

Disclosure of movement of 1% or more in substantial holding
or change in nature of relevant interest, or both

Sections 277 and 278, Financial Markets Conduct Act 2013

To NZX Limited (NZX)
and
To Vital Limited (**Vital**)

Relevant event being disclosed: Change in nature of relevant interest

Date of relevant event: 19 August 2024

Date this disclosure made: 20 August 2024

Date last disclosure made: 9 August 2024

Substantial product holder(s) giving disclosure

Full name(s): Asset Management Partners Limited

Summary of substantial holding

Class of quoted voting products: Ordinary shares in Vital (NZX Code: VTL)

Summary for Asset Management Partners Limited

For **this** disclosure,—

- (a) total number held in class: 3,330,854
- (b) total in class: 41,548,318
- (c) total percentage held in class: 8.017%

For **last** disclosure,—

- (a) total number held in class: 3,259,569
- (b) total in class: 41,548,318
- (c) total percentage held in class: 7.845%

Details of transactions and events giving rise to relevant event

Details of the transactions or other events requiring disclosure: Asset Management Partners Limited has increased the number of ordinary shares it holds in Vital to a holding of 8.017%. Since its last disclosure, on 9 August 2024, Asset Management Partners Limited has made aggregated on-market acquisitions of 71,285 ordinary shares in Vital for a total consideration of \$19,603.38 as follows:

Date	Description of Transaction	Ave. Price per Share	Number of Shares Acquired	Total Consideration
12 Aug 2024	On-market acquisition. Transferor is unknown	\$0.2750	71,285	\$19,603.38
			71,285	\$19,603.38

Subsequent to those acquisitions, there has been a change in the nature of the relevant interest in the ordinary shares in Vital held by Asset Management Partners Limited, as it has entered into an agreement to accept a partial takeover offer intended to be made by Empire Technology Limited. That lock-up agreement is in respect of all shares held or controlled by Asset Management Partners Limited in Vital, in connection with an offer price of NZ\$0.375. Asset Management Partners Limited's power to dispose of financial products is now subject to the terms of that lock-up agreement.

A copy of a lock-up agreement between Empire Technology Limited and Asset Management Partners Limited is attached (20 pages).

Details after relevant event

Details for Asset Management Partners Limited

Nature of relevant interest(s): Registered holder and beneficial owner of 3,330,854 ordinary shares in Vital. Asset Management Partners Limited's power to dispose of financial products is now subject to the terms of the lock-up agreement (attached, 21 pages)

For that relevant interest,—

- (a) number held in class: 3,330,854
- (b) percentage held in class: 8.017%
- (c) current registered holder(s): Asset Management Partners Limited
- (d) registered holder(s) once transfers are registered: No change

For a derivative relevant interest, also—

- (a) type of derivative: Not applicable
- (b) details of derivative: Not applicable
- (c) parties to the derivative: Not applicable
- (d) if the substantial product holder is not a party to the derivative, the nature of the relevant interest in the derivative: Not applicable

Additional information

Address(es) of substantial product holder(s): Level 2, 469 Grey Street, Hamilton, 3216, New Zealand

Contact details: Andrew Johnson, Andrew.johnson@londongreen.co.nz, +64 21 775 930

Name of any other person believed to have given, or believed to be required to give, a disclosure under the Financial Markets Conduct Act 2013 in relation to the financial products to which this disclosure relates: Empire Technology Limited

Certification

I, Andrew Dean Johnson, certify that, to the best of my knowledge and belief, the information contained in this disclosure is correct and that I am duly authorised to make this disclosure by all persons for whom it is made.



Lock Up Agreement relating to a partial takeover offer for Vital Limited

Asset Management Partners Limited
(Shareholder)

Empire Technology Limited (Offeror)

Date: 19 August 2024



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LOCK UP AGREEMENT RELATING TO A PARTIAL TAKEOVER OFFER FOR VITAL LIMITED

Date: 19 August 2024

PARTIES

Asset Management Partners Limited, a duly incorporated company, at Hamilton
(*Shareholder*)

Empire Technology Limited, a duly incorporated company, at Auckland (*Offeror*)

BACKGROUND

- A The Offeror has agreed that, subject to the provisions of this Agreement, it will make the Offer for 50.01% of the fully paid ordinary shares in the Company.
- B The Shareholder has irrevocably agreed that, subject to the terms of this Agreement, the Shareholder will accept or procure the acceptance of the Offer in respect of all the ordinary shares in the Company the Shareholder holds or controls in accordance with the Offer Terms and the Takeovers Code.
- C The Shareholder acknowledges that the number of shares actually sold will depend on the application of the scaling provisions applying to partial takeover offers under Rule 9 of the Takeovers Code, and in particular that subject to the extent of acceptances by other shareholders, the Shareholder may not be able to sell all of its shareholding.

THE PARTIES AGREE as follows:

1 INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Business Day means a day on which registered banks are open for business in Auckland and Hamilton, New Zealand.

Company means Vital Limited (NZX:VTL).

Offer means a partial takeover offer made under Rule 9 of the Takeovers Code and on the Offer Terms to be made by the Offeror to purchase all of the ordinary shares in the Company.

Offer Terms means, subject to clause 2.4 and to any variation made by the Offeror which is permitted by the Takeovers Code, the terms and conditions set out in at clause 5.3 of the offer document attached in the Schedule to this Agreement.

Shares means all of the ordinary shares in the Company held or controlled by the Shareholder, being 3,330,854 ordinary shares in the Company as at 19 August 2024 plus any share in the Company, but also including all of any Shares acquired (or over which the Shareholder acquires control) after 18 August 2024.



Takeovers Code means the Takeovers Code set out in the Schedule to the Takeovers Regulations 2000 (SR 2000/210) as consolidated, amended, re-enacted or replaced from time to time and as varied by any applicable exemption granted by the Takeovers Panel.

Takeover Notice means a takeover notice to be sent by the Offeror to the Company in accordance with Rule 41 of the Takeovers Code and clause 2.1(a), and having attached to it the Offer Terms and the other information required by the Takeovers Code.

1.2 **Interpretation**

In this Agreement, unless the context otherwise requires or as specifically otherwise stated:

- (a) words importing one gender include the other gender;
- (b) the singular includes the plural and vice versa;
- (c) references to dates and times are to dates and times in New Zealand;
- (d) references to currency are to New Zealand currency;
- (e) a reference to a "person" includes an individual, firm, company, corporation, an incorporated body of persons, state or government or any agency thereof and any body or entity and their respective successors (in each case whether or not having separate legal status);
- (f) headings are for convenience only and do not affect interpretation;
- (g) references to sections, clauses and schedules are references to sections, clauses and schedules of this agreement unless specifically stated otherwise; and
- (h) a reference to a statute or other law is a reference to a New Zealand statute or other law and includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.

2 **TAKEOVER OFFER**

2.1 **Making of Offer**

Subject to clause 2.2, the Offeror agrees that it will:

- (a) send the Takeover Notice to the Company in accordance with Rule 41 of the Takeovers Code within five Business Days, after execution and delivery of this Agreement by all parties; and
- (b) make the Offer (by sending the Offer to all shareholders in the Company) as soon as reasonably possible in accordance with the Takeovers Code, and in any event no later than 20 Business Days after sending the Takeover Notice to the Company.



2.2 Conditions

The Offeror's obligations under clauses 2.1(a) and 2.1(b) are each subject to the condition that none of the circumstances set out in paragraph 5.3 of the Offer Terms has occurred or failed to occur, as the case may require, in the period commencing on the date of this Agreement and ending on the date the Takeover Notice is sent to the Company or the Offer is made, as the case may be.

2.3 Waiver

The condition contained in clause 2.2 is inserted for the sole benefit of the Offeror and may be waived by the Offeror, in its absolute discretion, in respect of the Takeover Notice, the Offer or both. The Offeror will not send the Offer to the Company's shareholders unless it is satisfied that, as at the date on which the Offer is sent, none of the circumstances set out in paragraph 4.1 of the Offer Terms has occurred or failed to occur, as the case may require, or it has irrevocably waived any such occurrence or non-occurrence.

2.4 Offer Terms

- (a) The Offeror agrees that the Offer will be made at a price of \$0.375 per Share and on the Offer Terms, except as otherwise agreed in writing by the Offeror and the Shareholder (each acting reasonably) before the date on which the Offer is made (and each reference to Offer Terms in this Agreement shall be a reference to such terms as amended).
- (b) The Offeror is entitled to complete the other sections of the offer document for the Offer including all necessary dates, and the information required by Schedule 1 to the Takeovers Code, as it reasonably requires, provided that such other sections shall comply with the Takeovers Code and shall not be inconsistent with the Offer Terms or include additional terms and conditions. The Offeror is also entitled to make any changes required by the Takeovers Panel to the Offer Terms, provided that such changes do not add any new material conditions to the Offer Terms.
- (c) Nothing in this Agreement limits the Offeror's ability to extend the Offer or waive or invoke any condition or other right included in the Offer Terms in accordance with the Takeovers Code.
- (d) If after making the Offer the Offeror subsequently increases the price per Share under the Offer, then in accordance with the Takeovers Code, the Shareholder will be entitled to receive that higher price per Share for all of the Shares which the Shareholder submits a valid acceptance under the Offer.

3 ACCEPTANCE OF OFFER

3.1 Acceptance of Offer

Subject to the Offer being made or caused to be made by the Offeror in accordance with this Agreement, the Shareholder irrevocably agrees to accept or procure the acceptance of the Offer in accordance with its terms and the Takeovers Code in respect of all of the Shares held by it no later than the date which is two Business Days after the date of despatch of the Offer to the Company's shareholders, as notified by the Offeror under Rule 45 of the Takeovers Code, by duly signing the relevant acceptance form accompanying the offer document for the Offer and returning the acceptance form to the Offeror in accordance with the terms of the Offer. The Shareholder acknowledges and accepts that its acceptance may be scaled in accordance with rules 9 and 10 of the Takeovers Code.



3.2 Dealings with Shares

The Shareholder agrees that, unless this Agreement is terminated in accordance with its terms or the Offer lapses in accordance with its terms or is withdrawn in accordance with the Takeovers Code, the Shareholder will not (and, to the extent applicable, will procure that the registered holder of the Shares does not) dispose of, encumber or deal in any way with any of the Shares, except to accept the Offer or as otherwise provided in this Agreement.

3.3 Representations and warranties

The Shareholder represents and warrants to the Offeror that, at the date of this Agreement and on the date of the Offer:

- (a) this agreement creates obligations which are legally binding on the Shareholder and are enforceable against the Shareholder in accordance with the terms of this Agreement;
- (b) the Shareholder has full power, capacity and authority to sell and transfer or procure the sale and transfer of both legal and beneficial ownership in the Shares;
- (c) the Shares are fully paid and no money is owing in respect of them;
- (d) other than the Shares, the Shareholder has no interest in, and does not control, any other shares in the Company; and
- (e) on payment of the purchase price in accordance with the Offer Terms, legal and beneficial title to the Shares will pass to the Offeror free of all charges, liens, mortgages, encumbrances and other adverse interests and claims of any kind in accordance with the Offer Terms.

3.4 Nominees

If applicable, the Shareholder will instruct the Shareholder's nominees and take all other steps necessary to ensure that the Shareholder complies, and the Shareholder's nominees comply, with the Shareholder's obligations under clause 3.1.

4 TERMINATION

4.1 Termination where Offer not made

The Shareholder may terminate this Agreement by written notice to the Offeror if the Offeror does not make the Offer to the Company's shareholders (in compliance with the Takeovers Code) in accordance with this Agreement.

4.2 Effect of Termination

If this Agreement is terminated under clause 4.1:

- (a) except for this clause 4.2, this Agreement has no further force and effect; and
- (b) the parties will otherwise be released from their obligations under this Agreement and no party will have any claim against any other party arising under or in connection with such termination except any breach occurring before termination.



5 EXERCISE OF VOTING RIGHTS

The Shareholder may exercise and/or control the exercise of all voting rights (as defined in the Takeovers Code) attached to the Shares in whatever manner the Shareholder sees fit until such time as payment of the purchase price is made to the Shareholder in accordance with the Offer. For the avoidance of doubt, nothing in this Agreement will confer on the Offeror or any other party the ability, or right, to hold or control (as defined in the Takeovers Code) the voting rights attaching to the Shares and no party will become the holder or controller of such voting rights except following payment of the purchase price to the Shareholder under the Offer.

6 NOTICES

6.1 Form of notice

If a party wishes to give to the other party any notice, claim, demand or other communication (Notice) under or in connection with this Agreement, the Notice is to be in writing, made by personal delivery or email to the addressee at the email address or address set out below, and marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other party. The initial email address, address and relevant persons or office holders of each party are:

The Shareholder

Address: c/- Vazey Child
3 London Street
Hamilton 3204
New Zealand

Attention: Andrew Johnson

Email address: Andrew.johnson@londongreen.co.nz

The Offeror

Address: c/- CM Partners Limited
84 Coates Avenue
Orakei
Auckland 1745
New Zealand

Attention: Sean Joyce

Email address: sean@corporate-counsel.co.nz

6.2 When notice effective

No communication is to be effective until received. A communication will, however, be deemed to be received by the addressee:

- (a) in the case of personal delivery, when delivered; and
- (b) in the case of a communication sent by email, on the Business Day on which it was despatched or, if despatched after 5.00 p.m. (in the place of receipt) on a



Business Day, on the next Business Day (in the place of receipt) after the date of despatch provided in each case the computer system used to transmit the communication:

- (i) has received an acknowledgement of receipt to the email address of the person transmitting the communication; or
- (ii) has not generated a record that the communication has failed to be transmitted.

7 GENERAL

7.1 Agreement binding

Each party warrants and represents to the other that this Agreement creates obligations which are legally binding on it and are enforceable against it in accordance with its terms.

7.2 Compliance with law

Nothing in this Agreement shall require any party to do any act or thing in contravention of the Takeovers Code, the Financial Markets Conduct Act 2013 or the Companies Act 1993.

7.3 Entire agreement

This Agreement constitutes the entire agreement and understanding (express or implied) between the parties concerning the making and acceptance of the Offer and the sale and purchase of the Shares, and replaces any earlier negotiations, representations, warranties, understandings or agreements, whether oral or written, between the parties concerning the Shares.

7.4 Amendments

No amendment to this Agreement will be effective unless it is in writing and signed by all parties.

7.5 Further assurances

The Shareholder and the Offeror shall promptly do everything reasonably required to give effect to this Agreement according to its spirit and intent.

7.6 Counterparts

This Agreement may be signed in two or more counterparts (including scanned PDF copies), all of which when taken together shall constitute one and the same instrument and a binding and enforceable agreement between the parties.

7.7 Governing law

This Agreement shall be governed by, and construed in accordance with, New Zealand law, and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

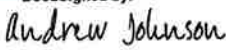
LOCK UP AGREEMENT RELATING TO A PARTIAL TAKEOVER OFFER FOR VITAL LIMITED



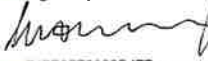
EXECUTION

Executed as an agreement.

Asset Management Partners Limited
by:

DocuSigned by:

AD18041272C04B5
Andrew Johnson
Director

Empire Technology Limited
by:

Signed by:

747E87F8930847B
Simon Edwin Herbert
Director



SCHEDULE: OFFER TERMS

TERMS AND CONDITIONS OF THE OFFER

1. THE OFFER

- 1.1 **Offer:** Empire offers to purchase, on the Terms and Conditions set out in this Offer **Document**, the Specified Percentage of the Shares in Vital, including all rights, benefits and entitlements attached thereto on, after, or by reference to the Notice Date.
- 1.2 As at [30 August 2024], the Specified Percentage represents [20,774,160] Shares (that number, or any lesser or greater number that may result from an issue buyback of Shares, is referred to as the Specified Number in this Offer Document).
- 1.3 Empire may end up holding more than the Specified Percentage if Empire receives more than sufficient acceptances that would result in Empire holding more than Specified Percentage of the Shares, in such case, Empire will scale applications so that it holds the Specified Percentage.
- 1.4 **Offer Period:** This Offer is dated [2 September 2024] (Offer Date) and will remain open for acceptance until 11.59 p.m. on [30 September 2024] (the Offer Period), unless the Offer is withdrawn in accordance with the Takeovers Code and every person is released from every obligation incurred under the terms of it, or the Offer lapses in accordance with its terms. Empire may extend the Offer Period in accordance with the Takeovers Code. The time the Offer expires is referred to in this Offer Document as the Closing Time.
- 1.5 **Persons who may accept:** The Offer is open for acceptance by any person who holds Shares in Vital, whether acquired before or on or after the Offer Date, upon production of satisfactory evidence of such person's entitlement to those Shares.
- 1.6 **Acceptance Form and Specified Holder Certificate:** The enclosed Acceptance Form and Specified Holder Certificate comprise part of this Offer.
- 1.7 The Offer is also made subject to the further terms in clauses 2 to 9 below and to the Takeovers Code.

2. OFFER CONSIDERATION

- 2.1 **What you will be paid:** The consideration offered by Empire is NZ\$0.375 per Share payable in cash, subject to any adjustment in accordance with clause 6.
- 2.2 **When you will be paid:** The consideration payable to each holder of Shares who accepts this Offer (each an **Acceptor**) will be paid within five Working Days after the latest of:

- (a) the date on which this Offer becomes unconditional;
- (b) the date on which the Acceptor's acceptance is received by Empire; and
- (c) the Closing Date (unless a further extension is permitted by the Takeovers Code or any exemption granted by the Takeovers Panel).

As at the Offer Date, Empire intends that the Offer will only be declared unconditional following the Closing Date but it reserves its right to declare the Offer unconditional earlier.

- 2.3 **Non-payment of consideration:** If the consideration is not sent to an Acceptor within the period specified in clause 2.2, the Acceptor may withdraw their acceptance of the Offer by:
 - (a) giving written notice to Empire of the Acceptor's intention to withdraw acceptance of the Offer; and
 - (b) no less than five Working Days after giving notice under clause 2.3(a), giving written notice to Empire withdrawing the Acceptor's acceptance of the Offer,



provided that the Acceptor does not receive the consideration for their Shares before written notice is given under clause 2.3(b).

3. ACCEPTANCE OF THIS OFFER

3.1 **How to accept the Offer:** To accept this Offer, an Acceptor must do one of the following:

- (a) **Online acceptance:** complete the relevant Acceptance Form and, if applicable, the Specified Holder Certificate online at [website – URL to be advised]. The Acceptor will be required to provide its CSN/Holder Number and Acceptance Number (which are set out in the Acceptance Form sent to each Acceptor);
- (b) **Physical Acceptance Form:** complete the acceptance form in accordance with the instructions printed on the form and, if applicable, the Specified Holder Certificate and deliver that form and, if applicable, Specified Holder Certificate to Empire so as to be received not later than 11.59 p.m. on the Closing Date, to:
 - (i) **By email:** c/- MUFG Pension & Market Services
enquiries@linkmarketservices.co.nz
 - (ii) **By post:** c/- MUFG Pension & Market Services
PO Box 91976, Auckland, 1142
 - (iii) **By hand:** c/- MUFG Pension & Market Services
PwC Tower, Level 30/15 Customs Street West,
Auckland CBD, Auckland 1010

provided that any Acceptance Form or, if applicable, Specified Holder Certificate received after the Closing Date that is post-marked on or before the Closing Date will be deemed for the purposes of this Offer to have been received by the Closing Date. No acknowledgment of the receipt of acceptances will be given.

3.2 **Shares held on behalf of other persons:**

- (a) If an Acceptor holds Shares on behalf of more than one person, the Acceptor is a "Specified Holder" and **MUST** complete the Specified Holder Certificate for the Offer. The completed Specified Holder Certificate must be returned to Empire with the relevant Acceptance Form (or as soon as practicable thereafter), in accordance with clause 3.1, so as to be received by Empire not later than 11.59 p.m. on the Closing Date. Failure by a Specified Holder to complete a Specified Holder Certificate means that the Specified Holder's acceptance is invalid. All Specified Holder Certificates sent to the address for acceptance set out in clause 3.13.1(b) will be deemed to have been provided to both Empire and the Registrar.
- (b) Clause 3.2(a) applies regardless of:
 - (i) whether the holdings are direct or indirect;
 - (ii) whether the Specified Holder is a custodian or not; and
 - (iii) the particular arrangements between the Specified Holder and the person on whose behalf the Specified Holder holds Shares.
- (c) An Acceptor does not need to complete and return a Specified Holder Certificate if the Acceptor holds Shares for itself or on behalf of only one other person.

3.3 **Acceptance Forms and Specified Holder Certificates:** Empire may, in its discretion:

- (a) treat any Acceptance Form as valid even if it does not comply with clause 3.1, or is otherwise irregular;
- (b) rectify any errors in, or omissions from, any Acceptance Form to enable that form to constitute a valid acceptance of this Offer and to facilitate registration of the transfer of the



relevant Shares to Empire, including inserting or correcting details of the Shares held by the Acceptor and filling in any blanks; and

- (c) subject to the Takeovers Code:
 - (i) treat any Specified Holder Certificate as valid even if that Specified Holder Certificate does not comply with any instructions on the Specified Holder Certificate; and
 - (ii) rectify any errors in, or omissions from, any Specified Holder Certificate to enable that certificate to comply with rules 14B to 14D of the Takeovers Code and to facilitate the taking up of Shares in accordance with rule 14E of the Takeovers Code.

3.4 Persons who may accept: The Offer is open for acceptance by any person who holds Shares, whether acquired before, on or after the Offer Date, upon production of satisfactory evidence of such person's entitlement to those Shares. A holder of Shares may accept this Offer in respect of all or any of their Shares. Each acceptance must be free of all conditions of acceptance of any nature whatsoever.

3.5 Acceptor's representations and warranties: Each Acceptor represents and warrants that:

- (a) it is the sole legal and beneficial owner of the Shares in respect of which it accepts this Offer, or it is the legal owner and has the necessary capacity and authority to accept this Offer in respect of those Shares; and
- (b) legal and beneficial title to all those Shares in respect of which it accepts this Offer will pass to Empire free of all liens, charges, mortgages, encumbrances and other adverse interests or claims of any nature whatsoever; and
- (c) accepting the Offer in the manner contemplated by the Acceptance Form and, if applicable, the Specified Holder Certificate submitted by the Acceptor will not cause Empire to breach any law in delivering the consideration specified in clause 2.1.

Acceptance of this Offer constitutes a representation and warranty by the Acceptor to Empire that title to the Shares to which the applicable acceptance relates will pass to Empire on the basis described in this clause 3.5 and that the Acceptor has full power, capacity and authority to sell and transfer all Shares in respect of which they accept this Offer.

3.6 Specified Holder's representation and warranty: Each person who completes and returns a Specified Holder Certificate represents and warrants to Empire that the Specified Holder Certificate is true and correct and has been duly completed and executed. Any person who does not complete and return a Specified Holder Certificate represents and warrants that that person does not hold Shares on behalf of more than one person.

3.7 Joint Holders: Despite anything to the contrary in an Acceptance Form or Specified Holder Certificate, if an Acceptor is a joint holder of Shares (whether or not as trustee of a trust) and the Acceptance Form and/or Specified Holder Certificate is signed by one or some, but not all, joint holders, then the Acceptor represents and warrants to Empire that:

- (a) the holder(s) who has/have signed the Acceptance Form and/or Specified Holder Certificate do(es) so on behalf of and as duly authorised agent(s) for the joint holder(s) who has/have not signed, that such authority has not been revoked, and that the acceptance and/or certificate is binding on the joint holder(s) who has/have not signed the Acceptance Form and/or Specified Holder Certificate; and
- (b) if the Acceptor holds the relevant Shares as a trustee of a trust, the instrument constituting the trust permits the execution of the Acceptance Form and/or Specified Holder Certificate in the manner in which it was executed.

3.8 Procurement by brokers: Empire may choose to engage the services of one or more Primary Market Participants (as defined in the NZX Participant Rules) or other financial advisory firms (**Brokers**) to contact holders of Shares. If Empire chooses to do this, the key terms of engagement will be as follows:



- (a) For each completed and valid Acceptance Form procured by a Broker, Empire may pay to the Broker a handling or procurement fee in respect of the Shares that are the subject of the Acceptance Form (**Procurement Fee**). The amount of the Procurement Fee will be 2.00% of the consideration payable by Empire under this Offer to the relevant Acceptor in respect of the Acceptance Form received. The Procurement Fee will be subject to a minimum amount of \$50 and a maximum amount of \$500 for a single Acceptance Form inclusive of GST, if any;
- (b) the Broker will be paid, and will receive, the Procurement Fee solely in connection with its services to Empire and must not, directly or indirectly, pass any or all of the Procurement Fee on to any Acceptor, or share the Procurement Fee with any Acceptor;
- (c) the payment of a Procurement Fee to a Broker in respect of an Acceptance Form procured by that Broker is in all respects conditional on the Shares, that are the subject of that Acceptance Form, being validly transferred to Empire. No Procurement Fees will be payable if this Offer is not declared unconditional by Empire. In addition, the Acceptance Form must be delivered to Empire in accordance with clause 3.1 and, unless Empire in its sole discretion determines otherwise, must be stamped by the Broker (and only that Broker);
- (d) Brokers are precluded from receipt of any Procurement Fee in respect of Shares in which they or their associates have relevant interests;
- (e) Empire may, in determining the Procurement Fee payable to a Broker, aggregate and/or disregard any acceptance of this Offer procured by that Broker if Empire believes that a party has structured holdings of the Shares for the purpose or with the effect of enabling parties to take advantage of the arrangements summarised in this clause 3.8; and
- (f) Empire will determine, in its sole discretion, any disputes relating to the payment of a Procurement Fee. The determination of Empire will be final and binding on all parties, to the extent permitted by law.

4. SCALING OF ACCEPTANCES

4.1 How Empire treats acceptances: Empire will purchase:

- (a) all of the Specified Percentage of Shares of each Acceptor who accepts the Offer for the Specified Percentage of their Shares;
- (b) where an Acceptor accepts the Offer in respect of a lesser number of Shares, such lesser number of Shares so long as the minimum acceptance condition is satisfied in accordance with clause 5.1; and
- (c) where an Acceptor has accepted the Offer for more than the Specified Percentage of their Shares, such number of Shares as results from scaling the acceptance in accordance with clause 4.2,

provided that, in each case, the Offer becomes unconditional.

4.2 What happens to surplus acceptances: Where Empire has received acceptances from certain Acceptors (each a **Surplus Acceptor**) for more than the Specified Percentage of those Acceptors' Shares (those Shares in excess being **Surplus Shares**), then in accordance with the Takeovers Code:

- (a) Empire must take up from each Acceptor the lesser of:
 - (i) the number of that Acceptor's Shares that represents the Specified Percentage of the Shares held by that Acceptor; and
 - (ii) the number of Shares in respect of which the Acceptor has accepted the Offer; and
- (b) if the number of Shares that Empire takes up under clause 4.2(a) is less than the Specified Number, then Empire must take up, from each Surplus Acceptor, Shares which bear the same proportion to that Acceptor's Surplus Shares, as the balance of the Shares required by Empire to acquire the Specified Number bears to the total of all the Surplus Shares.



- 4.3 **What happens if there are no surplus acceptances:** If the Offer is accepted in respect of the Specified Percentage of Shares, then Empire must take up all of the Shares of each Acceptor who accepts the Offer.
- 4.4 **Specified Holders:** Where Empire receives one or more Specified Holder Certificates, Empire will take up Shares in accordance with rule 14E of the Takeovers Code and clauses 4.2 and 4.3 will apply accordingly.¹
- 4.5 **Appointment of attorney:** If the Offer is accepted in respect of more Shares than the Specified Percentage, each Acceptor irrevocably appoints Empire its attorney to amend the number of Shares specified in that Acceptor's Acceptance Form and, where applicable, the Specified Holder Certificate so as to reflect any scaling and apportionment undertaken in accordance with this clause 4. This may reduce the number of Shares taken up from the relevant Acceptor.

5. CONDITIONS OF THIS OFFER

- 5.1 **Minimum acceptance condition:** This Offer, and any contract arising from acceptance of it, is conditional on Empire receiving acceptances by no later than the Closing Date in respect of such number of Shares that would, upon this Offer becoming unconditional and the Shares being transferred to Empire, result in Empire holding or controlling 50.01% of the voting rights in Vital.
- 5.2 **Consent:** The Offer, and any contract arising from acceptance of it, is conditional on the consent of the various counterparties with whom Vital has contracted with prior to the Notice Date, to the acquisition by Empire of up to 50.01% of the Shares, becoming unconditional in all respects.²
- 5.3 **Further conditions of the Offer:** This Offer, and any contract arising from acceptance of it, are subject to the conditions that, except as otherwise agreed in writing by Empire, during the period from the Notice Date until the time that the Offer is declared unconditional by Empire:
- (a) Completion to Empire's satisfaction, acting reasonably, of targeted confirmatory due diligence investigations on Vital by Empire and its advisers.³
 - (b) no Material Adverse Change occurs;
 - (c) no dividends, bonuses or other payments or distributions (within the meaning of the Companies Act 1993) of any nature whatsoever (including, for the avoidance of doubt, by way of share buyback, redemption or cancellation or any other form of capital reduction) are authorised, declared, paid or made upon or in respect of any of the Shares;
 - (d) no shares, performance rights, convertible securities or other equity securities of any nature (including options, rights or interest in any ordinary shares) of Vital or any of its subsidiaries or joint venture entities (together the **Vital Group**), are issued, agreed to be issued or made the subject of any option or right to subscribe except pursuant to a transaction between Vital and wholly owned subsidiaries of Vital, or between wholly owned subsidiaries of Vital (**Intra-Group Transaction**);
 - (e) there is no alteration of the rights, benefits, entitlements and restrictions attaching to any of the Shares;

¹ In broad terms, rule 14E provides that where a Specified Holder holds Shares on behalf of more than one person (each person being a **Specified Person**), in certain circumstances Empire must treat the Specified Person (and not the Specified Holder) as the Surplus Acceptor for the purposes of scaling calculations. For example, a Specified Person will be treated as a Surplus Acceptor where that Specified Person accepts the Offer (through the Specified Holder) for more than the Specified Percentage of the Shares held by the Specified Holder on behalf of the Specified Person. The Takeovers Code provides that an acceptance under the Offer by a Specified Holder who has not provided a Specified Holder Certificate in accordance with rule 14B of the Takeovers Code is invalid.

² See footnote 2.

³ Empire will confirm through its targeted confirmatory due diligence which contracts, if any, that require a counterparty consent to a change of control in Vital that would be triggered by the Offer and seek that those consents are obtained. Empire may waive this requirement at its discretion, should consents sought not be forthcoming.



- (f) there is no alteration to the constitutional documents of any member of the Vital Group, other than amendments that are of a formal or technical, and not of a substantive, nature;
- (g) no member of the Vital Group disposes, or agrees to dispose, or grants any person any option to acquire, right to acquire, first right of refusal or pre-emptive rights in respect of, or, except as permitted by clause 5.3(i), grants any person any other adverse interests in respect of, the whole or a substantial part of the Vital Group's business or property with a value in excess of \$1,000,000;
- (h) no member of the Vital Group enters into a material contract with a value in excess of \$500,000;
- (i) no member of the Vital Group grants a security interest, or agrees to grant a security interest, in respect of the whole or a substantial part, of the Vital Group's business or property, except for the granting of a security interest over property acquired in the ordinary course of business;
- (j) Vital remains listed on the NZX, the Shares remain quoted on the NZX, and the Shares are not suspended from trading on the NZX or more than five trading days;
- (k) no liquidator, receiver, receiver and manager, statutory manager or similar official is appointed in respect of any member of the Vital Group or any of their respective assets, and no resolution is passed for any amalgamation (other than pursuant to an Intra-Group Transaction) of any member of the Vital Group and none of them is involved in any merger, share buyback or scheme of arrangement;
- (l) no member of the Vital Group seeks orders in respect of, or becomes the subject of, any scheme of arrangement under Part 15 of the Companies Act 1993;
- (m) Vital conducts its business, and each member of the Vital Group conducts its business, in the ordinary course of business, in a manner materially consistent with the manner in which such business has been conducted in the 12 months prior to the Notice Date;
- (n) no member of the Vital Group acquires an interest in "sensitive land" (including "residential land") for the purposes of the Overseas Investment Act 2005;
- (o) no member of the Vital Group changes, or agrees to change, the remuneration or any other material terms of employment of any existing director, officer, employee, or consultant where the aggregate impact of all such changes would result in a cost to the Vital Group in excess of \$1,000,000;
- (p) no member of the Vital Group settles or offers to settle any action, dispute, issue, claim, litigation, prosecution, or other form of proceeding, where:
 - (i) the aggregate settlement amount exceeds \$1,000,000; or
 - (ii) the settlement involves the imposition of an injunction against, or restriction on, any member of the Vital Group undertaking any business activity, where that injunction or restriction will have a material impact on the business of the Vital Group;
- (q) no member of the Vital Group guarantees, provides an indemnity for, provides security in respect of, or otherwise accepts liability in respect of, the obligations or liabilities of any person who is not a member of the Vital Group except for the provision of indemnities to directors and employees of the Vital Group (to the extent permitted by the Companies Act 1993);
- (r) Vital does not enter into a "major transaction" for the purposes of the Companies Act 1993 or any agreement or arrangement to which NZX Listing Rules 5.1 or 5.2 apply (or would apply but for the granting of any waiver or ruling by NZX);
- (s) there is no temporary restraining order, preliminary or permanent injunction or other order issued by any regulatory authority or any court of competent jurisdiction in New Zealand or elsewhere or other legal restraint or prohibition making implementation of this Offer, or any aspect of it, void, unenforceable or illegal; and



- (t) no board resolution or shareholders' resolution of any member of the Vital Group is passed to do or authorise the doing of any act or matter referred to in any of sub-clauses (a) to (s) (inclusive).
- 5.4 Each of the conditions in clauses 5.1 to 5.3 is a separate condition, and acceptance of this Offer by each Acceptor shall constitute a contract between that Acceptor and Empire subject to each such condition. This Offer will only proceed if all conditions in clauses 5.1 to 5.3 are satisfied or, to the extent permissible, waived.
- 5.5 Each of the conditions set out in clauses 5.1 to 5.3 is for the benefit of Empire and may be waived, in whole or in part, by Empire and on such terms as it decides, in its sole discretion. Any waiver or consent given by Empire in respect of any matter or thing shall apply only in accordance with its terms and shall not constitute a waiver or consent in respect of any similar matter or thing.
- 5.6 To the extent required by the Takeovers Code, where any condition set out in clauses 5.1 to 5.3 requires a determination as to whether a matter is or could reasonably be expected to be material or not, is adverse or not, is onerous or not, is long term or not, is normal or not, is in the ordinary course of business or not, is consistent with past practices or not, or is of a formal or technical (and not substantive) nature or not, before the condition may be invoked, such determination must be made by a suitably qualified expert nominated by Empire who is independent of, and not an associate of Empire.
- 5.7 The latest date on which Empire can declare this Offer unconditional is 10 Working Days after the Closing Date. The latest date by which the Offer is to become unconditional based on the Closing Date as at the Offer Date is 5.00 p.m. on [Monday 14 October 2024] (**Unconditional Date**). If the Offer does not become unconditional by the Unconditional Date, it will lapse and all Acceptance Forms and, where applicable, Specified Holder Certificates will be destroyed.
- 5.8 Without limiting clause 5.9, Empire may not allow the Offer to lapse or invoke a condition in clause 5.3(a), 5.3(m), 5.3(o) or 5.3(p) or clause 5.3(t) (to the extent that clause 5.4(r) relates to clause 5.3(a), 5.3(m), 5.3(o) or 5.3(p)) in respect of, or in reliance on, any matter or circumstance:
 - (a) fairly disclosed by Vital to NZX in the 24 months prior to the Notice Date; or
 - (b) actually known by Empire on the Notice Date.
- 5.9 Notwithstanding any other term of the Offer, Empire may not allow the Offer to lapse:
 - (a) in unreasonable reliance on a condition of the Offer; or
 - (b) in reliance on a condition that restricts Vital's activities in the ordinary course of Vital's business during the period that begins on the Notice Date and ends on the Unconditional Date.

6. CHANGE IN CIRCUMSTANCES

6.1 Dividends and distributions: If, on or after the Notice Date:

- (a) Vital declares or pays any dividend or makes any other distribution to its shareholders; and
- (b) Empire waives the condition contained in clause 5.3(c),

then, at Empire's election, either:

- (a) the Acceptors will be bound to pay to Empire an amount equivalent to that dividend or the value of that other distribution paid or payable to them or received or receivable by them in respect of the Shares taken up from them under the Offer; or
- (b) the cash consideration which would otherwise have been paid to such Acceptors will be reduced by an amount equivalent to that dividend or the value of the other distribution paid or payable to them or received or receivable by them in respect of the Shares taken up from them under the Offer.



6.2 Issues of securities: If, on or after the Notice Date:

- (a) any shares, convertible securities or other securities of any nature of Vital or any member of the Vital Group by way of bonus issue, are issued, agreed to be issued or made the subject of any option or right to subscribe (except in the circumstances referred to in clause 5.3(d); and
- (b) Empire waives the condition contained in clause 5.3(d),

the Acceptors will be bound to transfer any such securities or other rights and interests to Empire and the consideration per relevant Share provided for under clause 2.1 will be reduced to take account of such issue.

6.3 Consolidation or subdivision of Shares: If, on or after the Notice Date, all or any of the Shares are consolidated or subdivided, then:

- (a) this Offer will be interpreted to take into account that consolidation or subdivision and will be deemed to be for the Shares resulting from that consolidation or subdivision;
- (b) the consideration per Share provided for under clause 2.1 will be increased or reduced, as the case may require, in proportion to that consolidation or subdivision; and
- (c) the Acceptors will be bound to transfer those consolidated or subdivided Shares to Empire on the basis of the consideration so increased or reduced.

6.4 Issues of new Shares: If Vital makes any issue of shares to any person on or after the Offer Date other than by way of bonus issue and the condition contained in clause 5.3(d) is waived by Empire, then this Offer will be deemed to extend to and include those shares and the consideration payable for them will be as provided in clause 2.1.

7. METHOD OF SETTLEMENT

7.1 Nominated method payment: If:

- (a) this Offer is declared unconditional; and
- (b) an Acceptor's relevant Acceptance Form is in order (or Empire rectifies any errors or omissions in or from the relevant Acceptance Form or otherwise accepts the relevant Acceptance Form as valid under clause 3.3); and
- (c) where applicable, the Specified Holder Certificate is received and is in order (or Empire rectifies any errors or omissions in or from the Specified Holder Certificate or otherwise accepts the Specified Holder Certificate as valid under clause 3.3),

the cash amount will be electronically transferred to the bank account identified in the Acceptor's Acceptance Form, by the date specified in clause 2.2.

7.2 No nominated method of payment: If:

- (a) an Acceptor does not nominate a method of payment; or
- (b) an Acceptor does not provide sufficient details to Empire for Empire to make an electronic funds transfer to the Acceptor's nominated bank account,

Empire will pay the amount payable to the Acceptor by electronic funds transfer to any bank account that the relevant Acceptor has advised to MUFG Pension & Market Services (such as for dividend payments).

7.3 Interest: In no circumstances will Empire be liable to pay interest on any payment due to an Acceptor.



8. NOTICES

8.1 Notices given to Vital, the Takeovers Panel and NZX:

- (a) declaring this Offer unconditional;
- (b) advising that this Offer is withdrawn in accordance with the Takeovers Code;
- (c) advising that a term or condition of this Offer has been waived; or
- (d) advising that this Offer has lapsed in accordance with its terms or the Takeovers Code,

will, in each case, be deemed to be notice to all Vital shareholders when so given.

8.2 Notice of any variation of this Offer will be sent to Vital, the Takeovers Panel, NZX and, except where not required in accordance with the Takeovers Code, to each of Vital shareholders under this Offer.

9. FURTHER INFORMATION AND MISCELLANEOUS

9.1 **Schedule:** Further information relating to this Offer, as required by Schedule 1 of the Takeovers Code, is set out in the Schedule to this Offer and forms part of this Offer Document.

9.2 **Definitions:** In this Offer Document, unless the context indicates otherwise:

Acceptance Form means the acceptance and transfer form relating to the Shares that is enclosed with, and forms part of, this Offer Document;

Acceptor means a holder of Shares who has accepted this Offer in accordance with its terms;

Closing Date means [30 September 2024] or such other date to which the Offer Period is extended in accordance with the Takeovers Code;

Closing Time means 11.59 p.m. on the Closing Date;

Empire means Empire Technology Limited (NZCN 9268858);

Material Adverse Change means a matter, event or circumstance that occurs or becomes known to Empire after the Notice Date (each a **Specified Event**) which has, has had, or is reasonably likely to have a material adverse effect of:

- (a) diminishing the consolidated net tangible assets of Vital and each of its Related Companies (together, the Vital Group) taken as a whole by at least \$2,000,000 against what it would reasonably have been expected to have been but for such Specified Event (either individually or when aggregated with other matters, events or circumstances of a similar kind or category); or
- (b) diminishing the consolidated earnings before interest, tax, depreciation and amortisation of the Vital Group for the then current 52-week period (that is, for example if the matter, event or circumstance occurs on or before 1 July 2024, the 52 week period ending 30 June 2025 (FY25) by at least \$1,000,000 against what they would reasonably have been expected to have been but for such Specified Event (either individually or when aggregated with other matters, events or circumstances of a similar kind or category) but disregarding matters, events or circumstances which have a one-off or non-recurring impact and the results of which are felt by the Vital Group only in FY25,

in each case, determined after disregarding matters, events or circumstances:

- (a) resulting from changes in general economic or political conditions (including changes in foreign exchange rates, interest rates or commodity prices), the securities market in general or law;
- (b) fairly disclosed to NZX or to Empire prior to the Notice Date;



- (c) done or not done at the written request or with the written acknowledgement and written approval of Empire, including any consequences reasonably foreseeable as a result of such matters;
- (d) resulting solely from the actual or anticipated change of control of Vital contemplated by this Offer;
- (e) resulting from changes in generally accepted accounting principles; or
- (f) resulting from the implementation of IFRS 16;

Notice Date means [Monday 19 August 2024], being the date on which Empire served or caused to be served on Vital a notice in writing pursuant to rule 41 of the Takeovers Code;

NZX means NZX Limited and, where the context requires, the main board financial market that it operates;

NZX Listing Rules means the main board listing rules of NZX;

Offer means the offer for the Specified Percentage of Shares as set out in this Offer Document;

Offer Date means [Monday 2 September 2024], being the date of this Offer Document specified in clause 1.2;

Offer Document means this offer document dated [Monday 2 September 2024];

Offer Period means the period beginning on the Offer Date and ending at the Closing Time;

Offer Terms means the Terms and Conditions of the Offer set out on pages [9] to [22] of the Offer Document;

Registrar means MUFG Pension & Market Services, the registrar for the Offer;

Related Company has the meaning, in relation to a company, given to that expression in section 2(3) of the Companies Act 1993, provided that, for this purpose, references to "company" in that section will extend to any body corporate wherever incorporated or registered;

Share(s) means a fully paid ordinary share in Vital;

Specified Holder Certificate means the certificate, that is enclosed with, and forms part of, this Offer Document, that must be signed by a person that holds equity securities on behalf of more than one person;

Specified Number means the total number of Shares which the Specified Percentage represents.

Specified Percentage means 50.01%, subject to any adjustment in accordance with rule 9(7) of the Takeovers Code (if applicable);

Takeover Notice means Empire's notice, under rule 41 of the Takeovers Code of its intention to make a partial takeover offer for Vital;

Takeovers Code means the takeovers code recorded in the Takeovers Regulations 2000 (SR 2000/210) as consolidated, amended, re-enacted or replaced from time to time and as varied by any applicable exemption granted by the Takeovers Panel;

Takeovers Panel means the takeovers panel established by the Takeovers Act 1993;

Unconditional Date means, at the latest, [Monday 14 October 2024], but this may change (as permitted by the Takeovers Code) if the Closing Time is extended in accordance with the Takeovers Code;

Vital means Vital Limited (NZX:VTL);

Vital Group means Vital and its subsidiaries, associates and controlled persons; and



Working Day has the meaning given in section 2(1) of the Companies Act 1993.

9.3 Interpretation: In this Offer Document:

- (a) except as expressly defined in this Offer Document, or where the context requires otherwise, terms defined in the Takeovers Code have the same meaning in this Offer Document;
- (b) references to amounts of dollars, NZD and \$ are to New Zealand currency and to times are to New Zealand time;
- (c) headings are for ease of reference only and will not affect the interpretation of this Offer Document or any Acceptance Form or Specified Holder Certificate;
- (d) references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by-law, regulation, order, statutory instrument, determination or subordinate legislation made under it;
- (e) the singular includes the plural and vice versa;
- (f) all percentages in the Offer (including the Specified Percentage and in the Schedule) are rounded to two decimal places; and
- (g) a reference to "fairly disclosed" means a disclosure in writing to Empire or NZX (as applicable) in a manner, and in sufficient detail, so as to enable a reasonable bidder to identify and reasonably assess the nature, scope and significant implications of the relevant matter, event or circumstances.

9.4 Takeovers Act and Code prevail: If there is any inconsistency between the terms and conditions of this Offer and the provisions of the Takeovers Act 1993 (including any exemption granted under it) or the Takeovers Code, the provisions of the Takeovers Act 1993 or the Takeovers Code (as the case may be) will prevail to the extent of that inconsistency.

9.5 Documents and transfers: All electronic funds transfers, Acceptance Forms, Specified Holder Certificates and other documents to be delivered, sent or transferred by or to any person will be delivered, sent or transferred at that person's own risk.

9.6 Variation: This Offer may be varied by Empire in accordance with the Takeovers Code or any exemption granted by the Takeovers Panel under section 45 of the Takeovers Act 1993.

9.7 Governing law and jurisdiction: This Offer and any contract arising from it shall be governed by and construed in accordance with the laws of New Zealand, and the parties to any such contract submit to the non-exclusive jurisdiction of the Courts of New Zealand.