if due diligence is not provided.
- The Vital Board considers that Empire's proposed partial offer materially undervalues Vital and is not at a level to warrant the provision of due diligence information.
- The takeover notice is not a takeover offer and it is not currently capable of acceptance by shareholders. If Empire wishes to proceed to make the partial offer to shareholders, the earliest date that it can make the offer is 2 September 2024. If Empire makes the partial offer, Vital will release an electronic copy of its target company statement, including the Board's recommendation and an independent adviser's report on the merits of the offer, within 10 working days after the offer.



## Background

On 12 August 2024, the Vital Board received what we understood to be a confidential, unsolicited, non-binding indicative and incomplete proposal outlining a potential partial takeover offer from an affiliate of Empire to acquire 50.01% of all Vital shares, at a price of NZ\$0.375 per share ("Empire NBIO").

On the evening of 13 August 2024, Empire advised Vital that it intended to publicly announce its intention to make a partial takeover offer the following day. It publicly released a statement to that effect on the morning of 14 August 2024 ("Empire statement"). The NBIO and the Empire statement included a request for the Vital Board to provide Empire with due diligence access to facilitate the potential partial offer (the nature of Empire's due diligence request is discussed further below, under "Empire's request for due diligence").

As a result of the public release of the Empire statement, Vital requested and was granted a trading halt. This was to ensure that the Board had an opportunity to consider and respond to the Empire NBIO and the Empire statement, with assistance from external advisers.

On 16 August 2024, Vital responded to Empire and updated the NZX to advise that the Board's position is that the proposed offer price materially undervalues Vital and sits well below a level at which the Board would be prepared to provide the requested due diligence.

On the morning of 19 August 2024, Empire provided Vital with formal takeover notice, setting out Empire's intention to make a partial takeover offer under the Takeovers Code for 50.01% of the fully paid ordinary shares in Vital. In the takeover notice, Empire re-iterated its earlier request for due diligence to assist Empire to determine whether to proceed with the proposed offer. Empire stated that its decision as to whether to make the offer remains conditional on satisfactory completion of due diligence. However, Empire also reserved the right to make the offer even if due diligence is not provided.

Empire has notified Vital that it has entered into lock up agreements with two shareholders. Under those agreements, Empire has agreed to make the partial offer, and those shareholders have agreed to accept the partial offer for an aggregate of 4,030,854 shares in Vital (representing, in aggregate, 9.702% of Vital's share capital).<sup>1</sup> Under those agreements, Empire's obligation to make the partial offer is subject to certain conditions, including completion, to Empire's satisfaction (acting reasonably), of targeted confirmatory due diligence investigations of Vital. Empire may (but is not required to) waive that due diligence condition (and the other conditions). Accordingly, Empire could (but is not required to) proceed with the partial offer without due diligence access.

## 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. Rather, 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 for all of

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<sup>1</sup> One of the lock up agreements relates to 700,000 shares in Vital. The other agreement relates to 3,330,854 shares, and also includes any other shares which the relevant shareholder acquires (or obtains control over) after 18 August.



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.

### **Board committee and advisers**

The Board is committed to acting in the best interest of all shareholders. It will consider and respond to Empire's offer in accordance with its director duties and its obligations under the Takeovers Code.

As part of this process, the Board has formed a response committee, comprising John McMahon and James Sclater, and has appointed Cameron Partners as financial advisers, Harmos Horton Lusk as legal advisers, and Shanahan Partners as communications advisers, to assist the committee and the Board.

The Board has also appointed Grant Samuel to prepare an independent adviser's report on the merits of Empire's proposed partial offer. If Empire proceeds to make the partial takeover offer, that report will be sent to shareholders with Vital's target company statement.

### **Empire's request for due diligence**

The due diligence information currently requested by Empire is reasonably narrow in scope. The key items are specified financial information relating to the financial year that ended on 30 June 2024 and information about all prospective commercial transactions above a value of \$500,000.<sup>2</sup> In this regard, Vital notes that:

- It will release its 2024 annual report (including audited full-year financial statements for the financial year ended 30 June 2024) to NZX on 27 August 2024, which incorporates the financial information sought by Empire in its due diligence request. This will provide Empire with sufficient time to review and consider those audited financial statements before Empire is required to make the offer under the Takeovers Code.
- Vital considers the disclosure of prospective commercial transactions having a value of more than \$500,000 to be confidential and commercially sensitive. As noted above, **the Vital Board considers that Empire's current proposal does not warrant the disclosure of this information.**

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<sup>2</sup> Empire also requested management accounts for July 2024. Vital considers that these accounts are immaterial relative to the audited financial statements for the 12-month period ended 30 June 2024. Although Vital does not propose to provide these accounts to Empire, it has confirmed in writing to Empire that there is nothing in those management accounts that the Board considers to be material.



## Timing

The takeover notice is not a takeover offer and it is not currently capable of acceptance by shareholders. As noted above, Empire has entered into lock up agreements under which it has contractually agreed to make the partial offer, but this obligation is conditional on (amongst other things) Empire's satisfaction of targeted due diligence.

If Empire were to proceed with the partial offer that was notified in the takeover notice, then it must make the offer (by sending an offer document to all shareholders) by no earlier than 2 September 2024 and by no later than 16 September 2024. If Empire makes the offer, it must be open for acceptance by shareholders for at least 20 working days. 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 makes the offer.

## Conclusion

The Vital Board strongly recommends that Vital shareholders **DO NOT TAKE ANY ACTION** in respect of the takeover notice or Empire's proposed partial offer until they receive further guidance from the Board. **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 then are recommended to seek their own professional advice.**

As previously communicated to shareholders, Vital is focused on a turnaround strategy. This strategy is centred on optimising our business and network assets, increasing access to our quality Wired and Wireless networks, and driving a stronger customer focus. While this partial takeover is an indication the turnaround is making progress, we must ensure that the business remains focused on this work.

The Board will continue to keep shareholders and the market informed of any material developments in accordance with its continuous disclosure and Takeovers Code obligations.

The Board looks forward to updating shareholders on progress with the release of our annual results on 27 August 2024. If there is anything you wish to share with the Board in the interim, please contact [investors@vital.co.nz](mailto:investors@vital.co.nz)

Yours sincerely

John McMahon  
Vital Chair