



PRIME MINERALS LIMITED

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27 June 2014

ASX ANNOUNCEMENT

PRIME MINERALS LIMITED TO MERGE WITH COCOON DATA HOLDINGS LIMITED

On 20 May 2014, Prime Minerals Limited (ACN 120 658 497) (**Prime**) announced the entry into a binding heads of agreement (**HOA**) to merge with unlisted Australian public company Cocoon Data Holdings Limited (ACN 127 993 300) (**Cocoon**) (**Merger**), which holds various intellectual property interests pertaining to data security software known as “Covata”.

Prime is now pleased to announce the entry into a formal bid implementation agreement (**BIA**) under which Prime and Cocoon will complete the Merger by way of Prime making a conditional off-market takeover offer (**Takeover Offer**) to acquire all of Cocoon’s fully paid ordinary shares (**Cocoon Shares**).

Details in respect of Cocoon and its business activities are set out in Prime’s announcement of 20 May 2014 and further details will be included in a bidder’s statement, target’s statement and prospectus to be prepared by Prime and Cocoon.

The full conditions of the Takeover Offer are set out in Annexure A to this announcement. An executed copy of the BIA is Annexure B to this Announcement.

In addition to the Takeover Offer, Prime intends, subject to necessary shareholder approvals, to consolidate its capital on a 10 for 1 basis (**Consolidation**), conduct a capital raising under a full form prospectus (**Prospectus**) to raise at least \$2.5 million and up to between \$10 – 15 million (subject to market conditions) at a minimum issue price of \$0.20 per Share (**Capital Raising**), re-comply with Chapters 1 and 2 of the ASX Listing Rules and change its name to “**Covata Limited**”.

transaction summary & mechanics

Takeover Offer Consideration

Under the terms of the BIA, Prime will seek to acquire 100% of issued Cocoon Shares (including Cocoon Shares issued during the offer period) via the Takeover Offer. Cocoon shareholders will be offered total non cash consideration of \$57,281,673.

Prime will offer a total of 250,000,000 fully paid ordinary shares in the capital of Prime (**Prime Shares**) and 36,408,365 performance shares in Prime (the terms of which are set out in Schedule 3 of the BIA) (**Performance Shares**), at a deemed issue price of \$0.20 each, both on a post Consolidation basis. These securities will be offered pro rata to Cocoon shareholders on the basis of:

- 0.6547 Prime Shares for each Cocoon Share held; and
- 0.0953 Performance Shares for each Cocoon Share held.

Under the BIA, Cocoon is entitled to seek an additional \$1 million in funding which it proposes raising by way of an issue of an addition 20 convertible notes (each with a face value of \$50,000), convertible into Cocoon Shares at \$0.15 each (**Additional Convertible Notes**). It is a condition of any such Additional Convertible Notes that they are automatically converted into Prime Shares upon the Takeover Offer being completed successfully.

A proposed capital structure upon completion of the Merger is set out further below.

Secured Loan Agreement

Prime has agreed to make a \$1.5 million convertible loan facility available to Cocoon upon the Takeover Offer being completed successfully. The loan is to be secured by a first ranking general security over Cocoon.

Cocoon convertible securities

Cocoon Options

Under the BIA, Prime and Cocoon have agreed to enter into agreements with existing Cocoon optionholders to replace their existing 28,825,000 Cocoon options with 28,825,000 Prime options upon successful completion of the Merger. These replacement options are to be granted, subject to necessary shareholder and regulatory approvals (including, if necessary, waiver of the ASX Listing Rules), on the same terms as the options currently held by Cocoon optionholders.

In addition, certain directors of Cocoon have entitlements to be issued with an aggregate of 15,000,000 Cocoon options in accordance with the terms of their employment agreements (with 10 million of those Cocoon options exercisable at AUD \$0.15 and 5 million of those Cocoon options exercisable at USD \$0.11, on or before the date which is 10 years from the date of issue). Under the BIA, Prime has agreed, subject to shareholder and regulatory approval, to issue an equivalent number of Prime options to those directors on equivalent terms to the Cocoon options held within 10 Business Days of Prime being re-admitted to trading on ASX.

Cocoon Convertible Notes

Under the BIA, Cocoon has agreed:

- to procure that all holders of convertible notes in Cocoon issued prior to the date of the HOA vary the terms of their convertible note agreements to require that the convertible notes will convert automatically upon the Takeover Offer being declared unconditional and that the holder accepts the Takeover Offer in respect of the Cocoon Shares issued to them within 5 business days of conversion of their convertible notes; and
- to procure that all holders of convertible notes issued after the date of the HOA enter into tripartite deeds with Prime under which they agree that, upon successful completion of the Takeover Offer, their convertible notes will automatically convert directly into Prime Share at a conversion price of \$0.20 per Share.

Cocoon Warrants

Under the BIA, Cocoon has agreed to procure that all holders of warrants in Cocoon vary the terms of their warrant deeds to require that the warrants will be cancelled automatically upon the Takeover Offer being declared unconditional in consideration for an issue of Cocoon Shares and the holder accepts the Takeover Offer in respect of the Cocoon Shares issued to them on conversion of their warrants.

Defeating Conditions

The full conditions of the Takeover Offer are set out in Annexure A to this announcement.

Prime has agreed to lodge a Bidder's Statement containing the terms of the Takeover Offer as soon as practicable.

Escrow

The Prime securities issued to Cocoon shareholders and option holders will be subject to any applicable escrow restrictions in accordance with the ASX Listing Rules.

Cocoon Board Recommendation

The Board of Cocoon has agreed to unanimously recommend the Takeover Offer in the absence of a superior proposal.

Key Shareholder Support

Key Cocoon shareholders, who collectively own 60% of issued Cocoon Shares, have indicated that they intend to accept the Takeover Offer within 2 Business Days after the Takeover Offer opens in the absence of a superior offer.

Re-compliance with ASX Listing Rules Chapters 1 and 2

Since the Merger will result in a significant change to the nature and scale of Prime's activities, it will require Prime's shareholder approval under ASX Listing Rule 11.1.2 and will also require Prime to re-comply with Chapters 1 and 2 of the ASX Listing Rules.

Consolidation

In order to re-comply with the ASX Listing Rules, Prime intends, subject to shareholder approval, to undertake a consolidation of its issued capital on a 10 for 1 basis with a view to Prime's Shares being valued at a minimum of \$0.20 each post Consolidation.

Capital Raising

To enable Prime to re-comply with the ASX Listing Rules and to support Prime's growth strategy post Merger, Prime plans, subject to shareholder approval, to conduct a capital raising under the Prospectus to raise at least \$2.5 million and up to between \$10 – 15 million (subject to market conditions).

Under the Prospectus, Prime Shares will be offered at a minimum issue price of \$0.20 per Prime Share, on a post Consolidation basis.

Shareholder Approvals

A notice of meeting seeking shareholder approval for the resolutions required to effect the Merger will be sent to Prime shareholders in due course. It is expected that Prime will convene a meeting to facilitate shareholder approval in August 2014.

On the date of the meeting, Prime securities will be suspended and, subject to shareholder approval being obtained, will remain suspended until Prime has re-complied with ASX Listing Rules and the merger with Cocoon has taken effect.

Exclusivity and break fee

The BIA contains mutual no shop, no talk and no due diligence exclusivity arrangements in relation to the Takeover Offer (subject to standard fiduciary carve outs) that terminate on the earlier of the Takeover Offer closing, 30 September 2014 and termination of the BIA. The BIA also includes notification rights and a first right to match competing proposals.

A break fee of 1% of the total consideration payable by Prime in respect of the Merger applies in certain circumstances.

Full details of the exclusivity arrangements and reimbursement fees are set out in the BIA.

pro-forma Capital structure

On the basis Prime completes the Merger and associated transactions on the terms set out above, Prime's capital structure on a post-Consolidation basis will be as follows (assuming 100% acceptance of the Takeover Offer, conversion of all convertible notes and warrants in Cocoon (including any additional convertible notes issued in accordance with the terms of the BIA and no other Shares are issued by either Prime or Cocoon):

	Shares (assuming \$2.5 million raised under Capital Raising)	%	Shares (assuming \$10 million raised under Capital Raising)	%
Current Issued Capital	337,444,946	N/A	337,444,946	N/A
Post Consolidation Issued Capital	33,744,495	9.47%	33,744,495	8.57%
Takeover Offer Consideration Shares	250,000,000	70.19 %	250,000,000	63.51 %
Takeover Offer Performance Shares ¹	36,408,365	10.22 %	36,408,365	9.25%
Capital Raising ²	12,500,000	3.51%	50,000,000	12.70 %
Advisor Fees ³	10,000,000	2.81%	10,000,000	2.54%
Conversion of Additional Convertible Notes ⁴	13,500,000	3.79%	13,500,000	3.43%
Total Post Merger & Capital Raising	356,152,860	100%	393,652,860	100%

Notes:

1. The deferred consideration will be payable by way of an issue of Performance Shares to Cocoon shareholders. The terms and conditions of the Performance Shares (including the milestones for conversion) are set out in Schedule 3 of the BIA.
2. This assumes that the issue price under the Capital Raising is \$0.20 per Share and that \$2.5 million is raised. Prime and Cocoon are yet to settle on the final issue price of Shares under the Capital Raising and, if the issue price is increased, a lesser number of Shares will be issued under the Capital Raising. Subject to market conditions, Prime may raise up to an additional \$5 million under the Capital Raising.
3. Upon completion of the Merger, Prime proposes issuing up to a total of 10 million Prime Shares to advisors of Prime and Cocoon.
4. The Additional Convertible Notes (together with interest incurred at a rate of 2% per month) will automatically convert into Prime Shares upon successful completion of the Takeover Offer at a deemed issue price of \$0.20 per Prime Share. This assumes that 4 months interest is payable in respect of the Additional Convertible Notes at the time of conversion.

Prime does not currently have any options on issue. However, under the BIA, Prime has agreed to issue a total of 43,825,000 Prime options to Cocoon optionholders in consideration for the cancellation of their Cocoon options (or entitlements to Cocoon options), on the terms set out below:

Number of Prime Options	Exercise Price	Expiry Date
4,700,000	AUD \$0.2933	9 March 2016
16,275,000	USD \$0.1467	24 July 2022
2,000,000	USD \$0.1467	1 August 2022
2,350,000	USD \$0.1467	17 December 2022
750,000	USD \$0.1467	31 July 2023
1,500,000	USD \$0.1467	28 August 2023
1,250,000	USD \$0.1467	18 December 2023
5,000,000	USD \$0.1467	10 years from the date of issue
10,000,000	AUD \$0.20	10 years from the date of issue

indicative timetable

An indicative timetable for completion of the merger with Cocoon and associated transactions is set out below:

Event	Date
Announcement of Takeover Offer	27 June 2014
Draft Prime Notice of Meeting lodged with ASX	4 July 2014
Notice of Meeting sent to Prime shareholders	11 July 2014
Bidder's Statement lodged with ASIC and served on Cocoon and ASX	18 July 2014
Target's Statement lodged with ASIC and served on Prime and ASX	23 July 2014
Prospectus lodged with ASIC	25 July 2014
Bidder's Statement and Target's Statement sent to Cocoon shareholders	29 July 2014
Notice to Target and ASIC that Bidder's Statement and Takeover Offer has been sent to Cocoon shareholders	29 July 2014
Prime Shareholder Meeting	11 August 2014
Prospectus offer closes	21 August 2014
Takeover Offer closes	29 August 2014
Re-instatement to trading on ASX	12 September 2014

Please note this timetable is indicative only and the directors of Prime reserve the right to amend the timetable as required.

ADVISORS

Prime's legal advisor is Steinepreis Paganin.

Cocoon's legal advisor is Quinert Rodda & Associates.

contact information

For further information please contact:

Ronn Bechler
Market Eye Pty Ltd
(03) 9591 8900

Annexure A – Defeating Conditions

The Takeover Offer is proposed to be subject to the following defeating conditions. Terms used below have the meaning given in the BIA, as provided in Annexure B.

1. Approval of Essential Bidder Resolutions

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

2. No Target Material Adverse Change

During the period from the Announcement Date to the end of the Offer Period (inclusive), no Target Material Adverse Change occurs, is announced or becomes known to Bidder (whether or not it becomes public).

3. No Target Prescribed Occurrence

During the period from the Announcement Date to the end of the Offer Period (inclusive), no Target Prescribed Occurrence occurs.

4. Minimum Acceptance Condition

As at the end of the Offer Period, Bidder Group has a Relevant Interest in such number of Target Shares as represents at least 90% in aggregate of all Target Shares then on issue and being entitled to proceed to compulsory acquisition of Target Shares under the Corporations Act.

5. Prospectus Offer Condition

The Prospectus Offer closes and, as at the close of the Prospectus Offer, Bidder receives or becomes entitled to receive, in immediately available funds, gross proceeds of no less than \$5 million (less the amount of any Convertible Note Proceeds) as a result of subscriptions made under the Prospectus Offer.

6. ASX consent to re-admission

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

7. No regulatory intervention

During the period from the Announcement Date to the end of the Offer Period (inclusive):

- there is not in effect any preliminary or final decision, order or decree issued by an Authority; and
- no application is made to any Authority (other than by Bidder or a subsidiary of Bidder), or action or investigation is announced, threatened or commenced by an Authority,

in consequence of or in connection with the Offer (other than an application to or a determination by ASIC or the Takeovers Panel in the exercise of the powers and discretions conferred by the Corporations Act), which restrains, impedes or prohibits (or if granted could restrain, impede or prohibit), or otherwise materially adversely impacts upon, the making of the Offer or any transaction contemplated by this agreement, the Offer or the rights of Bidder in respect of Target or the Target Shares to be acquired under the Takeover Bid, or requires the divestiture by Bidder or Bidder's Shareholders of any Target Shares or the divestiture of any assets of Target Group, Bidder, Bidder Group or otherwise.

8. No material acquisitions

Between the Announcement Date and the end of the Offer Period (each inclusive), no Target Material Transaction occurs.

9. Conversion of Target Convertible Securities

By the end of the Offer Period, all Target securities convertible into Target Shares on issue as at the date of this Agreement have been either converted into Target Shares or cancelled, except for securities issued under the Target's Employee Option Scheme (US), and Target having no more than 381,877,818 Target Shares on issue..

Annexure B – Bid Implementation Agreement

PRIME MINERALS LIMITED
ACN 120 658 497
(Bidder)

and

COCOON DATA HOLDINGS LIMITED
ACN 127 993 300
(Target)

BID IMPLEMENTATION AGREEMENT

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PARTIES

PRIME MINERALS LIMITED (ACN 120 658 497) of Level 1, 8 Parliament Place, West Perth, WA 6005 (**Bidder**);

AND

COCOON DATA HOLDINGS LIMITED (ACN 127 993 300) of Level 4, 156 Clarence Street, Sydney, NSW 2000 (**Target**).

RECITALS

- A. The Bidder and the Target have executed the Heads of Agreement under which they agree to merge, subject to the conditions contained therein.
- B. Bidder proposes to acquire Target by means of the Takeover Bid.
- C. This agreement is entered into to record and give effect to the terms and conditions on which Bidder proposes to make the Takeover Bid and Target intends to support the Takeover Bid.

Operative Parts

1. DEFINED TERMS AND INTERPRETATION

1.1 Defined terms

The following definitions apply unless the context requires otherwise.

Additional Target Convertible Notes means notes issued by Target under the Convertible Note Agreements.

Adviser Shares means up to 100,000,000 Bidder Shares (on a pre-Share Consolidation basis) to be issued to key advisers of Bidder in consideration for those persons introducing and assisting with the Transaction, to be voluntarily escrowed for 12 months from the date of issue.

Announcement Date means the date of issue by the Bidder of its announcement in relation to the Takeover Bid in accordance with this agreement.

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 and Target were a designated body.

ASX means ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it.

ASX Listing Rules means the official listing rules of the ASX.

Authority means:

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

Bid Conditions means each of the conditions of the Offer as enumerated in Schedule 1.

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

Bidder Disclosure Materials means the information and documents disclosed in writing by Bidder or its Representatives about the Bidder Group and its businesses to Target or its Representatives or otherwise disclosed by Bidder in its public announcements to ASX prior to the date of this agreement.

Bidder Group means Bidder and its related entities.

Bid Implementation Agreement means this agreement.

Bidder Material Adverse Change means any event, matter or circumstance which individually, or when aggregated with all such other events, matters or circumstances results in or could reasonably be expected to result in:

- (a) the value of the consolidated net assets of the Bidder Group reported in Bidder's audit reviewed financial statements for the half year ended 31 December 2013 being reduced by at least \$250,000; or
- (b) the incurrence of any obligations, liabilities, costs or expenses (contingent or otherwise), where the quantum (whether individually or when aggregated with all such other events) is at least \$250,000 in any 6-month period; or

other than an event, matter or circumstance:

- (c) in accordance with the terms of the Secured Loan or a Convertible Note Agreement (excluding any event, matter or circumstance that occurs as a result of an event of default under any of those agreements);
- (d) required or permitted to be done by this agreement;
- (e) required to be done as a result of the Takeover Bid or the Re-compliance Process;

- (f) the occurrence of which was fairly disclosed in the Bidder Disclosure Materials or fairly disclosed by Bidder in its public announcements to ASX prior to the date of this agreement;
- (g) caused or materially contributed to by Target;
- (h) that is an actual event, matter or thing which is actually known to Target prior to the date of this agreement (which does not include knowledge of the risk of an event, occurrence or matter happening); or
- (i) directly resulting from any actions taken (or omitted to be taken) following a written request from Target or with Target's prior written consent.

Bidder Material Transaction means any member of the Bidder Group:

- (a) acquiring, offering to acquire or agreeing to acquire one or more entities, businesses or assets (or any interest in one or more entities, businesses or assets) for an amount in aggregate greater than \$250,000;
- (b) disposing of, offering to dispose of or agreeing to dispose of one or more entities, businesses or assets (or any interest in one or more entities, businesses or assets) for an amount, or in respect of which the book value is, in aggregate, greater than \$250,000;
- (c) entering into, agreeing to enter into or announcing any agreement to enter into any contract, commitment or arrangement, joint venture or partnership that:
 - (i) requires payments, expenditure or the foregoing of revenue by any member of the Bidder Group of an amount in excess of \$250,000 on any individual basis or which is, in aggregate, greater than \$250,000; or
 - (ii) is material in the context of the Bidder Group and is not in the ordinary course of business;
- (d) entering into or agreeing to enter into, terminating or agreeing to terminate a contract, commitment or arrangement for the provision of services or a licence to a third party that is a new or existing customer that results in any member of the Bidder Group incurring costs greater than \$250,000 on an individual basis or is, in aggregate, greater than \$250,000 for the entire term of such contract, commitment or arrangement;
- (e) providing or agreeing to provide financial accommodation or a guarantee (other than to entities within the Bidder Group) for any amount, or receives financial accommodation (other than from entities within the Bidder Group) for any amount;
- (f) entering into, amending, or agreeing to enter into or amend, any material contract, commitment or other arrangement with a related party (as defined in section 228 of the Corporations Act) of Bidder; or

- (g) incurring, agreeing to incur or bringing forward the time for incurring, or granting to a third party a right the exercise of which would involve any member of the Bidder Group incurring or agreeing to incur an amount of capital expenditure in excess of \$250,000,

other than to the extent:

- (h) required or permitted to be done by this agreement;
- (i) required to be done under the Takeover Bid or the Re-compliance Process;
- (j) fairly disclosed by Bidder to Target in writing prior to execution of this agreement;
- (k) actually known to Target prior to the date of this agreement (which does not include knowledge of the risk of an event, occurrence or matter happening); or
- (l) directly resulting from any actions taken (or omitted to be taken) following a written request from Target or with Target's prior written consent, with such consent not to be unreasonably withheld or delayed.

Bidder Option means an option to be issued a Bidder Share.

Bidder Prescribed Occurrence means any of the following:

- (a) Bidder converts all or any of its shares into a larger or smaller number of shares;
- (b) any member of the Bidder Group (other than a direct or indirect wholly owned subsidiary of Bidder) resolves to reduce its share capital in any way or reclassifies, redeems or repurchases any of its shares;
- (c) any member of the Bidder Group (other than a direct or indirect wholly owned subsidiary of Bidder) enters into a buy-back agreement or resolves to approve the terms of a buy-back agreement;
- (d) any member of the Bidder Group issues equity securities or grants an option or performance right over any securities (including equity securities, debt securities or convertible securities, or agrees to make such an issue or grant) other than to Bidder or to a direct or indirect wholly owned subsidiary of Bidder or pursuant to performance rights, the conversion of convertible securities or the exercise of options the existence of which has been fairly disclosed to Target before the date of this agreement;
- (e) the Bidder amends or proposes to amend its constitution;
- (f) any member of the Bidder Group creates or agrees to create any Encumbrance over the whole or any part of its assets or undertaking other than an Encumbrance arising in the ordinary course of business;

- (g) an order or application is made or a resolution is passed for the winding up of any member of the Bidder Group;
- (h) an administrator, liquidator, provisional liquidator, receiver or receiver and manager is appointed in respect of any member of the Bidder Group or the whole or any part of the assets or undertaking of any member of the Bidder Group, or any member of the Bidder Group executes a deed of company arrangement;
- (i) any member of the Bidder Group ceases to carry on business or is deregistered under the Corporations Act;
- (j) any member of the Bidder Group enters into any unusual or abnormal contract or commitment which is outside the ordinary course of business and which could reasonably be expected to:
 - (i) change the nature of the business conducted by the Bidder Group; or
 - (ii) have a material adverse impact on the business conducted by the Bidder Group;
- (k) any member of the Bidder Group enters into a contract or commitment restraining any member of the Bidder Group from competing with any person or conducting activities in any market;
- (l) any member of the Bidder Group enters into or otherwise becomes a party to, any material transaction with a related party (as that term is defined in Chapter 2E of the Corporations Act) of Bidder (other than between Bidder and a direct or indirect wholly owned subsidiary of Bidder);
- (m) any member of the Bidder Group (other than a direct or indirect wholly owned subsidiary of Bidder) declares, pays, or determines to be payable any distribution, bonus or other share of its profits or assets (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie);
- (n) any member of the Bidder Group disposes of, or offers or agrees to dispose of, any material business, asset, joint venture interest, entity or undertaking (or any interest in a business, asset, joint venture, entity or undertaking) or makes an announcement in relation to such a disposal, offer or agreement;
- (o) any member of the Bidder Group:
 - (i) enters into any financing arrangement or commitment or agrees to extend, repay or materially amend any existing financing arrangement or commitment; or
 - (ii) guarantees, indemnifies or provides security for the obligations of any person or entity other than a member of the Bidder Group; and

- (p) any member of the Bidder Group agrees or announces an intention to take any of the actions referred to in paragraphs (a) to (o) above,

provided that a Bidder Prescribed Occurrence will not include any matter:

- (q) required or permitted to be done or procured by Bidder under this agreement or which is otherwise contemplated by this agreement;
- (r) required to be done as a result of the Takeover Bid or the Re-compliance Process;
- (s) fairly disclosed by Bidder to Target in writing prior to execution of this agreement;
- (t) actually known to Target prior to the date of this agreement (which does not include knowledge of the risk of an event, occurrence or matter happening);
- (u) directly resulting from any actions taken (or omitted to be taken) following a written request from Target or with Target's prior written consent; or
- (v) approved in writing by Target, such approval not to be unreasonably withheld or delayed.

Bidder Reimbursement Amount means a cash payment equal to 1% of the Consideration (plus GST, if applicable).

Bidder Share means a fully paid ordinary share in the capital of 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 Bidder's activities as a result of the Takeover Bid, for the purposes of ASX Listing Rule 11.1.2;
- (b) the Share Consolidation;
- (c) subject to the Takeover Bid being declared Unconditional or completing:
 - (i) the capital raising under the Prospectus Offer, for the purposes of ASX Listing Rule 7.1;
 - (ii) the issue of a new class of share capital of the Bidder, being the Performance Shares;
 - (iii) the change of name of Bidder to "Covata Limited" or such other name as determined by Target;
 - (iv) the election of three nominees of Target to the Bidder Board;
 - (v) the issue of the Adviser Shares;

- (vi) the adoption of a new constitution of Bidder;
- (vii) the issue of Replacement Bidder Options in accordance with clauses 6.3 and 6.4(a);
- (viii) the issue of Bidder Options in accordance with clause 6.4(d); and
- (ix) the issue of Bidder Shares in accordance with clause 7,

in each case with effect on and from the fifth Business Day (or such other date as the parties may agree) after the last day of the Offer Period.

Bidder Superior Proposal means a Superior Proposal from the perspective of Bidder Shareholders.

Bidder's Statement means the bidder's statement to be issued by Bidder to Target Shareholders in relation to the Offer as required under section 633(1) of the Corporations Act.

Business Day means a business day as defined in the ASX Listing Rules.

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

- (a) acquire, or have a right to acquire, a legal, equitable or economic interest or Relevant Interest in 10% or more of all of the voting shares in that party's Shares (whether by way of acquisition of existing shares or the issue of new shares);
- (b) acquire, or have a right to acquire, a legal, equitable or economic interest in the whole or a substantial part of the business or assets of that party and/or its related entities;
- (c) acquire control of that party, within the meaning of section 50AA of the Corporations Act; or
- (d) otherwise acquire or merge with that party (including by reverse takeover bid or takeover bid, scheme of arrangement or by establishing a dual listed company structure or stapled security structure).

Consideration means, assuming 100% acceptance of the Offer and Target having a total of 381,877,818 Target Shares on issue after conversion or cancellation of all convertible securities, a sum of \$57,281,673, to be satisfied through the issue to Target Shareholders of a total of 250,000,000 Bidder Shares and 36,408,365 Performance Shares (at a deemed issue price of \$0.20 each), to be issued to each Target Shareholder who accepts the Offer as follows:

- (a) 0.6547 Bidder Shares (on a post-Share Consolidation basis) for each Target Share held; and

- (b) 0.0953 Performance Shares (on a post-Share Consolidation basis) for each Target Share held.

Control, in respect of an entity, has the meaning given in section 50AA of the Corporations Act.

Convertible Note Agreement means an agreement entered into by Target after the date of the Heads of Agreement pursuant to which a lender, or lenders, advances (in aggregate with any other Convertible Note Agreements) up to \$2,500,000 (or such higher amount as Bidder and Target agree in writing) to the Target in payment of the face value of the convertible notes in exchange for which Target issues to such lender convertible notes, and includes a **Secured Convertible Note Agreement**.

Convertible Note Proceeds means all monies paid as the face value of convertible notes under any Convertible Note Agreement.

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

Court means the Federal Court of Australia, the Supreme Court of Western Australia or any other court of competent jurisdiction under the Corporations Act as Bidder and Target agree in writing.

Employee Option Scheme (AU) means the "Cocoon Data Holdings Limited Share Option Plan" approved by Target Board on 27 November 2012.

Employee Option Scheme (US) means the "Cocoon Data Holdings Limited 2012 Share Incentive Plan" approved by Target Board on 2 August 2011.

Encumbrance means any mortgage, fixed or floating charge, pledge, lien, option, right to acquire a security or to restrain someone from acquiring a security (including under a right of pre-emption or right of first refusal), assignment by way of security, trust arrangement for the purpose of providing security, retention arrangement or other security interest of any kind (including a "security interest" as defined under the *Personal Property Securities Act 2009* (Cth)), and any agreement to create any of the foregoing or allow any of the foregoing to exist.

Essential Bid Conditions means Bid Condition 4, Bid Condition 5 and Bid Condition 6.

Essential Bidder Resolutions means those resolutions referred to in paragraphs (a), (b), (c)(i), (c)(ii), (c)(iv), (c)(vii), (c)(viii) and (c)(ix) of the definition of "Bidder Shareholder Meeting".

Exclusivity Period means the period starting on the date of this agreement and ending on the first to occur of:

- (a) termination of this agreement; and
- (b) the Long Stop Date.

Existing Target Convertible Notes means notes issued by Target which are convertible into Target Shares issued by Target and were in existence as at the date of the Heads of Agreement.

GST has the meaning given in the GST Act.

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

Heads of Agreement means the binding heads of agreement dated 19 May 2014 between Bidder and Target.

Insolvent means, in respect of a party, any one or more of the following events:

- (a) that party is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) an administrator, liquidator, provisional liquidator, receiver, receiver and manager or equivalent officer has been appointed in respect of that party or the whole or any part of its assets or undertaking;
- (c) an arrangement, compromise, moratorium, assignment, composition or similar arrangement with creditors has been proposed, agreed or sanctioned in respect of that party (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other party);
- (d) an order or application has been made, or a resolution has been passed, for the winding up or dissolution of that party;
- (e) that party has stopped paying its debts as they fall due or is unable to pay its debts as they fall due; or
- (f) something having a substantially similar effect to paragraphs (a) to (e) occurs in respect of that party under the laws of any jurisdiction.

Intellectual Property means the intellectual property interests set out in Schedule 4.

Loan Share Plan (AU) means the "Cocoon Data Holdings Limited Loan Plan" approved by Target Board on 31 October 2013.

Long Stop Date means the earlier of:

- (a) the date on which the Offer Period in respect of the Takeover Bid ends; and
- (b) 30 September 2014, or such later date as Bidder and Target agree in writing, and each party must reasonably consider any request by the other party to extend such date.

Minimum Acceptance Condition means the Bid Condition referred to in paragraph 4 of Schedule 1.

Notice of Bidder Shareholder Meeting means the notice of the Bidder Shareholder Meeting to be prepared by Bidder in accordance with the Corporations Act and ASX Listing Rules, to convene the Bidder Shareholder Meeting.

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

Offer Period means the period for which the Offer is open for acceptance.

Performance Share means a performance share in the capital of Bidder that is subject to the terms and conditions set out in Schedule 3.

Prescribed Occurrence Condition means the Bid Condition referred to in paragraph 3 of Schedule 1.

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

Prospectus Offer means an offer by Bidder of not less than 25,000,000 Bidder Shares at \$0.20 per Bidder Share (on a post-Share Consolidation basis) made pursuant to a prospectus prepared in accordance with Chapter 6D of the Corporations Act, with a minimum subscription requirement of \$5,000,000 (less any Convertible Note Proceeds).

Re-Compliance Process means the process and actions undertaken by Bidder to re-comply with Chapters 1 and 2 of the ASX Listing Rules, including, without limitation, preparation of the Prospectus.

Reference Rate means in relation to interest payable on any payment due under this agreement, the average bid rate displayed on the Reuters Screen BBSY for a 3 month term at or about 10.30 am on the first date on which interest accrues on that payment.

Relevant Interest has the meaning given in section 608 of the Corporations Act.

Replacement Bidder Option means a Bidder Option issued to a holder of Target AU Options or Target US Options in accordance with clauses 6.3 or 6.4, as set out in Schedule 5.

Representative means:

- (a) in relation to Target, a member of the Target Group, any director, officer or employee of any member of the Target Group, and any financier, financial adviser, accounting adviser, auditor, legal adviser or technical or other expert adviser or consultant to any member of the Target Group in relation to the Transaction; and
- (b) in relation to Bidder, a member of the Bidder Group, any director, officer or employee of any member of the Bidder Group, any financier, financial adviser, accounting adviser, auditor, legal adviser, or technical or other expert adviser or consultant to any member of the Bidder Group in relation to the Transaction.

Secured Convertible Note Agreement means a secured Convertible Note Agreement, in the form annexed to this agreement as Annexure A, pursuant to which a lender, or lenders, advances monies to Target on a secured basis.

Secured Loan Agreement means the loan agreement, and general security agreement, entered into by the Bidder and the Target on or about the date of this agreement in accordance with the Heads of Agreement.

Share Consolidation means:

- (a) the consolidation of the total number of Bidder Shares in the Share Consolidation Ratio, immediately after the Bidder Shareholder Meeting; and
- (b) immediately upon effecting the consolidation referred to in paragraph (a) above, the adjustment of the terms and conditions of any then-existing Bidder Options in accordance with ASX Listing Rule 7.22.1.

Share Consolidation Ratio means the ratio of 10 to 1 (or such other ratio as agreed in writing between Bidder and Target in order to ensure that Bidder Shares under the Prospectus Offer are offered at a minimum of \$0.20 per Bidder Share).

Superior Proposal means, in respect of a party, a written bona fide Competing Proposal which the board of directors of that party, acting in good faith after receiving written advice from its external advisers, determines is:

- (a) reasonably capable of being completed, taking into account all aspects of the Competing Proposal; and
- (b) more favourable than the Takeover Bid from the perspective of the shareholders of that party, taking into account all terms and conditions of the Competing Proposal.

Target AU Option means an option to acquire a Target Share issued either:

- (a) under the Employee Option Scheme (AU); or
- (b) under option deeds between Target and Australian employees of Target.

Takeover Bid means the off-market takeover bid to be made by Bidder for all Target Shares under Chapter 6 of the Corporations Act subject to the Bid Conditions and otherwise in accordance with the terms of this agreement.

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

Target Class A Shares means Target Shares issued by Target under the Loan Share Plan (AU).

Target Director means a director of Target as at the date of this agreement.

Target Disclosure Materials means the information and documents disclosed in writing by Target or its Representatives about the Target Group and its businesses to Bidder or its Representatives or otherwise disclosed by Target to the public prior to the date of this agreement.

Target Group means Target and its related entities.

Target Material Adverse Change means any event, matter or circumstance which individually, or when aggregated with all such other events, matters or circumstances results in or could reasonably be expected to result in:

- (a) the value of the consolidated net assets of the Target Group reported in Target's audit reviewed financial statements for the financial year ended 30 June 2013 being reduced by at least \$500,000; or
- (b) the incurrence of any obligations, liabilities, costs or expenses (contingent or otherwise), where the quantum (whether individually or when aggregated with all such other events) of at least \$500,000 in any 6-month period; or
- (c) the termination or loss of or a material reduction in Target's interest in any Target Material Contract,

other than an event, matter or circumstance:

- (d) required or permitted to be done by this agreement;
- (e) required to be done as a result of the Takeover Bid or the Re-compliance Process;
- (f) the occurrence of which was fairly disclosed in the Target Disclosure Materials or fairly disclosed by Target to Bidder prior to the date of this agreement;
- (g) caused or materially contributed to by Bidder;
- (h) that is an actual event, matter or thing which is actually known to Bidder prior to the date of this agreement (which does not include knowledge of the risk of an event, occurrence or matter happening); or
- (i) directly resulting from any actions taken (or omitted to be taken) following a written request from Bidder or with Bidder's prior written consent.

Target Material Contracts means:

- (a) the intra-group licence agreement between Target and Covata Australia Pty Limited dated 28 June 2013;
- (b) the intra-group licence agreement between Target and Covata USA Inc dated 28 June 2013;
- (c) the reseller agreement between Target and NSC Global Services Limited dated 4 April 2014;
- (d) the product and service supply agreement between Target and Verizon Australia Pty Limited dated 19 April 2011;
- (e) the product development and distribution agreement between Covata Australia Pty Limited and TPG Telecom Limited dated 30 October 2012;
- (f) the convertible note agreement between Target and Gaffwick Pty Ltd dated 22 May 2012;
- (g) the convertible note agreement between Target and Ilwella Pty Limited dated 22 May 2012;

- (h) the convertible note agreement between Target and QWL Pty Ltd dated 28 February 2012;
- (i) the security deed between Target and QWL Pty Ltd dated 28 February 2012;
- (j) the convertible note agreement between Target and TPG Telecom Limited dated 27 November 2012;
- (k) the convertible note agreement between Target and Raven Ventures Pty Ltd dated 20 May 2014; and
- (l) the loan agreement between Bidder and Target dated on or about the date of this agreement.

Target Material Transaction means any member of the Target Group:

- (a) acquiring, offering to acquire or agreeing to acquire one or more entities, businesses or assets (or any interest in one or more entities, businesses or assets) for an amount in aggregate greater than \$500,000;
- (b) disposing of, offering to dispose of or agreeing to dispose of one or more entities, businesses or assets (or any interest in one or more entities, businesses or assets) for an amount, or in respect of which the book value is, in aggregate, greater than \$500,000;
- (c) entering into, agreeing to enter into or announcing any agreement to enter into any contract, commitment or arrangement, joint venture or partnership that:
 - (i) requires payments, expenditure or the foregoing of revenue by any member of the Target Group of an amount in excess of \$500,000 on any individual basis or which is, in aggregate, greater than \$500,000; or
 - (ii) is material in the context of the Target Group and is not in the ordinary course of business;
- (d) entering into or agreeing to enter into, terminating or agreeing to terminate a contract, commitment or arrangement for the provision of services or a licence to a third party that is a new or existing customer that results in any member of the Target Group incurring costs greater than \$500,000 on an individual basis or is, in aggregate, greater than \$500,000 for the entire term of such contract, commitment or arrangement;
- (e) providing or agreeing to provide financial accommodation or a guarantee (other than to entities within the Target Group) in an amount in excess of \$500,000, or receives financial accommodation (other than from entities within the Target Group) in an amount in excess of \$500,000;
- (f) entering into, amending, or agreeing to enter into or amend, any material contract, commitment or other arrangement with a related party (as defined in section 228 of the Corporations Act) of Target;

- (g) incurring, agreeing to incur or bringing forward the time for incurring, or granting to a third party a right the exercise of which would involve any member of the Target Group incurring or agreeing to incur an amount of capital expenditure in excess of \$500,000,

other than to the extent:

- (h) required or permitted to be done by this agreement;
- (i) required to be done under the Takeover Bid or the Re-compliance Process;
- (j) fairly disclosed by Target to Bidder in writing prior to execution of this agreement;
- (k) actually known to Bidder prior to the date of this agreement (which does not include knowledge of the risk of an event, occurrence or matter happening); or
- (l) directly resulting from any actions taken (or omitted to be taken) following a written request from Bidder or with Bidder's prior written consent, with such consent not to be unreasonably withheld or delayed.

Target Prescribed Occurrence means any of the following:

- (a) Target converts all or any of its shares into a larger or smaller number of shares;
- (b) any member of the Target Group (other than a direct or indirect wholly owned subsidiary of Target) resolves to reduce its share capital in any way or reclassifies, redeems or repurchases any of its shares;
- (c) any member of the Target Group (other than a direct or indirect wholly owned subsidiary of Target) enters into a buy-back agreement or resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) any member of the Target Group issues securities or grants an option or performance right over any securities (including equity securities, debt securities or convertible securities) (or agrees to make such an issue or grant) other than to Target or to a direct or indirect wholly owned subsidiary of Target or pursuant to performance rights, the conversion of convertible securities or the exercise of options the existence of which has been fairly disclosed to Bidder before the date of this agreement;
- (e) Target amends or proposes to amend its constitution;
- (f) any member of the Target Group creates or agrees to create any Encumbrance over the whole or any part of its assets or undertaking other than an Encumbrance arising in the ordinary course of business;
- (g) an order or application is made or a resolution is passed for the winding up of any member of the Target Group;

- (h) an administrator, liquidator, provisional liquidator, receiver or receiver and manager is appointed in respect of any member of the Target Group or the whole or any part of the assets or undertaking of any member of the Target Group, or any member of the Target Group executes a deed of company arrangement;
- (i) any member of the Target Group ceases to carry on business or is deregistered under the Corporations Act;
- (j) any member of the Target Group enters into any unusual or abnormal contract or commitment which is outside the ordinary course of business and which could reasonably be expected to:
 - (i) change the nature of the business conducted by the Target Group; or
 - (ii) have a material adverse impact on the business conducted by the Target Group;
- (k) any member of the Target Group enters into a contract or commitment restraining any member of the Target Group from competing with any person or conducting activities in any market;
- (l) any member of the Target Group enters into or otherwise becomes a party to, any material transaction with a related party (as that term is defined in Chapter 2E of the Corporations Act) of Target (other than between Target and a direct or indirect wholly owned subsidiary of Target);
- (m) any member of the Target Group (other than a direct or indirect wholly owned subsidiary of Target) declares, pays, or determines to be payable any distribution, bonus or other share of its profits or assets (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie);
- (n) any member of the Target Group disposes of, or offers or agrees to dispose of, any material business, asset, joint venture interest, entity or undertaking (or any interest in a business, asset, joint venture, entity or undertaking) or makes an announcement in relation to such a disposal, offer or agreement;
- (o) any member of the Target Group:
 - (i) enters into any financing arrangement or commitment or agrees to extend, repay or materially amend any existing financing arrangement or commitment; or
 - (ii) guarantees, indemnifies or provides security for the obligations of any person or entity other than a member of the Target Group; and
- (p) any member of the Target Group agrees or announces an intention to take any of the actions referred to in paragraphs (a) to (o) above,

provided that a Target Prescribed Occurrence will not include any matter:

- (q) required or permitted to be done or procured by Target under this agreement or which is otherwise contemplated by this agreement;
- (r) required to be done as a result of the Takeover Bid or the Re-compliance Process;
- (s) fairly disclosed by Target to Bidder in writing prior to execution of this agreement;
- (t) actually known to Bidder prior to the date of this agreement (which does not include knowledge of the risk of an event, occurrence or matter happening); or
- (u) directly resulting from any actions taken (or omitted to be taken) following a written request from Bidder or with Bidder's prior written consent; or
- (v) approved in writing by Bidder, such approval not to be unreasonably withheld or delayed.

Target Share means a fully paid ordinary share in the capital of Target.

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

Target Superior Proposal means a Superior Proposal from the perspective of Target Shareholders.

Target's Statement means the target's statement to be issued by Target to Target Shareholders in relation to the Offer as required under section 633(1) of the Corporations Act.

Target US Options means an option to acquire a Target Share issued under the Employee Incentive Scheme (US).

Target Warrant means a right granted to a third party to acquire Target Shares on terms set out in warrant deeds between Target and those third parties.

Third Party means a person other than a member of the Bidder Group or the Target Group.

Timetable means the indicative timetable set out in Schedule 2.

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

Unconditional means, subject to Bidder complying with clause 3 of this agreement, Bidder issuing a notice in accordance with section 630(3) of the Corporations Act, declaring that the 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 Related entities

For the purposes of this agreement, one entity is related to another if the first entity:

- (a) controls the second entity;
- (b) is under the control of the second entity; or
- (c) is under the control of a third entity that also controls the second entity,

in each case for the purposes of section 50AA of the Corporations Act but as if section 50AA(4) did not apply.

1.3 References to certain other words and terms

In this agreement:

- (a) any reference, express or implied, to any legislation in any jurisdiction includes:
 - (i) that legislation as amended, extended or applied by or under any other legislation made before or after signature of this agreement;
 - (ii) any legislation which that legislation re-enacts with or without modification; and
 - (iii) any subordinate legislation made before or after signature of this agreement under that legislation, including (where applicable) that legislation as amended, extended or applied as described in clause 1.3(a)(i), or under any legislation which it re-enacts as described in clause 1.3(a)(ii);
- (b) references to persons or entities include natural persons, bodies corporate, partnerships, trusts and unincorporated associations of persons;
- (c) the Schedules and annexes form part of this agreement and a reference to a clause, Schedule or annex is a reference to a clause, schedule or annex of or to this agreement;
- (d) a reference to any time is, unless otherwise indicated, a reference to that time in Sydney, Australia; and
- (e) a reference to \$ or to dollars is to Australian currency.

1.4 Rules of interpretation and construction

In this agreement:

- (a) singular words include the plural and vice versa;
- (b) if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;
- (c) general words must not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words;

- (d) nothing is to be construed adversely to a party just because that party put forward this agreement or the relevant part of this agreement;
- (e) headings do not affect interpretation;
- (f) a reference to a document includes the document as novated, altered, supplemented or replaced; and
- (g) a reference to 'fairly disclosed' means disclosed to Bidder or Target, as the case may be, in sufficient detail so as to enable a reasonable and sophisticated buyer or seller, as the case may be, or one of its Representatives, to identify the nature and scope of the relevant matter, event or circumstance.

1.5 Things required to be done other than on a Business Day

Unless otherwise indicated, if the day on which any act, matter or thing is to be done under this agreement is a day other than a Business Day, that act, matter or thing must be done on or by the next Business Day.

1.6 Fully and fairly disclosed

In this agreement, a fact, matter or circumstance is "fully and fairly disclosed" or "fairly disclosed" only if sufficient information has been disclosed that a sophisticated investor would be aware of the substance and significance of the information.

2. AGREEMENT TO PROPOSE TAKEOVER BID

2.1 Agreement to bid

- (a) Bidder agrees to make the Offer to Target Shareholders subject to the Bid Conditions and otherwise in accordance with the terms of this agreement.
- (b) The Offer will apply to all Target Shares which are on issue prior to the close of the Offer Period including, for the avoidance of doubt, all Target Shares issued during the Offer Period, whether as a result of the conversion of securities convertible into Target Shares, the exercise of any right to be issued with Target Shares, or otherwise.
- (c) Bidder will:
 - (i) announce the Takeover Bid no later than the time provided in the Timetable or such other time as agreed by the parties in writing; and
 - (ii) use its best endeavours to lodge its Bidder's Statement with ASIC and provide a copy of the lodged Bidder's Statement to Target in accordance with the Timetable or such other time as agreed by the parties in writing.

2.2 Fractional entitlements

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

3. BID CONDITIONS AND VARIATION OF OFFER

3.1 Bid conditions

- (a) To the extent that it is within its power to do so, each party must use reasonable endeavours to procure that nothing occurs that will, or is likely to, cause any Bid Condition to be breached or will or is likely to prevent a Bid Condition from being satisfied.
- (b) If a fact, matter or circumstance occurs or arises of which either party is or becomes aware and which will or is likely to cause any Bid Condition to be breached, or will or is likely to prevent any Bid Condition from being satisfied or unreasonably delayed, that party must promptly provide written notice to the other party of that fact, matter or circumstance. Each party must, on request from the other party, advise of its progress to satisfy any Bid Condition.

3.2 Variation of Offer and Waiver of Bid Conditions

- (a) Subject to clause 3.2(b), Bidder may at any time (but is not obliged to) vary or waive any of the terms and conditions of the Offer in any manner permitted by the Corporations Act.
- (b) Bidder may only waive or vary an Essential Bid Condition with the prior written consent of Target, not to be unreasonably withheld or delayed, and provided that Bidder may waive the Minimum Acceptance Condition without the Target's consent if the Bidder has a voting power in the Target Shares, as a result of receiving acceptances under the Offer, of at least 80%.

3.3 Target assistance with Prospectus Offer

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

3.4 Performance Shares

As soon as practicable after the date of this agreement, Bidder agrees to apply to ASX to seek a waiver to permit the issue of the Performance Shares. In the event that ASX does not grant the waiver, Bidder and Target agree to negotiate in good faith a variation to the terms of the Performance Shares, such as to preserve the commercial intent of those shares but to also ensure that they comply with the ASX Listing Rules requirements.

4. TAKEOVER BID

4.1 Compliance with Timetable

- (a) Each party agrees to use reasonable endeavours to do all acts and things within its power as may be reasonably necessary for the implementation and performance of the Takeover Bid in accordance with the Timetable.
- (b) The parties acknowledge and agree that it is the intention of the parties to lodge the Bidder's Statement and Target's Statement with ASIC and (if applicable) ASX on the same day.

4.2 Bidder's Statement

- (a) Bidder must within a reasonable time (and in any event no later than 5 Business Days) prior to lodgement of the Bidder's Statement with ASIC, provide an advanced and reasonably complete draft of the Bidder's Statement to Target and its Representatives for review and consider in good faith the comments of Target and its Representatives when finalising the Bidder's Statement.
- (b) Bidder and Target acknowledge that Bidder will make disclosures in the Bidder's Statement to comply the Corporations Act, Takeovers Panel decisions and guidance notes and ASIC regulatory guides.

4.3 Target Assistance

Target must provide on a timely basis any assistance and information that is reasonably requested by Bidder to enable Bidder to prepare and finalise the Bidder's Statement.

4.4 Target's Statement

- (a) Target must within a reasonable time (and in any event no later than 5 Business Days) prior to lodgement of the Target's Statement with ASIC, provide an advanced and reasonably complete draft of the Target's Statement to Bidder and its Representatives for review and consider in good faith the comments of Bidder and its Representatives when finalising the Target's Statement.
- (b) Bidder and Target acknowledge that Target will make disclosures in the Target's Statement to comply the Corporations Act, Takeovers Panel decisions and guidance notes and ASIC regulatory guides.

4.5 Bidder Assistance

Bidder must provide on a timely basis any assistance and information that is reasonably requested by Target to enable Target to prepare and finalise the Target's Statement.

4.6 Dispatch of Bidder's Statement and Target's Statement

- (a) To the extent permitted under the Corporations Act, each of Bidder and Target agrees that it will take prompt action to ensure that the

Bidder's Statement and Target's Statement can be mailed together to Target Shareholders in accordance with the Timetable.

- (b) Bidder and Target agree that the Bidder's Statement and any accompanying documents may be sent to Target Shareholders earlier than the time period set out in section 633(6) of the Corporations Act.

4.7 Supplementary Bidder's Statement and Supplementary Target's Statement

Each of Bidder and Target covenants to comply with Division 4 of Part 6.5 and Chapter 6B of the Corporations Act.

5. RECOMMENDATION OF TAKEOVER BID

5.1 Public announcement

As soon as practicable after execution of this agreement, Target and Bidder must notify the other party of their proposed announcement in respect of execution of this agreement, consult with the other party as to the announcement's content, and use reasonable endeavours to comply with any reasonable request by the other party concerning the announcement.

5.2 Target Directors' recommendation

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

- (a) he or she supports the Takeover Bid;
- (b) he or she will publicly recommend that Target Shareholders accept the Offer in respect of all of their respective Target Shares; and
- (c) he or she will not change his or her public recommendation,

in each case, in the absence of a Target Superior Proposal and in the absence of a variation or waiver of an Essential Bid Condition by Bidder otherwise than in accordance with this agreement.

5.3 Target Directors' intentions

Target represents and warrants to Bidder that each Target Director has informed Target prior to its entry into this agreement that the relevant Target Director and each person and entity Controlled by that Target Director (collectively, **Controlled Entities**) intends to accept the Offer in respect of all of the Target Shares that they respectively hold (if any) in the absence of a Target Superior Proposal and in the absence of a variation or waiver of an Essential Bid Condition by Bidder otherwise than in accordance with this agreement.

5.4 Target promotion of Takeover Bid

Target will:

- (a) support the Offer made under the Takeover Bid during the Offer Period in the absence of a Target Superior Proposal and in the absence of a

variation or waiver of an Essential Bid Condition by Bidder otherwise than in accordance with this agreement; and

- (b) jointly promote the Takeover Bid to Target Shareholders with Bidder, including:
 - (i) participating in joint conference calls and investor presentations; and
 - (ii) meeting key Target Shareholders, analysts, management, customers, press and other parties mutually agreed by Bidder and Target,

in each case, in the absence of a Target Superior Proposal and in the absence of a variation or waiver of an Essential Bid Condition by Bidder otherwise than in accordance with this agreement.

5.5 Change or withdrawal of recommendation

Subject to clauses 9.5 to 9.8, Target will procure that the Target Board does not change or withdraw the recommendation referred to in clause 5.2 once made and will not make any public statement which would suggest that the Offer is no longer recommended or that it supports a Competing Proposal in respect of Target unless:

- (a) Bidder varies or waives an Essential Bid Condition otherwise than in accordance with this agreement;
- (b) the Target Board determines that a Competing Proposal in respect of Target constitutes a Target Superior Proposal;
- (c) a Bidder Prescribed Occurrence, a Bidder Material Adverse Change or a Bidder Material Transaction occurs;
- (d) Bidder breaches its obligations in clause 9; or
- (e) Bidder breaches any provision of this agreement, other than clause 9, in a material respect and, if such breach is capable of remedy, Bidder has not remedied the breach within 7 days of receipt of written notice from Target.

6. PRE-BID ACTIVITIES

6.1 Target Shares

On or before lodgement of the Bidder's Statement with ASIC, Target Board shall resolve under clause 25.6 of its constitution that any first right of refusal applicable to Target Shares is waived in respect of acceptances under the Offer.

6.2 Target Class A Shares

On or before lodgement of the Bidder's Statement with ASIC, Target shall:

- (a) take all action required to ensure that the Target Class A Shares are re-classified as ordinary Target Shares (on the basis that, technically, the Target Class A Shares were originally issued as ordinary Target Shares);
- (b) give all holders of Target Class A Shares (**Class A Shareholders**) notice that the transfer restrictions applicable to the Target Class A Shares have been waived in order to allow the Target Class A Shareholders to accept the Offer; and
- (c) enter into arrangements with each of the Target Class A Shareholders, or their duly appointed proxy, under which they agree to accept the Offer and that any Bidder Shares and Bidder Performance Shares (including Bidder Shares issued upon conversion of the Bidder Performance Shares) issued to them as Consideration shall be:
 - (i) subject to transfer restrictions; and
 - (ii) used as security to secure the Target Class A Shareholders' obligations to repay any loan repayable to Target in respect of the Target Class A Shares,

on terms consistent with the Loan Share Plan (AU).

6.3 Target AU Options

On or before lodgement of the Bidder's Statement with ASIC, Target and Bidder shall enter into arrangements (effective upon successful completion of the Offer) with each holder of Target AU Options (**Target AU Optionholders**) under which Target AU Optionholders agree to the cancellation of all their Target AU Options in consideration for the issue of an equivalent number of Replacement Bidder Options on, mutatis mutandis, equivalent terms, provided that:

- (a) the Target AU Optionholders will agree not to exercise their Target AU Options during the Offer Period;
- (b) the Replacement Bidder Options will be subject to equivalent vesting conditions as applicable to the Target AU Options held by each of the Target AU Optionholders (if any); and
- (c) the exercise price of the Replacement Bidder Options issued in respect of the Target AU Options will be increased as shown in Schedule 5, on the basis of Bidder Shares having a deemed value of \$0.20 and Target Shares having a deemed value of \$0.15.

6.4 Target US Options

- (a) On or before lodgement of the Bidder's Statement with ASIC, Target and Bidder shall enter into arrangements with each holder of Target US Options (**Target US Optionholders**) under which Target US Optionholders agree to either:
 - (i) the cancellation of all of their Target US Options in consideration for the issue of an equivalent number of Replacement Bidder Options on, mutatis mutandis, equivalent

terms (effective upon successful completion of the Offer), provided that:

- (A) the Target US Optionholders agree that their Target US Options will not vest as a result of the Takeover Bid;
 - (B) the Target US Optionholders agree not to exercise their Target US Options during the Offer Period;
 - (C) the Replacement Bidder Options will be subject to equivalent vesting conditions as applicable to the Target US Options held by each of the Target US Optionholders (if any); and
 - (D) the exercise price of the Replacement Bidder Options issued in respect of the Target US Options will be increased as shown in Schedule 5, on the basis of Bidder Shares having a deemed value of AUD\$0.20 and Target Shares having a deemed value of AUD\$0.15; or
- (ii) the cancellation of their Target US Options in consideration for such number of Bidder Shares as agreed between Bidder and Target (effective upon successful completion of the Offer).
- (b) In the event that Bidder and Target agree to deal with the Target US Options in the manner set out in clause 6.4(a)(i), Bidder agrees to apply to ASX for a waiver from the ASX Listing Rules to the extent required to issue Replacement Bidder Options with an exercise price of less than AUD\$0.20, provided that if a waiver from ASX is not forthcoming, Bidder and Target agree to deal with the Target US Options in another manner that does not require a waiver from ASX.
- (c) Bidder acknowledges that certain employees and directors of Target (**Target Eligible Employees**) have, or may be granted after the date of this agreement, entitlements to be issued with an aggregate of 15,000,000 Target US Options under the Employee Option Scheme (US) in accordance with the terms of their employment agreements with Target (with 10 million of those Target US Options exercisable at AUD \$0.15 and 5 million of those Target US Options exercisable at USD \$0.11, on or before the date which is 10 years from the date of issue and subject to vesting conditions set out in those employment agreements) (**Additional Target US Options**).
- (d) Bidder agrees, subject to approval by the Bidder Shareholders at the Bidder Shareholder Meeting and receipt of any necessary regulatory approvals, to issue an equivalent number of Replacement Bidder Options on, mutatis mutandis, equivalent terms to the Target Eligible Employees (**Additional Replacement Bidder Options**) within 10 Business Days of Bidder being re-admitted to trading on ASX, provided that:
- (i) the exercise price of the Additional Replacement Bidder Options will be increased as shown in Schedule 5, on the basis of Bidder Shares having a deemed value of AUD\$0.20 and Target Shares having a deemed value of AUD\$0.15;

- (ii) the Additional Target US Options must not be issued unless this agreement is terminated; and
 - (iii) the Target Eligible Employees agree to any escrow imposed by the ASX in respect of the Additional Replacement Bidder Options they are issued.
- (e) Bidder agrees to apply to ASX for a waiver from the ASX Listing Rules to the extent required to issue the Additional Replacement Bidder Options with an exercise price of less than AUD\$0.20, provided that if a waiver from ASX is not forthcoming, Bidder and Target agree to deal with the Additional Target US Options in another manner that does not require a waiver from ASX.

6.5 Existing Target Convertible Notes

On or before lodgement of the Bidder's Statement with ASIC, Target shall enter into variation agreements with the holders of Existing Target Convertible Notes (on terms acceptable to Bidder, acting reasonably) under which the holders of Existing Target Convertible Notes agree:

- (a) that their Existing Target Convertible Notes shall automatically convert into Target Shares upon the Offer becoming or being declared Unconditional; and
- (b) undertake to accept the Offer no later than 5 Business Days after the issue of those Target Shares and the Offer being declared Unconditional.

6.6 Target Warrants

On or before lodgement of the Bidder's Statement with ASIC, Target shall enter into variation agreements with the holders of Target Warrants (on terms acceptable to Bidder, acting reasonably) under which the holders of Target Warrants agree:

- (a) to the cancellation of the Target Warrants in consideration for the issue of that number of Target Shares set out in Schedule 5 (as a qualifying reorganization under section 368(a)(1) of the Internal Revenue Code (USA) of 1986), effective as at the date of the Offer becoming or being declared Unconditional; and
- (b) undertake to accept the Offer no later than 5 Business Days after the issue of those Target Shares and the Offer being declared Unconditional.

6.7 Statements of intention

On or before the Announcement Date, Target agrees to procure that Target Shareholders holding an aggregate of at least 60% of Target Shares on issue as at the Announcement Date make public statements of intention, on terms acceptable to Bidder, that they intend to accept the Offer in the absence of a Superior Proposal and in the absence of a variation or waiver of an Essential Bid Condition by Bidder otherwise than in accordance with this agreement.

7. CONVERTIBLE NOTE AGREEMENTS

- (a) Bidder and Target acknowledge that Target has entered into a Convertible Note Agreement under which it has issued Additional Target Convertible Notes with a total face value of \$1,500,000.
- (b) Subject to this clause, Target may, no later than ten (10) Business Days after the start of the Offer Period, enter into Convertible Note Agreements and issue Additional Target Convertible Notes with a total face value of up to \$1,000,000.
- (c) Any Convertible Note Agreements entered into after the date of this agreement must, and any Convertible Note Agreements entered into prior to the date of this agreement must (on or before lodgement of the Bidder's Statement with ASIC), incorporate terms such that the Additional Target Convertible Notes (plus any interest payable under the Convertible Note Agreements) automatically convert into Bidder Shares upon successful completion of the Offer at a deemed conversion price of \$0.20 per Bidder Share.

8. ESCROW

8.1 Escrow by ASX

The parties agree that any Bidder Shares and Performance Shares issued to Target Shareholders as Consideration (including any Bidder Shares issued upon satisfaction of the performance hurdles under the terms of the Performance Shares), may be escrowed by ASX. The Target agrees to use its reasonable endeavours to procure execution of all necessary ASX escrow agreements within 5 Business Days of the Offer becoming or being declared Unconditional.

9. EXCLUSIVITY

9.1 General

For the purposes of this clause 9, it is acknowledged that:

- (a) any actions by any director, officer or employee of any member of the Target Group or any other Representative of Target acting as authorised agent of Target that would, if they were actions of Target, breach this clause 9, shall be deemed to be a breach by Target of this clause 9 (including for the purposes of the definition of "Competing Proposal" and "Superior Proposal"); and
- (b) any actions by any director, officer or employee of any member of the Bidder Group or any other Representative of Bidder acting as authorised agent of Bidder that would, if they were actions of Bidder, breach this clause 9, shall be deemed to be a breach by Bidder of this clause 9 (including for the purposes of the definition of "Competing Proposal" and "Superior Proposal").

9.2 No existing discussions

Each party warrants that, as at the date of this agreement, it is not, and must ensure that none of its Representatives are, in any negotiations or discussions,

and that it has, and its Representatives have, ceased any existing negotiations or discussions, in respect of any Competing Proposal in respect of that party (or which may reasonably be expected to lead to a Competing Proposal in respect of that party) with any person.

9.3 No shop

During the Exclusivity Period, each party must not, and must ensure that each of its Representatives does not solicit, invite, encourage or initiate (including by the provision of non-public information) any inquiry, expression of interest, offer, proposal or discussion by any person in relation to, or that may reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal in respect of that party or communicate to any person an intention to do anything of those things.

9.4 No talk and no due diligence

Subject to clause 9.5, during the Exclusivity Period, each party must not and must ensure that each of its Representatives does not, except with the prior written consent of the other party:

- (a) enter into, continue or participate in any negotiations or discussions with any person in relation to a Competing Proposal in respect of that party or that may reasonably be expected to encourage or lead to the making of a Competing Proposal in respect of that party;
- (b) negotiate, accept, approve, recommend or enter into, or offer or agree to negotiate, accept, approve, recommend or enter into, any agreement, arrangement or understanding regarding an actual, proposed or potential Competing Proposal in respect of that party;
- (c) disclose or otherwise provide any material non-public information about the business or affairs of that party or its related entities to any person (other than a public authority) with a view to obtaining a Competing Proposal in respect of that party or which may reasonably be expected to encourage or lead to the receipt of a Competing Proposal in respect of that party; or
- (d) communicate to any person an intention to do anything referred to in paragraphs (a) to (c) (inclusive) of this clause 9.4,

even if:

- (e) the Competing Proposal was not solicited, invited, encouraged or initiated by that party or its Representatives; or
- (f) the Competing Proposal is publicly announced.

9.5 Exceptions

Clause 9.4 does not prohibit any action or inaction by any party or any of its Representatives if the board of directors of that party determines, acting in good faith after receiving written advice from its external advisers, that:

- (a) where there is a Competing Proposal in respect of that party, the Competing Proposal is or may reasonably be expected to lead to a Superior Proposal from the perspective of the shareholders of that party, having regard to the steps that board proposes to take; and
- (b) failing to respond to that Competing Proposal constitutes or would be likely to constitute, a breach of any of the fiduciary or statutory duties of the directors of that party,

provided that the Competing Proposal was not solicited, invited, encouraged or initiated by that party or any of its Representatives in a manner that would breach its obligations under clause 9.4.

9.6 Notice of Competing Proposal

- (a) During the Exclusivity Period, a party must as soon as possible notify the other party in writing if the first-mentioned party, or any of its Representatives, becomes aware of any direct or indirect:
 - (i) approach or attempt to initiate any negotiations or discussions, or intention to make such an approach or attempt to initiate negotiations or discussions, in respect of any expression of interest, offer, proposal or discussion in relation to an actual, proposed or potential Competing Proposal in respect of the first-mentioned party;
 - (ii) proposal made to the first-mentioned party or any of its Representatives, in connection with, or in respect of any exploration or completion of, an actual, proposed or potential Competing Proposal in respect of the first-mentioned party; or
 - (iii) provision by the first-mentioned party or any of its Representatives of any material confidential information concerning that party or its related entities or their respective operations to any person in relation to an actual, proposed or potential Competing Proposal in respect of that party.

For the avoidance of doubt, any of the acts described in this clause 9.5(a) may be taken by a party only to the extent permitted or not proscribed under clauses 9.3 to 9.5 (inclusive).

- (b) A notification given under clause 9.5(a) must include the identity of the proponent of the Competing Proposal and a summary of all material terms and conditions of the actual, proposed or potential Competing Proposal.

9.7 Matching right

Without limiting clause 9.6(a), during the Exclusivity Period, a party must:

- (a) not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) under which a Third Party and/or that party proposes to undertake or give effect to an actual, proposed or potential Competing Proposal in respect of that party; and

- (b) procure that its directors do not change their respective recommendation in favour of the Offer to publicly recommend the actual, proposed or potential Competing Transaction,

unless:

- (c) the board of directors of that party determines that the actual, proposed or potential Competing Proposal is or may reasonably be expected to lead to a Superior Proposal from the perspective of the shareholders of that party having regard to the steps which that board proposes to take;
- (d) that party has provided the other party with the material terms and conditions of the actual, proposed or potential Competing Proposal, including the price and the identity of the Third Party making the actual, proposed or potential Competing Proposal;
- (e) that party has given the other party at least 5 Business Days after the provision of the information referred to in clause 9.7(d) to revise, or provide proposed revisions, to the Offer (as the case may be) to match or better the actual, proposed or potential Competing Proposal if the other party so chooses in its absolute discretion; and
- (f) the other party has not, within the time period referred to in clause 9.7(e), revised, or provided proposed revisions, to the Offer (as the case may be) which the board of directors of the first-mentioned party determines, in good faith after receiving written advice from its external legal advisers, matches or betters the actual, proposed or potential Competing Proposal.

Each party acknowledges and agrees that each successive modification of any actual, proposed or potential Competing Proposal will constitute a new actual, proposed or potential Competing Proposal for the purposes of this clause 9.7.

9.8 Compliance with law

This clause 9 does not impose any obligation on the parties if the performance of that obligation would:

- (a) involve a breach of statutory, fiduciary or other duty of a director of either party;
- (b) otherwise be unlawful (except that it is acknowledged that a performance of an obligation would not be unlawful merely because it would result in a breach of a contractual obligation of the relevant party); or
- (c) constitute unacceptable circumstances (as declared by the Takeovers Panel or a court) under Part 6.10 (Division 2) of the Corporations Act.

10. OTHER OBLIGATIONS DURING EXCLUSIVITY PERIOD

10.1 Conduct of business

Subject to clauses 10.2 and 10.3, between the date of this agreement and the earlier to occur of the completion of the Takeover Bid and the termination of this agreement:

- (a) Target must procure that each member of the Target Group; and
- (b) Bidder must procure that each member of the Bidder Group,

carries on business in the ordinary and usual course and in substantially the same manner as conducted at the date of this agreement as well as using its reasonable endeavours to procure that:

- (c) respectively, no Target Prescribed Occurrence or Bidder Prescribed Occurrence occurs;
- (d) respectively, no Target Material Transaction or Bidder Material Transaction occurs;
- (e) respectively, each member of the Target Group or the Bidder Group:
 - (i) preserves its relationships with all Authorities, material customers and suppliers, licensors, licensees, joint venturers and others with whom they have business dealings;
 - (ii) preserves intact its current business organisation and maintains its material assets in good working order necessary to operate all aspects of its business;
 - (iii) maintains current liabilities at normal levels and discharge current liabilities as they fall due or otherwise in the ordinary course;
 - (iv) does not incur any borrowings or other debt finance from any Third Party;
 - (v) does not repay any borrowings or debt finance earlier than the applicable due date;
 - (vi) does not incur capital expenditure other than in accordance with the cash flow budget contained in the Target Disclosure Materials or Bidder Disclosure Materials (as the case may be);
 - (vii) keeps available the services of its key employees and procures that those senior employees continue to conduct the business and affairs of the Target Group or the Bidder Group (as the case may be) in the ordinary and usual course;
 - (viii) does not enter or agree to enter into any agreement in respect of the employment or engagement of a person in a managerial or executive office (as that expression is defined in the Corporations Act);

- (ix) does not alter or agree to alter the terms of employment or benefits of any key employee where such alteration would result in the total compensation payable by the Target Group or the Bidder Group (as the case may be) to Target's key employees, in aggregate, increasing by more than 5% of the total compensation paid to those key employees as at the date of this agreement;
 - (x) does not enter or agree to enter into any unusual or abnormal contract or commitment; and
 - (xi) does not permit any of its insurances to lapse or do anything that would make any policy of insurance void or voidable; and
- (f) respectively, no member of the Target Group or Bidder Group engages in any conduct that would or is reasonably likely to result in a Target Material Change Effect or Bidder Material Adverse Change (as the case may be).

10.2 Exceptions

The obligations under clause 10.1 do not apply to actions undertaken by any member of the Bidder Group or the Target Group:

- (a) which are required or permitted to be undertaken under this agreement;
- (b) which are required to be undertaken as a result of the Takeover Bid or Re-compliance Process;
- (c) have been fairly disclosed by Bidder to Target or by Target to Bidder respectively prior to the date of this agreement;
- (d) actually known to Bidder or Target respectively prior to the date of this agreement (which does not include knowledge of the risk of an event, occurrence or matter happening); or
- (e) as a direct result of any actions taken (or omitted to be taken) following a written request from Target or Bidder respectively; or
- (f) with the prior written consent of Target or Bidder respectively, such consent not to be unreasonably withheld or delayed.

10.3 Notification

Each party must promptly notify the other party in writing after it becomes aware of a matter which is in breach of or inconsistent with clause 10.1.

10.4 Intellectual Property

- (a) Target covenants and agrees that, during the Exclusivity Period, it shall not, other than in the ordinary course of business or with the prior written consent of Bidder:

- (i) create or permit the creation of any Encumbrance over the Intellectual Property, other than in accordance with the terms of a Secured Convertible Note Agreement; or
 - (ii) sell, assign or dispose of any legal or beneficial interest in the Intellectual Property.
- (b) Target covenants and agrees that, during the Exclusivity Period, it shall maintain and renew its existing Intellectual Property under applicable intellectual property laws and regulations to the extent required to keep the Intellectual Property in good standing.
- (c) During the Exclusivity Period, Target shall promptly pass to Bidder any notice or communication from any Authority or third party in any way affecting or potentially affecting the Intellectual Property.

10.5 Target representation on Bidder Board

Subject to the Bidder acquiring a Relevant Interest in at least 80% (by number) of all Target Shares and the Offer becoming Unconditional, Bidder must, as soon as is practicable thereafter, take all actions necessary to ensure:

- (a) the appointment of 3 individuals identified by Target by notice in writing to Bidder, to the Bidder Board and to the board of directors of any Subsidiary (as that term is defined in the Corporation Act) of the Bidder, subject to receipt of necessary consents from the individuals to act as Directors; and
- (b) the resignation of the existing members of the Bidder Board and the board of directors of any subsidiary of Bidder (if applicable),

with effect from the date of completion of the Takeover Bid (or such later date as agreed by Bidder and Target).

10.6 Target Employee Incentive Plan

Parties acknowledge that it is the intention of Target to replicate in Bidder (*mutatis mutandis*) the terms of the Employee Option Scheme (US), Employee Option Scheme (AU) and Loan Share Plan (AU) presently in existence as at the date of this Agreement, after completion of the Takeover Bid, as contemplated and provided for in the Heads of Agreement.

11. REPRESENTATIONS AND WARRANTIES

11.1 Target warranties

Target represents and warrants to Bidder that each of the following statements is true, accurate and not misleading:

- (a) each member of the Target Group is a corporation validly existing under the laws of its place of incorporation;
- (b) Target has the power to execute, deliver and to perform its obligations under this agreement, and has taken all necessary corporate action to

authorise such execution, delivery and the performance of such obligations;

- (c) Target's obligations under this agreement are legal, valid and binding obligations enforceable in accordance with their terms;
- (d) no regulatory action of any nature has been taken as at the date of this agreement which would prevent, inhibit or otherwise have a material adverse effect on the ability of Target to fulfil its obligations under this agreement;
- (e) the execution and delivery by Target of this agreement do not and will not conflict with or constitute a default under any provision of:
 - (i) any agreement or instrument to which it is a party; or
 - (ii) its constitution; or
 - (iii) any law, order, judgment, award, injunction, decree, rule or regulation by which it is bound;
- (f) no member of the Target Group is Insolvent;
- (g) as at the date of this agreement, and upon the Offer becoming Unconditional, the capital structure of Target is, and will upon the Offer becoming Unconditional be, as set out in Schedule 5 and other than as set out in Schedule 5, Target has not made any offer or entered into any agreement to issue to any Third Party any such shares, securities (including equity securities, debt securities or convertible securities), options or performance rights or other instruments, other than in accordance with this agreement;
- (h) Schedule 4 accurately describes:
 - (i) all registered and unregistered business names and trademarks;
 - (ii) all registered patents and designs; and
 - (iii) all applications for registration of trademarks, patents and designs,

which are owned or used at any time by the Company in connection with its business and the Company owns all legal and beneficial right, title and interest in and to the Intellectual Property without having licensed, assigned or disposed of any right, title or interest therein;

- (i) the Intellectual Property is not being presently infringed, nor are they the subject of any dispute litigation or expungement application (whether threatened or otherwise);
- (j) none of the Intellectual Property or other processes now or at any time employed or used by the Company, constitute or may constitute an unauthorised infringement of any intellectual property rights of any other person.

- (k) the information technology and telecommunications systems, hardware and software owned or used by the Company in the conduct of its business **(Systems)** comprise all the information technology and telecommunications systems, hardware and software necessary for the conduct of the Company's business;
- (l) all Systems, are owned and operated by, and are under the control of the Company and are not wholly or partly dependent on any facilities that are not under the ownership, operation or control of the Company and the Company either owns or is validly licensed to use the software comprised in the Systems;
- (m) Target has terminated all negotiations and discussions (other than with Bidder and its Representatives) that relate to any Competing Proposal in respect of Target as at the date of this agreement, and there are no discussions, negotiations or agreements in relation to any Competing Proposal in respect of Target other than to the extent permitted under this agreement;
- (n) no member of the Target Group is involved in any litigation, arbitration, legal, administrative or governmental proceedings or other dispute and there are no facts or circumstances known to Target (after making reasonable inquiries) likely to give rise to any such proceedings or dispute;
- (o) each member of the Target Group holds all material licences, permits and authorisations necessary to conduct its activities as presently conducted;
- (p) so far as Target is aware, there has been no material breach by any member of the Target Group of any laws applicable to it, any orders of any Authority having jurisdiction over it, or any conditions to any material licence, permit or authorisation held by it;
- (q) all information Target or its Representatives have provided to Bidder or its Representatives (whether as part of the Target Disclosure Materials or otherwise) is to the knowledge of Target (after making reasonable enquiries) true and correct in all material respects and is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (r) as at the date of this agreement, Target is not aware, after having made due enquiry, of any matter which is likely to result in the occurrence of a Target Prescribed Occurrence between the date of this agreement and the first to occur of the date on which the Offer Period ends and the date when this agreement is terminated (both inclusive);
- (s) Target's audit reviewed financial statements for the financial year ended 30 June 2013:
 - (i) are, in all material respects, a true and fair reflection of Target's financial position as at 30 June 2013 and of Target's performance during the financial year ended 30 June 2013; and

- (ii) comply with Australian Accounting Standards and the *Corporations Regulations 2001* (Cth);
- (f) all Target Material Contracts are in full force and of full effect and, so far as Target is aware, having made due enquiry, are legally binding as between the parties thereto in accordance with their terms;
- (u) as at the date of this agreement, Target is not aware of any act, omission, event or fact that would result in any of the Bid Conditions being breached or not satisfied;
- (v) no person has any right (whether subject to conditions or not) to, as a result or otherwise in connection with Bidder acquiring Target Shares:
 - (i) acquire, or require Target to dispose of or offer to dispose of, any material asset of the Target Group;
 - (ii) terminate or vary any material deed with any member of the Target Group; or
 - (iii) accelerate or adversely modify the performance of any obligations of a member of the Target Group in a material respect under any material deed, arrangement or understanding;
- (w) no member of the Target Group is in default in any material respect under any document, agreement or instrument binding on it or its assets nor, so far as the Target is aware, having made due enquiry, has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party thereto a termination right or right to accelerate any right or obligation, under any such document or agreement with such an effect; and
- (x) there is no Encumbrance (of whatsoever nature) over any assets of the Target Group other than an Encumbrance arising in the ordinary course of business.

11.2 Bidder warranties

Bidder represents and warrants to Target that each of the following statements is true, accurate and not misleading:

- (a) each member of the Bidder Group is a corporation validly existing under the laws of its place of incorporation;
- (b) Bidder has the power to execute, deliver and to perform its obligations under this agreement, and has taken all necessary corporate action to authorise such execution, delivery and the performance of such obligations;
- (c) Bidder's obligations under this agreement are legal, valid and binding obligations enforceable in accordance with their terms;

- (d) no regulatory action of any nature has been taken as at the date of this agreement which would prevent, inhibit or otherwise have a material adverse effect on the ability of Bidder to fulfil its obligations under this agreement;
- (e) the execution and delivery by Bidder of this agreement does not and will not conflict with or constitute a default under any provision of:
 - (i) any agreement or instrument to which it is a party; or
 - (ii) its constitution; or
 - (iii) any law, order, judgment, award, injunction, decree, rule or regulation by which it is bound;
- (f) no member of the Bidder Group is Insolvent;
- (g) Bidder is not in breach of its continuous and periodic disclosure obligations under the Corporations Act, the ASX Listing Rules and is not relying on the carve out in ASX Listing Rule 3.1A to withhold any information from public disclosure (other than in respect of the Transaction);
- (h) as at the date of this agreement there are 337,444,946 Bidder Shares on issue and there are no other shares or other securities (including equity securities, debt securities or convertible securities) or options or performance rights or other instruments which are convertible into securities in Bidder nor has it offered or agreed to issue any such shares, securities, options or performance rights or other instruments to any party, other than as referred to in this agreement;
- (i) Bidder has terminated all negotiations and discussions (other than with Target and its Representatives) that relate to any Competing Proposal in respect of Bidder as at the date of this agreement, and there are no discussions, negotiations or agreements in relation to any Competing Proposal in respect of Bidder other than to the extent permitted under this agreement;
- (j) no member of the Bidder Group is involved in any litigation, arbitration, legal, administrative or governmental proceedings or other dispute and there are no facts or circumstances known to Bidder (after making reasonable inquiries) likely to give rise to any such proceedings or dispute;
- (k) each member of the Bidder Group holds all material licences, permits and authorisations necessary to conduct its activities as presently conducted;
- (l) so far as Bidder is aware, there has been no material breach by any member of the Bidder Group of any laws applicable to it, any orders of any Authority having jurisdiction over it, or any conditions to any material licence, permit or authorisation held by it;
- (m) all information Bidder or its Representatives have provided to Target or its Representatives (whether as part of the Bidder Disclosure Materials or

otherwise) is to the knowledge of Bidder (after making reasonable enquiries) true and correct in all material respects and is not misleading or deceptive in any material respect (whether by omission or otherwise);

- (n) as at the date of this agreement, Bidder is not aware, after having made due enquiry, of any matter which is likely to result in the occurrence of a Bidder Prescribed Occurrence, a Bidder Material Adverse Change or a Bidder Material Transaction between the date of this agreement and the first to occur of the date on which the Offer Period ends and the date when this agreement is terminated (both inclusive);
- (o) Bidder's audit reviewed financial statements for the half year ended 31 December 2013:
 - (i) are, in all material respects, a true and fair reflection of Bidder's financial position as at 31 December 2013 and of Bidder's performance during the half year ended 31 December 2013; and
 - (ii) comply with Australian Accounting Standards and the *Corporations Regulations 2001* (Cth);
- (p) as at the date of this agreement, Bidder is not aware of any act, omission, event or fact that would result in any of the Bid Conditions being breached or not satisfied;
- (q) no person has any right (whether subject to conditions or not) to, as a result or otherwise in connection with Bidder acquiring Target Shares or making or completing the Offer:
 - (i) acquire, or require Bidder to dispose of or offer to dispose of, any material asset of the Bidder Group;
 - (ii) terminate or vary any material agreement or deed with any member of the Bidder Group; or
 - (iii) accelerate or adversely modify the performance of any obligations of a member of the Bidder Group in a material respect under any material deed, arrangement or understanding;
- (r) no member of the Bidder Group is in default in any material respect under any document, agreement or instrument binding on it or its assets nor, so far as the Bidder is aware, having made due enquiry, has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party thereto a termination right or right to accelerate any right or obligation, under any such document or agreement with such an effect; and
- (s) there is no Encumbrance (of whatsoever nature) over any assets of the Bidder Group other than an Encumbrance arising in the ordinary course of business, or as disclosed on the Personal Property Securities Register,

or in accordance with the terms of the Secured Loan Agreement or a Secured Convertible Note Agreement.

11.3 Timing of warranties

Each of the representations and warranties in clauses 11.1 and 11.2 is given:

- (a) as at the date of this agreement and each day up to and including the date of termination of this agreement; or
- (b) if the representation or warranty is expressly stated to be given at a different time, at that time.

11.4 Acknowledgements

Each party acknowledges that:

- (a) in entering into this agreement, the other party has relied on the representations and warranties made by the first-mentioned party under this clause 11;
- (b) those representations and warranties are not extinguished or affected by any investigation into the affairs of business of the first-mentioned party or any of its related entities; and
- (c) each representation and warranty in this clause 11 is severable and survives termination of this agreement.

11.5 Notice

If any party becomes aware of a matter or circumstance which results in or is likely to result in any of the representations or warranties given by that party in this clause 11 being untrue, inaccurate or misleading, it must give notice to the other party specifying that matter or circumstance in reasonable detail as soon as reasonably practicable after it becomes aware of that matter or circumstance. The failure by any party to give notice as contemplated by this clause 11.5 in relation to any matter or circumstance does not, for the avoidance of doubt, prevent the other party from making any claim arising from that matter or circumstance.

11.6 Qualifications

The representations and warranties given by Target in clause 11.1 and by Bidder in clause 11.2 are given subject to:

- (a) any exception, disclosure or qualification fairly disclosed to the other party in any due diligence materials prior to execution of this agreement;
- (b) any matter which would be revealed by a search on the date of this agreement of records maintained by ASIC or the High Court, Federal Court or any Supreme Court of any State or Territory, or a registration of a security interest on the Personal Property Securities Register;
- (c) any matter expressly provided for under the terms of this agreement; and

- (d) any matter or thing done, or omitted to be done, in accordance with any provision of this agreement or with the prior written approval of the other party.

12. TERMINATION

12.1 Material breach

- (a) A party (**Terminating Party**) may terminate this agreement at any time by giving written notice to the other if:
 - (i) the other party commits a breach of substantial import or of consequence to the Terminating Party of a material term of this agreement or any representation or warranty given by the other under this agreement is untrue, inaccurate or misleading in any material respect other than as a result of a breach of this agreement by the Terminating Party;
 - (ii) the Terminating Party has given notice to the other party of its intention to terminate this agreement under this clause 12.1, setting out the details of the matters or circumstances giving rise to the termination right; and
 - (iii) the breach under clause 12.1 has not been remedied within 5 Business Days after the date of receipt by the other party of the Terminating Party's notice under clause 12.1(a)(ii).
- (b) On receipt of a notice under clause 12.1(a)(ii), the recipient of that notice must use its reasonable endeavours for the 5 Business Days referred to in clause 12.1(a)(iii) to remedy the breach, if capable of remedy, that is set out in that notice.

12.2 Bidder termination events

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

- (a) Target is in breach of its obligations in clause 5.5, 6 or 9 (for the avoidance of doubt, no cure period of the kind referred to in clause 12.1(a)(iii) applies to any breach of clause 5.5, 6 or 9);
- (b) the Minimum Acceptance Condition is not satisfied (or waived by Bidder) by the end of the Offer Period;
- (c) the Target Board changes or withdraws its recommendation that Target Shareholders accept the Offer in respect of all their Target Shares or their intention to accept the Offer in respect of all of their Target Shares or make a public statement indicating that it no longer supports the Offer or that it supports a Competing Proposal in respect of Target, other than where the Target is entitled to do so in accordance with this agreement and other than where the Target is entitled to validly terminate this agreement under clause 12.3(c);
- (d) an event of default occurs under the Secured Loan Agreement;

- (e) a Target Prescribed Occurrence occurs;
- (f) a Target Material Adverse Change occurs; or
- (g) a Target Material Transaction occurs.

12.3 Target termination events

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

- (a) Bidder is in breach of its obligations in clause 9 (for the avoidance of doubt, no cure period of the kind referred to in clause 12.1(a)(iii) applies to any breach of clause 9);
- (b) the Target Board (or a majority of the Target Directors) changes or withdraws its (or their) recommendation or makes a public statement in accordance with clause 5.5, provided that Target has complied with its obligations under clause 9;
- (c) Bidder withdraws or makes a public statement indicating that it no longer intends to make or intends to withdraw the Offer (as the case may be) or that it supports a Competing Proposal in respect of Target, other than where the Bidder is entitled to validly terminate this agreement under clause 12.2(c);
- (d) a Bidder Prescribed Occurrence occurs;
- (e) a Bidder Material Adverse Change occurs; or
- (f) a Bidder Material Transaction occurs.

12.4 Other termination events

Either party may terminate this agreement by giving written notice to the other if during the Offer Period:

- (a) a Court or Authority issues a final and non-appealable order or ruling or takes an action which permanently restrains or prohibits the Offer;
- (b) the Offer lapses without the Bid Conditions being satisfied or waived (in accordance with this agreement); or
- (c) the Long Stop Date is reached and the Offer Period has not concluded.

12.5 Effect of termination

If this agreement is terminated under this clause 12 then:

- (a) except for this clause 12.5, 13, 14 and any other term which by its nature is intended to survive termination of this agreement, all the provisions of this agreement will lapse and cease to have effect, and the parties will have no further obligation to comply with any of those provisions; and
- (b) neither the lapsing of those provisions nor their ceasing to have effect will affect any accrued rights or liabilities of either party in respect of

damages for non-performance of any obligation under this agreement falling due for performance before such lapse and cessation.

13. BIDDER REIMBURSEMENT AMOUNT

13.1 Acknowledgements

Target acknowledges and agrees that:

- (a) if Bidder enters into this agreement and the Takeover Bid does not succeed, Bidder Group will have incurred significant costs and expenses, including significant opportunity costs;
- (b) the costs and expenses actually incurred by the Bidder Group will be of such nature that they cannot accurately be ascertained, but that the Bidder Reimbursement Amount is a genuine and reasonable estimate of the costs and expenses that have been or will be actually incurred by the Bidder Group in such circumstances and has been calculated to reimburse the Bidder Group for such costs and expenses;
- (c) Bidder has requested that provision be made for the payment of the Bidder Reimbursement Amount to Bidder in the circumstances described in clause 13.2, without which Bidder would not have entered this agreement; and
- (d) the Target has concluded that it is reasonable and appropriate for Target to agree to payment of the Bidder Reimbursement Amount in the circumstances described in clause 13.2 to secure Bidder's participation in the Takeover Bid.

13.2 Bidder Reimbursement Amount payable to Bidder

Target agrees to pay to Bidder the Bidder Reimbursement Amount if this agreement is terminated by:

- (a) Bidder under:
 - (i) clause 12.1(a);
 - (ii) clause 12.2(c), other than as a result of:
 - (A) a material breach of this agreement by Bidder; or
 - (B) the occurrence of a Bidder Prescribed Occurrence or Bidder Material Adverse Change that is material in the context of the Takeover Bid)); or
 - (iii) any of clauses 12.2(a) or 12.2(b) or 12.2(e) to 12.2(g) inclusive, where such breach, occurrence, change, event, matter or circumstance is material in the context of the Takeover Bid; or
- (b) Target under clause 12.3(b) (other than as a result of a material breach of this agreement by Bidder or the occurrence of a Bidder Prescribed Occurrence, a Bidder Material Adverse Change or a Bidder Material Transaction that is material in the context of the Takeover Bid).

13.3 Sole remedy

For the avoidance of doubt, the payment of the Bidder Reimbursement Amount to Bidder under clause 13.2 releases Target from any claim or action by Bidder for any damages, loss or expense arising from, or in connection with, the termination of this agreement under clause 13.2, other than in respect of any breach of this agreement that occurred prior to termination.

13.4 Time for payment

The Bidder Reimbursement Amount provided for in clause 13.2 must be paid within 5 Business Days after the receipt by Target of a written demand for payment by Bidder. The demand may only be made after the occurrence of an event referred to in clause 13.2. The obligation to reimburse under clause 13.2 cannot be triggered more than once.

13.5 Modifications following regulatory intervention

If any of the following occurs:

- (a) the Court finds that all or any part of the payment required to be made under clause 13.2 is unenforceable by Bidder against Target; or
- (b) as a result of an application to the Takeovers Panel by a party other than Target or its Representatives, the Takeovers Panel indicates that in the absence of a written undertaking pursuant to section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) to modify the amount of the Bidder Reimbursement Amount or the circumstances in which it is to be paid, it will make a declaration of unacceptable circumstances,

then, subject to clause 13.6:

- (c) the parties must amend this clause 13 to the extent required to give effect to the requirements of the Court or the Takeovers Panel (as the case may be) and (in the circumstances referred to in clause 13.5(b)) must give the required undertaking(s); and
- (d) neither the occurrence of any of the events referred to in clause 13.5(a) or 13.5(b) nor the amendment of this clause 13 will be taken to be a breach of, or permit any party to terminate, this agreement.

13.6 No requirement to act unless decision is final

The parties are only required to take steps under clause 13.5(c) in relation to any requirement of the Court or the Takeovers Panel if:

- (a) no appeal or review proceeding is available from the decision to impose that requirement or the period for lodging an appeal or commencing review proceedings has expired without an appeal having been lodged or review proceedings commenced; or
- (b) the parties agree in writing not to appeal or seek review of the decision to impose that requirement.

13.7 Appeals and review of regulatory decisions

Nothing in this agreement requires either party to appeal or seek review of any decision of the Court or the Takeovers Panel referred to in clause 13.5(a) or 13.5(b).

13.8 Determination by Court

If a Court determines that payment of all or any part of the Bidder Reimbursement Amount in accordance with clause 13.2 is unlawful or involves a breach of the fiduciary or statutory duties of the members of the Target Board (**Bidder Impugned Amount**) and either no appeal from that determination is available or the period for lodging an appeal has expired without an appeal having been lodged then:

- (a) the obligation of Target to pay the Bidder Reimbursement Amount does not apply to the extent of the Bidder Impugned Amount; and
- (b) if Bidder has received any part of the Bidder Impugned Amount, it must refund it within 5 Business Days after that determination is made or the period for lodging an appeal has expired, whichever is the later.

14. ANNOUNCEMENTS AND CONFIDENTIALITY

14.1 Announcements

Subject to clause 14.2, each party must not make, and must procure that its Representatives do not make any public announcement concerning the Transaction or the terms of or the negotiations relating to, this agreement other than the announcement referred to in clause 5.1.

14.2 Permitted announcements

Nothing in clause 14.1 prevents any announcement being made:

- (a) with the written consent of both parties, which must not be unreasonably withheld or delayed;
- (b) by Target to Target Shareholders, provided such announcement only updates Target Shareholders on the status of the Transaction; or
- (c) to the extent required by law, the ASX Listing Rules or any court of competent jurisdiction or any Authority, but if any party is required to make any such announcement, it must promptly notify the other party, where reasonably practicable and lawful to do so, before the announcement is made and must co-operate with the other party regarding the timing and content of such announcement or any action which the other party may reasonably elect to take to challenge the validity of such requirement.

15. GST

15.1 Definitions

Words and expressions defined in the GST Act have the same meaning in this clause 15.

15.2 Payments exclusive of GST

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

15.3 Input tax credits

Without limiting clause 15.2, if an amount payable under or in connection with this agreement is calculated by reference to a liability incurred by a party, then the amount of the liability must be reduced by the amount of any input tax credit to which that party is entitled in respect of the acquisition of the supply to which the liability relates. A party will be assumed to be entitled to a full input tax credit unless it demonstrates that its entitlement is otherwise before the date on which payment must be made.

16. NOTICES

16.1 Service of notices

A notice, demand, consent, approval or communication under this agreement (**Notice**):

- (a) must be in writing and in English directed to the recipient's address for notices specified in the recitals (as varied by any Notice);
- (b) must be hand delivered, left at or sent by prepaid post or facsimile to the recipient's address for notices specified in the recitals (as varied by any Notice); and
- (c) may be given by an agent of the sender.

16.2 Effective on receipt

A Notice given in accordance with clause 16.1 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered or left at the recipient's address, on delivery;
- (b) if sent by prepaid post, the third Business Day after the date of posting, or the seventh Business Day after the date of posting if posted to or from outside Australia); and
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless,

within one Business Day after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery or transmission under paragraph (a) or (c) is outside Business Hours, the Notice is taken to be received at the commencement of Business Hours after that delivery, receipt or transmission.

16.3 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings in relation to this agreement may be served by any method contemplated by clause 16.1 in addition to any means authorised by law.

17. PAYMENTS

17.1 Accounts for payments

Unless otherwise expressly stated (or as otherwise agreed in the case of a given payment), any payment to be made to Target under this agreement must be made in Australian dollars by transfer of the relevant amount into the account nominated in writing by Target on or before the date on which the payment is due.

17.2 Default interest

If Bidder defaults in making any payment when due of any sum payable under this agreement, it must pay interest to Target on that sum from (and including) the date on which payment is due until (but excluding) the date of actual payment (after as well as before judgment) at an annual rate of 2% above the Reference Rate on that sum, which interest accrues from day to day and must be compounded monthly.

17.3 Gross up

If Target is required by law to make a deduction or withholding in respect of any sum payable under this agreement, Bidder must, at the same time as the sum which is the subject of the deduction or withholding is payable, make a payment to Target of such additional amount as is required to ensure that the net amount received by Target will equal the full amount which would have been received by it had no such deduction or withholding been required to be made.

18. GENERAL

18.1 Alterations

This agreement may be altered only in writing signed by each party.

18.2 Approvals and consents

Except where this agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this agreement.

18.3 Assignment

A party may only assign this agreement or a right under this agreement with the prior written consent of each other party.

18.4 Counterparts

This agreement may be executed in counterparts. All executed counterparts constitute one document.

18.5 Costs

The parties agree that each party shall bear its own costs in relation to, and associated with, this agreement and giving effect to this agreement.

18.6 No merger

Except where this agreement expressly states otherwise, the rights and obligations of the parties under this agreement do not merge on completion of any transaction contemplated by this agreement.

18.7 Entire agreement

This agreement and the Heads of Agreement constitute the entire agreement between the parties in connection with its subject matter and supersede all previous agreements or understandings between the parties in connection with its subject matter. This agreement takes priority in the event of any inconsistency with the Heads of Agreement.

18.8 Further action

Each party must do, at its own expense, everything reasonably necessary to give full effect to this agreement and the transactions contemplated by it (including executing documents) and to use all reasonable endeavours to cause relevant third parties to do likewise.

18.9 Severability

If the whole or any part of a provision of this agreement is invalid or unenforceable in a jurisdiction it must, if possible, be read down for the purposes of that jurisdiction so as to be valid and enforceable. If however, the whole or any part of a provision of this agreement is not capable of being read down, it is 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.

18.10 Enforcement of indemnities

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this agreement.

18.11 Survival

Any obligation of confidentiality in this agreement is independent and survives termination of this agreement. Any other term which by its nature is intended to survive termination of this agreement survives termination of this agreement.

18.12 Attorneys

Each person who executed this agreement on behalf of a party declares that he or she has no notice of the revocation or suspension by the grantor or in any other manner of the power of attorney under the authority of which he or she executes this agreement.

18.13 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise by a party of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

18.14 Relationship

Except where this agreement expressly states otherwise, this agreement does not create a relationship of employment, trust, agency or partnership between the parties.

18.15 Remedies cumulative

The rights provided in this agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this agreement.

18.16 Governing law

This agreement will be governed by and construed in accordance with the law for the time being in force in Western Australia and the parties, by entering into this agreement, are deemed to have submitted to the non-exclusive jurisdiction of the courts of that State.

18.17 Exercise of rights

A party may exercise a right, at its discretion and separately or concurrently with another right.

SCHEDULE 1 – BID CONDITIONS

1. Approval of Essential Bidder Resolutions

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

2. No Target Material Adverse Change

During the period from the Announcement Date to the end of the Offer Period (inclusive), no Target Material Adverse Change occurs, is announced or becomes known to Bidder (whether or not it becomes public).

3. No Target Prescribed Occurrence

During the period from the Announcement Date to the end of the Offer Period (inclusive), no Target Prescribed Occurrence occurs.

4. Minimum Acceptance Condition

As at the end of the Offer Period, Bidder Group has a Relevant Interest in such number of Target Shares as represents at least 90% in aggregate of all Target Shares then on issue and being entitled to proceed to compulsory acquisition of Target Shares under the Corporations Act.

5. Prospectus Offer Condition

The Prospectus Offer closes and, as at the close of the Prospectus Offer, Bidder receives or becomes entitled to receive, in immediately available funds, gross proceeds of no less than \$5 million (less the amount of any Convertible Note Proceeds) as a result of subscriptions made under the Prospectus Offer.

6. ASX consent to re-admission

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

7. No regulatory intervention

During the period from the Announcement Date to the end of the Offer Period (inclusive):

- (a) there is not in effect any preliminary or final decision, order or decree issued by an Authority; and
- (b) no application is made to any Authority (other than by Bidder or a subsidiary of Bidder), or action or investigation is announced, threatened or commenced by an Authority,

in consequence of or in connection with the Offer (other than an application to or a determination by ASIC or the Takeovers Panel in the exercise of the powers and discretions conferred by the Corporations Act), which restrains, impedes or

prohibits (or if granted could restrain, impede or prohibit), or otherwise materially adversely impacts upon, the making of the Offer or any transaction contemplated by this agreement, the Offer or the rights of Bidder in respect of Target or the Target Shares to be acquired under the Takeover Bid, or requires the divestiture by Bidder or Bidder's Shareholders of any Target Shares or the divestiture of any assets of Target Group, Bidder, Bidder Group or otherwise.

8. No material acquisitions

Between the Announcement Date and the end of the Offer Period (each inclusive), no Target Material Transaction occurs.

9. Conversion of Target Convertible Securities

By the end of the Offer Period, all Target securities convertible into Target Shares on issue as at the date of this agreement have been either converted into Target Shares or cancelled, except for securities issued under the Target's Employee Option Scheme (US), and Target having no more than 381,877,818 Target Shares on issue.

SCHEDULE 2 – INDICATIVE TIMETABLE

Event	Date
Bidder and Target issue their respective announcements in relation to Takeover Bid	27 June 2014
Draft Notice of Bidder Shareholder Meeting lodged with ASX	4 July 2014
Notice of Bidder Shareholder Meeting sent to Bidder Shareholders	11 July 2014
Bidder's Statement lodged with ASIC and served on Target and ASX	18 July 2014
Target's Statement lodged with ASIC and served on Bidder and ASX	23 July 2014
Prospectus lodged with ASIC	25 July 2014
Bidder's Statement and Target's Statement sent to Target Shareholders	29 July 2014
Notice to Target and ASIC that Bidder's Statement and Offer has been sent to Target Shareholders	29 July 2014
Bidder holds Bidder Shareholder Meeting	11 August 2014
Prospectus offer closes	21 August 2014
Offer closes	29 August 2014
Re-instatement to trading on ASX	12 September 2014

SCHEDULE 3 – TERMS AND CONDITIONS OF PERFORMANCE SHARES

1. Terms of Performance Shares

- (a) **(Performance Shares):** Each Performance Share is a share in the capital of Bidder.
- (b) **(General Meetings):** The Performance Shares shall confer on the holder (**Holder**) the right to receive notices of general meetings and financial reports and accounts of Bidder that are circulated to Bidder Shareholders. Holders have the right to attend general meetings of Bidder Shareholders.
- (c) **(No Voting Rights):** The Performance Shares do not entitle the Holder to vote on any resolutions proposed at a general meeting of Bidder Shareholders, subject to any voting rights under the Corporations Act 2001 (Cth) or the ASX Listing Rules where such rights cannot be excluded by these terms.
- (d) **(No Dividend Rights):** The Performance Shares do not entitle the Holder to any dividends.
- (e) **(No Rights on Winding Up):** Upon winding up of Bidder, the Performance Shares may not participate in the surplus profits or assets of Bidder.
- (f) **(Transfer of Performance Shares):** The Performance Shares are not transferable.
- (g) **(Reorganisation of Capital):** In the event that the issued capital of Bidder is reconstructed, all rights of a Holder will be changed to the extent necessary to comply with the ASX Listing Rules at the time of reorganisation provided that, subject to compliance with the ASX Listing Rules, following such reorganisation the economic and other rights of the Holder are not diminished or terminated.
- (h) **(Application to ASX):** The Performance Shares will not be quoted on ASX. Upon conversion of the Performance Shares into Bidder Shares in accordance with these terms, Bidder must within seven (7) days after the conversion, apply for and use its best endeavours to obtain the official quotation on ASX of the Shares arising from the conversion.
- (i) **(Participation in Entitlements and Bonus Issues):** Subject always to the rights under item (g) (Reorganisation of Capital), holders of Performance Shares will not be entitled to participate in new issues of capital offered to holders of Bidder Shares such as bonus issues and entitlement issues.
- (j) **(Amendments required by ASX):** The terms of the Performance Shares may be amended as necessary by the Bidder Board in order to comply with the ASX Listing Rules, or any directions of ASX regarding the terms provided that, subject to compliance with the ASX Listing Rules, following such amendment, the economic and other rights of the Holder are not diminished or terminated.

- (k) **(No Other Rights):** The Performance Shares give the Holders no 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.

2. Conversion of the Performance Shares

- (a) **(Issue of Performance Shares):** The Performance Shares will be issued at the same time as all other Consideration under the Offer.
- (b) **(Milestones):** The Performance Shares will convert upon satisfaction of any one of the following milestones:
 - (i) Target receives annualised revenue over three consecutive calendar months equivalent to at least \$20,000,000 on an annual basis, and such revenue is confirmed by the signed attestation of a registered company auditor, or such revenue is properly included in Target's audited financial statements;
 - (ii) deployment on a revenue generating basis of Target's "Covata Platform", "Covata Safe Share" and/or "Covata SDK" software services in the internal or cloud-hosted IT infrastructure of a multinational corporation included on the S&P 500 Index or the FTSE500; or
 - (iii) deployment of Target's "Covata Platform", "Covata Safe Share" and/or "Covata SDK" software services in the internal or cloud-hosted IT infrastructure on a proof-of-concept basis with at least:
 - (A) twenty (20) corporations, each having an annualised revenue of at least \$200,000,000; or
 - (B) twenty (20) G20 (permanent) member governments (or a department of such government); or
 - (C) twenty (20) of a combination of (A) and (B) above,and such deployment on a revenue generating basis with ten (10) of (A), (B) or (C) above,(each referred to as a **Milestone**).
- (c) **(Conversion of Performance Shares):** In the event a Milestone is satisfied, all of the Performance Shares held by the Holder will convert into an equal number of Bidder Shares.
- (d) **(No Conversion if Milestone not Achieved)** Any Performance Share not converted into a Bidder Share within 3 years from the issue of the Performance Share will lapse.
- (e) **(After Conversion)** The Bidder Shares issued on conversion of the Performance Shares will, as and from 5.00pm (WST) on the date of issue, rank equally with and confer rights identical with all other Bidder Shares then on issue and application will be made by Bidder to ASX for official quotation of the Bidder Shares issued upon conversion.

- (f) **(Conversion Procedure)** Bidder will issue the Holder with a new holding statement for the Bidder Shares as soon as practicable following the conversion of the Performance Shares into Bidder Shares.
- (g) **(Ranking of Shares)** The Bidder Shares into which the Performance Shares will convert will rank pari passu in all respects with the Bidder Shares on issue at the date of conversion.

SCHEDULE 4 – INTELLECTUAL PROPERTY

Patent Number	Country	Case Name and Status	Upcoming Deadline/Event Date	Deadline Event	Comment
2008341026	Australia	System and Method for Securing Data. Accepted and Sealed	13 March 2011		Adjustment made to application dated 4th October 2012. Priority Date: 21 December 2007
586279	New Zealand	System and Method for Securing Data. Accepted and Sealed	6 August 2012		Priority Date: 21 December 2007
201004425-3	Singapore	System and Method for Securing Data. Accepted and Sealed	15 February 2013		Priority Date: 21 December 2007
2709944	Canada	System and Method for Securing Data. Request Examination	22 December 2013		Currently in examination after the request event in Dec 2013
12/809758	United States of America	System and Method for Securing Data. Notice of Appeal filed	13 September 2012		Allowed for issuance as a patent on 9 June 2014 and fee paid on 10 June 2014. Patent will be issued in due course, subject to no prior art being discovered.
2013902603	Australia	Secure data object generation and management (API). Provisional Application	15 July 2014	Convention deadline for filing a complete application	Currently submitted as a Provisional application. The next phase would be to submit the PCT application with designated countries. i.e. Australia and the US.

Trademark Number	Country	Mark Title	Filing Date	Registered Date	Classes
1433246	Australia	Covata	27 June 2011	15th December 2011	9 and 42
959788	New Zealand	Covata	31 May 2012	12 September 2012	9 and 42
1103772	European Community	Covata	29 July 2011	9th October 2012	9 and 42
79107960	United States of America	Covata	27 June 2011	28th November 2012	9 and 42
840189095 840189195	Brazil Brazil	Covata	10 July 2012	In examination	9 42
112012-350580	Japan	Covata	29 July 2011	22nd November 2013	9 and 42 1103772 – International Registration Number
T1200921E	Singapore	Covata	26 January 2012	22nd August 2013	9 and 42 1103772 – International Registration Number

SCHEDULE 5 – TARGET CAPITAL STRUCTURE

The capital structure of Target as at the date this agreement and upon conversion or cancellation of all securities convertible into Target Shares or Bidder Shares upon the successful completion of the Offer shall be as set out below:

Security	Number (date of this agreement)	Target Shares (upon Offer becoming Unconditional)	Bidder Shares (upon successful completion of the Offer)	Bidder Options (upon successful completion of the Offer)
Target Shares	224,170,041	224,170,041	N/A	N/A
Target Class A Shares	14,930,000	14,930,000	N/A	N/A
Target US Options	24,125,000	Nil	N/A	24,125,000
Target AU Options	4,700,000	Nil	N/A	4,700,000
Target Warrants	83,923,583	30,000,000	N/A	N/A
Target Convertible Notes				
• QWL (\$3.15m)	63	35,000,000	N/A	N/A
• Ilwella (\$2m)	40	22,222,222	N/A	N/A
• Gaffwick (\$2m)	40	22,222,222	N/A	N/A
• TPG (\$5m)	100	33,333,333	N/A	N/A
• Raven (\$1.5m)	30	Nil	8,100,000	N/A
• Additional Notes (\$1m)	20	Nil	5,400,000	N/A
• Total (\$14.65m)				
Total		381,877,818	13,500,000	28,825,000

The capital structure of Bidder upon completion of the Share Consolidation, the Offer, the Prospectus Offer (assuming an issue price of \$0.20 per Bidder Share and a minimum capital raise of \$2.5M), the issue of Bidder Options in accordance with clauses 6.3 and 6.4 (assuming Replacement Bidder Options are issued in respect of the Target US Options and Target AU Options, and Additional Replacement Bidder Options are issued in respect of the Additional Target US Options), the issue of Bidder Shares to advisers and the issue of Bidder Shares to holders of Additional Target Convertible Notes (assuming aggregate face value of \$2,500,000 and 4 months interest is paid on the Additional Convertible Notes) is as set out below:

	Bidder Shares	Bidder Options
Current issued capital of Bidder	337,444,946	Nil
Post Share-Consolidation issued capital of Bidder	33,744,495	Nil
Offer Consideration (Bidder Shares)	250,000,000	Nil
Offer Consideration (Performance Shares)	36,408,365	Nil
Prospectus Offer	12,500,000	Nil
Bidder Shares to be issued to advisers	10,000,000	Nil
Issue of Bidder Shares under Convertible Note Agreements	13,500,000	Nil
Replacement Bidder Options ^{1,2}	Nil	43,825,000
Total Post Merger & Capital Raising	356,152,860	43,825,000

Notes:

1. Exercisable at the issue prices and on or before the expiry dates set out in the table below:

Number of Replacement Bidder Options	Exercise Price	Expiry Date
4,700,000	AUD \$0.2933	9 March 2016
16,275,000	USD \$0.1467	24 July 2022
2,000,000	USD \$0.1467	1 August 2022
2,350,000	USD \$0.1467	17 December 2022
750,000	USD \$0.1467	31 July 2023
1,500,000	USD \$0.1467	28 August 2023

1,250,000	USD \$0.1467	18 December 2023
5,000,000 ²	USD \$0.1467	Ten years from the date of issue
10,000,000 ²	AUD \$0.20	Ten years from the date of issue

2. 15,000,000 Bidder Options to be issued to the Target Eligible Employees in accordance with clause 6.4(d), subject to Bidder Shareholder and regulatory approvals.

EXECUTED BY)
PRIME MINERALS LIMITED)
ACN 120 658 497)
in accordance with section 127 of the)
Corporations Act:

Director

Name

Director/Secretary

Name

EXECUTED BY)
COCOON DATA HOLDINGS LIMITED)
ACN 127 993 300)
in accordance with section 127 of the)
Corporations Act:

Director

Name

Director/Secretary

Name