

# ASX Announcement

## TYRO REJECTS NON-BINDING INDICATIVE PROPOSAL

**Sydney, 8 September 2022** – Tyro Payments Limited (**Tyro**) announces that it has received an unsolicited, non-binding and indicative proposal from a consortium of private equity investors led by Potentia Capital Management Pty Ltd (**Potentia** and together with its co-investors the **Consortium**) to acquire 100% of the issued share capital of Tyro (**Indicative Proposal**).

In addition to Potentia, the Consortium comprises HarbourVest Partners LLC, MLC Investments Limited and The Construction and Building Unions Superannuation Fund.

The Indicative Proposal values Tyro at \$1.27 per share (**Offer Price**), with shareholders proposed to have the option to receive their consideration in the form of 100% cash; 50% cash and 50% scrip; or 100% scrip in a privatised Tyro (subject to scale-back).

Potentia has also advised Tyro that it has entered into a Voting and Acceptance Deed with Cannon-Brookes Head Trust (**Grok**) in relation to its 12.5% shareholding in Tyro, such that Grok will accept a takeover bid made by Potentia or vote in favour of a scheme of arrangement proposed by Potentia at the Offer Price, subject to certain conditions. Potentia has informed Tyro that Grok *“cannot take any action under a competing proposal, unless that proposal has a value of A\$0.25 per share greater than the value of the most recent Potentia proposal”*.

The making of an offer pursuant to the Indicative Proposal is currently subject to a number of conditions including:

- completion of due diligence over a proposed 6-week timeframe;
- execution of definitive transaction documentation;
- obtaining all necessary regulatory approvals including APRA and FIRB;
- securing the support of Tyro's board (**Board**).

The Board has considered the Indicative Proposal including with the assistance of its financial and legal advisers and unanimously determined the Indicative Proposal significantly undervalues Tyro and, as such, is not in the best interest of shareholders as a whole. The Board has therefore determined to reject the proposal in its current form.

In coming to this decision, the Board believes:

- the Indicative Proposal is materially below Tyro's fundamental value and highly opportunistic given the Offer Price is substantially below where Tyro's share price has traded in the past 12 months;
- the Indicative Proposal is highly conditional;
- Tyro has attractive growth prospects as it continues to take share in the Australian payments and business banking markets;
- Tyro expects to achieve strong and improving operating leverage in the medium term; and
- Tyro is well funded and capitalised to support its growth ambitions.

The Board will act in the interests of shareholders as a whole and will consider any credible change of control proposal it receives, but will only progress such a proposal if it believes it represents compelling value for shareholders.

Tyro shareholders do not need to take any action in relation to the Indicative Proposal.

Tyro has appointed Barrenjoey as financial adviser and Clayton Utz as legal adviser in relation to the Indicative Proposal.

A copy of the Indicative Proposal and the Voting and Acceptance Deed in the form provided by Potentia is attached to this announcement.

For further information, please contact:

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E: [mappleby@tyro.com](mailto:mappleby@tyro.com)

**Investors:** Giovanni Rizzo  
Ph: +61 439 775 030  
E: [grizzo@tyro.com](mailto:grizzo@tyro.com)

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*Pursuant to Listing Rule 15.5, Tyro confirms this document has been authorised for release to the market by its Board.*

**About Tyro** - Tyro is a technology-focused and values-driven Group providing Australian businesses with payment solutions and value-adding business banking products. The Group provides simple, flexible and reliable payment solutions as a merchant acquirer, along with complementary business banking products.

More than 63,700 Australian merchants chose to partner with Tyro at 30 June 2022. The Group processed more than \$34.2 billion in transaction value in FY22. In FY22 the Group generated \$148.5 million in normalised gross profit, originated \$99.1 million in loans and held merchant deposits totalling \$83.3 million.

Tyro is Australia's fifth largest merchant acquiring bank by number of terminals in the market, behind the four major banks.

The business was founded in 2003 with a goal of being the most efficient acquirer of electronic payments in Australia. Tyro has a track record of innovation, creating purpose-built solutions and being first to market. This approach saw the company become the first technology company to receive an Australian specialist credit card institution licence in 2005. In 2015 that licence was replaced by the award of an Australian banking licence, making Tyro the first new domestic banking licensee in over a decade.

Payments are at the core of Tyro's business, using its proprietary core technology platform to enable credit and debit card acquiring. This offering is enhanced by features purpose-designed for those merchants who choose to partner with the company, including Point of Sale systems integrations, least-cost routing (Tap & Save) and alternative payment types such as integrated Alipay. While traditionally focused on in-store payments, Tyro has recently expanded into eCommerce.

Further, Tyro provides value-adding solutions to its partners, such as loans in the form of merchant cash advances and fee-free, interest-bearing merchant transaction accounts. Tyro has a team of more than 600 people, approximately half of whom are in technology roles.

7 September 2022

**VIA EMAIL**

David Thodey  
Independent Non-Executive Chair  
Tyro Payments Limited

Robbie Cooke  
Managing Director and Chief Executive Officer  
Tyro Payments Limited

**Non-binding Proposal to acquire 100% of Tyro Payments Limited @ \$1.27 per share**

Dear David and Robbie,

Potentia Capital Management Pty Ltd (“Potentia Capital”, “Potentia” or “we”), together with its co-investors HarbourVest Partners LLC (“HarbourVest”), MLC Investments Limited<sup>1</sup> (“MLC”) and Construction and Building Unions Superannuation Fund (“CBUS”), (together “Co-investors”), is pleased to submit the following indicative and non-binding offer (the “Non-Binding Offer” or “Proposal”) for the acquisition of 100% of the diluted share capital of Tyro Payments Limited (“Tyro” or the “Business”) on the terms outlined in this letter (the “Proposed Transaction”).

Potentia has entered into a Voting and Acceptance Deed with Tyro’s major shareholder Grok Ventures<sup>2</sup> (“Grok”), such that Grok will accept a takeover bid made by Potentia or vote in favour of a scheme of arrangement proposed by Potentia at a price of \$1.27, representing an enterprise value for the company of A\$693.9m<sup>3</sup>, and subject to certain conditions. Grok is the largest shareholder of Tyro holding over 64.7m shares<sup>4</sup>, representing 12.5% of the ordinary issued capital. Grok’s support of Potentia is further evidenced in that it cannot take any action under a competing proposal, unless that proposal has a value A\$0.25 per share greater than the value of the most recent Potentia proposal.

We want to deliver a proposal that is attractive to Tyro’s shareholders across a range of factors: value, speed of execution and certainty. We have already conducted an extensive external review of Tyro which, together with our deep sector expertise, leaves us well-positioned to complete due diligence and execute the Proposed Transaction within a highly expediated timeframe.

<sup>1</sup> MLC Investments Limited is acting in its capacity as trustee of the WM Pool - Equities Trust No. 66 and in its capacity as trustee of the WM Pool - Equities Trust No. 79 (together the **MLC Trusts**). The investment manager for the MLC Trusts is MLC Asset Management Pty Limited (trading as MLC Private Equity).

<sup>2</sup> CBC Co Pty Ltd (ACN 108 337 104) as trustee for the Cannon-Brookes Head Trust

<sup>3</sup> Based on fully diluted shares on issue of 548.7 million (including all options and performance rights) and the latest reported net cash of A\$36.9 million and lease liabilities of A\$34.0 million per Tyro’s FY22 Annual Report.

<sup>4</sup> As at the date and time of this letter. See attached Voting and Acceptance Deed

We believe Tyro requires a level of business transformation that can be best undertaken under private ownership. Potentia Capital is uniquely placed to assist Tyro deliver this transformation given our strong experience in B2B software and payments, track record of helping Australian software businesses scale, and the significant capital and resources Potentia can bring to support organic and inorganic growth.

## 1 Terms of Non-Binding Offer

Based on publicly available information and extensive outside-in due diligence, we are pleased to submit this indicative, non-binding offer for 100% of the shares in Tyro for A\$1.27 per share (the “**Offer Price**”). On a fully diluted basis, this represents an enterprise value of A\$693.9 million.<sup>5</sup>

We believe this is a full and fair price which will be highly attractive to Tyro’s shareholders. At A\$1.27 per share, the Offer Price implies 4.7x FY22 Normalised Gross Profit, representing a premium of:

- a) 29% to the closing price of A\$0.99 per share on 7 September 2022, being the day prior to any public announcement or rumour of activity from Potentia Capital in Tyro (“**Undisturbed Share Price Date**”);
- b) 29% to Tyro’s 30-day VWAP to 7 September 2022 of A\$0.99 per share;
- c) 50% to Tyro’s 60-day VWAP to 7 September 2022 of A\$0.85 per share;
- d) 41% to Tyro’s 90-day VWAP to 7 September 2022 of A\$0.90 per share, and;
- e) 112% to Tyro’s 52 week low to 7 September 2022 of A\$0.60 per share.

### Consideration for Tyro shareholders

As part of the Proposal, we are offering shareholders the option to receive their consideration in the form of either:

- a) 100% cash consideration;
- b) 50% cash and 50% scrip; or
- c) 100% scrip.

This structure allows shareholders to roll either a portion or all of their shares into the newly privatised Tyro, with the amount of the Scrip Consideration provided to each shareholder to be scaled back, if necessary, on a pro-rata basis. It is intended that the Proposed Transaction would be undertaken by way of scheme of arrangement. We would welcome the opportunity to discuss this further with the Tyro Board.

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<sup>5</sup> Based on fully diluted shares on issue of 548.7 million (including all options and performance rights) and the latest reported net cash of A\$36.9 million and lease liabilities of A\$34.0 million per Tyro’s FY22 Annual Report.

We believe our Non-Binding Offer represents a compelling proposition to Tyro and its shareholders for the following reasons:

- **Non-Binding Offer supported by market knowledge and outside-in diligence:** Potentia is offering a full valuation for the business reflecting our initial due diligence and commercial analysis, and our experience in the payments and software sectors.
- **Credibility and track record:** Potentia has entered into definitive agreements for 18 software and technology-enabled assets since founding in 2014, one of the strongest records in the technology sector of any Australian sponsor. Further, Potentia's pre-bid voting agreement with Tyro's largest shareholder, Grok over its 12.5% stake demonstrates our conviction and the seriousness of our approach.
- **Co-Investment:** A number of Potentia's large, institutional investors have agreed to co-invest with Potentia as part of the Proposed Transaction. In addition to funds available through Potentia Fund I and Potentia Fund II, the Co-investors have access to significant financial resources which will enable Potentia Capital to complete the Proposed Transaction.
- **Ideal partner for Tyro:** As discussed above, our conviction on the opportunity, well considered strategy to transform the business, and experience in the payments sector makes Potentia an ideal partner for the business' next phase of growth. Potentia strives to be a business partner, not just a provider of capital. Our mission is to work closely with the businesses we invest in to help them grow.
- **Full and fair valuation:** The Proposal provides Tyro shareholders with an attractive opportunity to sell their Tyro shares at a material premium to recent trading prices, consistent with the price at which the largest shareholder has entered into a pre-bid voting agreement with respect to their stake, and materially above the price that Fidelity, the previously second largest shareholder, exited their position recently.

## 2 Overview of Potentia Capital and Co-Investors

### Potentia Capital

Potentia Capital is a Sydney-headquartered private equity investment firm focused exclusively on technology, tech-enabled services and software businesses. The team is led by Andrew Gray (previously of US technology buyout firm Francisco Partners and Australian buyout firm Archer Capital) and Tim Reed (previously CEO of MYOB). Collectively, Potentia is one of the most experienced in the Australian private equity market having over 50 years private equity experience with a focus on technology buyouts and a shared history of working together as both owners and operators. We have a strong track record of successfully partnering with management teams to drive business transformation and growth in the technology, tech-enabled services and software sectors spanning the full range of economic and business cycles.

The transaction would be funded from a mix of Potentia Fund I, an A\$450m closed-end fund, and Potentia Fund II, an A\$635m closed-end fund alongside participation by the Co-Investors. Potentia's

investors include large Australian superannuation firms, global fund of funds and global pension funds. Potentia has a strong track record of driving business transformations and has directly relevant experience in owning and transforming software businesses, including:

- **Linkly (2019):** a leading provider of POS-payment terminal middleware software and online payment gateway services to merchant acquirers in Australia. It serves the major banks in Australia and several merchant acquirer disrupters;
- **Ascender (2015):** Potentia backed the Ascender management team to create the leading pan-Asian payroll software and tech-enabled services platform servicing over 1,200 clients and 1.3m employees from 13 delivery centres. During Potentia's ownership period, Ascender invested heavily in its software platforms as well as successfully completing three bolt-on acquisitions and over a dozen strategic partnerships in the HR tech space. Potentia exited the Ascender business to NYSE-listed Ceridian in March 2021;
- **Micromine (2018):** a leading global provider of general mine planning software. Through our ownership, Potentia has driven the shift of customers from a legacy perpetual license revenue model onto subscription pricing, as well as broadening the product offering through investment in R&D and strategic acquisitions, and material investment in salesforce effectiveness. Potentia announced the sale of Micromine to NASDAQ-listed Aspen Technology in July 2022;
- **Education Horizons (2019):** a leading provider of education software in Australia, providing education and administration systems for independent schools across K–12. Potentia's investment thesis was predicated on accelerating investment into the business' tech platform and building a global footprint which has been achieved through the acquisition of UK-based business Double First in early 2020; and
- **MYOB (2008):** prior to founding Potentia, its principals drove significant value creation at MYOB, Australasia's leading accounting software company. MYOB was privatised in early 2009 and sold to Bain Capital for A\$1.2 billion in 2011 following a significant 2½ year business transformation.

#### HarbourVest Partners

HarbourVest is an independent, global private markets firm with 40 years of experience and more than \$98 billion of assets under management (as at 31 March 2022). Its interwoven platform provides clients access to global primary funds, secondary transactions, direct co-investments, real assets and infrastructure, and private credit. HarbourVest has a long history of investing in equity and debt capital alongside its general partner relationships. HarbourVest has consummated over 750 direct co-investments deploying more than \$18.0 billion of capital (as at 31 March 2022). HarbourVest has a long-standing relationship with Potentia Capital, both as a limited partner of its funds and as a co-investment partner in prior transactions.

#### MLC



MLC Private Equity is a leading private equity manager with \$4 billion in funds under management and has been investing in private equity globally since 1997. Supported by a proven investment process, MLC Private Equity partners and invests with leading private equity managers globally. The MLC Private Equity program is one of the largest and most established global private equity programs in Australia. The MLC Private Equity team has delivered strong investment performance over the life of its program. MLC Private Equity is part of the Insignia Financial Limited group of companies which has Group Funds Under Management and Administration of \$298 billion (as at 30 June 2022).

### CBUS

Cbus is the leading Industry Super Fund representing those that help shape Australia. As one of Australia's largest super funds, we provide superannuation and income stream accounts to more than 850,000 members and we manage more than \$70 billion of our members' money (as at 30 June 2022). Our members include workers and retirees, their families and employers.

As a significant investor in the Australian economy, Cbus invests in a range of asset classes including private equity, infrastructure, equities, property, fixed interest, global credit and alternative growth assets. Since its inception in 1984, the Cbus' Growth (MySuper) option has returned 8.88% p.a. for our members (to 30 June 2022).

## **3 Approvals and Conditions**

The Proposal is subject to the usual and customary conditions of a transaction of this type, including:

- Access to due diligence materials via a vendor data room and satisfactory completion of due diligence;
- Execution of mutually satisfactory definitive transaction documentation including:
  - customary deal protection mechanisms including exclusivity arrangements (no shop, no talk, no due diligence, notification rights and matching rights) and break fees;
  - obtaining any consents required under material contracts and leases;
  - customary conditions including obtaining all necessary regulatory approvals required to complete the Proposed Transaction (including FIRB and APRA approval); and
- No distributions: the Company does not make or declare any dividend, distribution or return of capital (unless otherwise agreed);
- Support from the Tyro Board.

This Non-Binding Offer is a preliminary indication of certain terms only, and will not create any liability, commitment, or obligation (contractual, pre-contractual or otherwise) on the part of Potentia Capital or the Co-investors, and will not confer any rights upon Tyro, its directors, the management team, and their advisers.

We do not anticipate material issues or delays from any competition or other regulatory requirements arising from Potentia Capital's investments in other businesses.

## **4 Diligence Requirements & Timing**

We are able to commence due diligence immediately and are confident that we can complete due diligence and submit a binding offer within six weeks subject to our due diligence information requests being readily available.

Given our knowledge of the sector, we believe that we can undertake a targeted approach to due diligence. Our due diligence would be focused on matters relating to the commercial, technological, financial, tax, legal, HR and intellectual property of Tyro.

We have appointed Jarden Group as our financial adviser, and Johnson Winter & Slattery as our legal adviser in relation to this Proposed Transaction.

## **5 Capital Structure & Source of Funds**

We envisage funding the cash component of the Proposed Transaction with equity to be provided by a mix of funds controlled by Potentia (including funds from Potentia Fund I and Potentia Fund II), and the Co-investors, with a prudent amount of debt to be provided by third party financial institutions.

## **6 Contact Details**

If you have questions regarding the contents of this Non-Binding Offer, please do not hesitate to contact us at the below contact details:

**Tim Reed**  
Partner

**Andrew Joyce**  
Partner

Also included below are key contacts from our financial adviser, Jarden Australia:

**Aidan Allen**  
Managing Director

**Bryce Thompson**  
Managing Director

## **7 General**

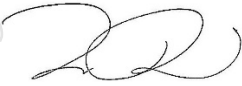
This Non-Binding Offer is an incomplete proposal. It is intended to be indicative only and is not capable of acceptance. This Non-Binding Offer does not impose any legally binding obligation or commitment on or on behalf of Potentia or Tyro to enter into any discussions or negotiate with each other or any other person. Accordingly, any transaction is subject to the negotiation, execution and delivery of mutually agreed definitive documentation.

We would like to reiterate that we believe Tyro is an excellent fit with our investment strategy and partnership model. We have a full team of investment executives and advisers on standby and are focused on delivering an efficient and expeditious path to an agreed transaction.

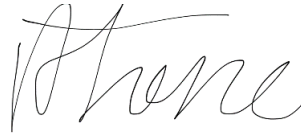
We look forward to hearing from you.



Yours sincerely,



**Tim Reed**  
Partner  
Potentia Capital



**Andrew Joyce**  
Partner  
Potentia Capital

For personal use only

## **Appendix A: Voting and Acceptance Deed**

*[Note: attached separately – page intentionally left blank]*

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**Shareholder**

**Potentia**

# **Voting and Acceptance Deed**

**JOHNSON WINTER & SLATTERY**

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SYDNEY NSW 2000

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## Voting and Acceptance Deed

**Date** 7 September 2022

### Parties

- 1** **CBC Co Pty Limited** (ACN 108 337 104) as trustee for **Cannon-Brookes Head Trust (Shareholder)**  
Address: Level 6, 341 George Street, Sydney NSW 2000
- 2** **Potentia Capital Management Pty Ltd** (ACN 630 264 210) (**Potentia**) as manager of Potentia Fund I  
Address: c/- Potentia Capital Services Pty Ltd, Suite 38.01, 1 Macquarie Place, Sydney NSW 2000

### Recitals

- A** Potentia proposes that its nominee, the Bidder, will acquire 100% of the shares in the capital of the Company.
- B** The Shareholder has agreed to accept a takeover bid made by the Bidder or vote in favour of a scheme of arrangement proposed by the Company, in each case on, and subject to, the terms of this document.

### Operative part

## 1 Definitions and interpretation

### 1.1 Definitions

In this document, unless the context otherwise requires:

**Associate** has the meaning set out in section 12 of the Corporations Act.

**Authorisation** means any authorisation, consent, approval, registration, filing, agreement, notice of non-objection, notarisation, certificate, licence, permit, authority or exemption from, by or with a Government Agency.

**Bidder** means a Related Entity of Potentia nominated by Potentia to acquire 100% of the shares in the capital of the Company.

**Bid Price** means \$1.27 per Share.

**Board** means the board of directors of the Company.

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

**Claim** means any allegation, claim, cause of action, suit, proceeding, investigation, audit or demand of any nature howsoever arising, whether present or future, fixed or unascertained, actual or contingent and whether at law, in equity, under statute or otherwise.

**Company** means Tyro Payments Limited (ACN 103 575 042).

**Company Group** means the Company and its subsidiaries.



**Competing Proposal** means any proposal, offer, expression of interest, agreement, arrangement or transaction which, if entered into or completed substantially in accordance with its terms, would result in a Third Party (either alone or together with any Associate):

- (a) directly or indirectly acquiring a Relevant Interest in, or having a right to acquire, a legal, beneficial or economic interest in, or control of, 20% or more of the Shares in the Company;
- (b) acquiring Control (as determined in accordance with section 50AA of the Corporations Act, but disregarding subsection 50AA(4)) of the Company;
- (c) directly or indirectly acquiring or becoming the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or control of, all or a substantial part of the business or assets of the Company Group; or
- (d) otherwise directly or indirectly acquiring or merging with the Company,

in each case whether by way of takeover bid, members' or creditors' scheme of arrangement, reverse takeover, shareholder approved acquisition, capital reduction, buy-back, sale or purchase of shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement recapitalisation, refinancing or other transaction or arrangement.

**Completes** means:

- (a) in the case of a Takeover Bid, the purchaser acquires the Grok Shares; and
- (b) in the case of a Scheme, the Scheme is implemented.

**Control** has the meaning given in section 50AA of the Corporations Act, disregarding subsection 50AA(4).

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

**Deal** means:

- (a) sell, assign, transfer, declare a trust over or otherwise dispose of;
- (b) agree or offer to sell, assign, transfer or otherwise dispose of;
- (c) enter into any option which, if exercised, enables or requires the person to sell, assign, transfer, declare a trust over or otherwise dispose of;
- (d) create or agree or offer to create or permit to be created any interest or Encumbrance; or
- (e) enter into any relevant agreement, or take any action, that gives rise to any Third Party acquiring any Relevant Interest.

**Encumbrance** means a mortgage, charge, pledge, lien, hypothecation or third party interest of any kind whatever, or an agreement to create any of them or to allow any of them to exist.

**End Date** means the later of:

- (a) six months after the date of this document; or
- (a) if, on the date that is six months after the date of this document:

- (i) the Company has entered into a bid implementation agreement or scheme implementation agreement to implement the Transaction or a Competing Transaction; or
- (ii) the Bidder or a Third Party has announced a takeover bid for the Company; or
- (iii) in the bona fide opinion of the Shareholder (acting in good faith), the Bidder otherwise remains engaged in a bona fide attempt to progress the Transaction,

then nine months after the date of this document, provided that if at the date that is nine months after the date of this document there are outstanding conditions precedent under a bid implementation agreement or scheme implementation agreement to implement the Transaction, the End Date will be the later of:

- (iv) the date that the relevant implementation agreement is terminated or the Scheme contemplated by it Completes; or
  - (v) the date that the Takeover Bid lapses, is withdrawn, or Completes; and
- (b) such other date agreed between the parties.

**Fee Cap** means \$5,000,000.

**Grok Shares** means 64,719,528 Shares.

**Government Agency** means each of the following in Australia:

- (a) a government (whether district, county, federal, provincial, municipal, state, territorial or local);
- (b) a governmental, semi-governmental, administrative or judicial entity, agency or authority including a department, office or minister of a government acting in that capacity;
- (c) a regulatory or self-regulatory entity, agency or organisation established under statute;
- (d) a securities exchange; or
- (e) any other taxing or other authority competent to impose, administer or collect any tax.

**HoldCo** means the holding company of the Bidder.

**Law** include any law or legal requirement, including at common law, in equity, under any statute, regulation or by-law, any condition of any Authorisation, and any decision, directive, guidance, guideline or requirements of any Government Agency.

**Loss** means any Claim, demand, damage, loss, cost, expense or liability.

**Matching Proposal** means:

- (a) a proposal provided by the Bidder to the Company to acquire all of the Shares in the Company which either:
  - (i) is for consideration that has a Value which is equal to or greater than the Value of the consideration for a Competing Proposal; or

- (ii) the board of the Company, acting in the best interests of Company shareholders and in good faith, determines is a valid matching proposal (under the terms of any exclusivity arrangements agreed between Bidder and the Company) or superior to a Competing Proposal; or
- (b) a Takeover Bid made to the Company's shareholders which is for consideration that has a Value which is equal to or greater than the Value of the consideration for a Competing Proposal,

provided that, in each case, there is a Mixed Consideration component of the consideration in the manner defined in clause 3.1.

**Reimbursement Fee** means the actual out-of-pocket fees, costs and expenses (exclusive of GST) that are properly and actually incurred by Potentia, the Bidder or their Related Entities in connection with the Transaction and for which tax invoices have been provided in accordance with clause 4.2, up to the Fee Cap.

**Related Bodies Corporate** has the meaning set out in section 50 of the Corporations Act.

**Relevant Interest** has the meaning given to that term in sections 608 and 609 of the Corporations Act.

**Related Entity** of a party means another entity which is:

- (a) a Related Body Corporate of the first entity;
- (b) in any consolidated entity (as defined in section 9 of the Corporations Act) which contains the first entity;
- (c) in relation to Potentia, an entity that is managed or advised by Potentia; or
- (d) any trust of which the first entity or an entity described in paragraph (a), (b) or (c) above is a trustee.

**Scheme** means a scheme of arrangement under Part 5.1 of the Corporations Act.

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

**Takeover Bid** means an off-market takeover bid under Chapter 6 of the Corporations Act.

**Transaction** means the acquisition of all the Shares in the Company by the Bidder whether by way of a Scheme, Takeover Bid or otherwise.

**Third Party** means a person other than the Shareholder, the Bidder, Potentia or their respective Related Bodies Corporate, Related Entities or Associates.

**Value** means in relation to any consideration (or part thereof) at any time:

- (a) if the consideration is a cash sum in \$A, that \$A value;
- (b) if the consideration is a cash sum denominated in a currency other than Australian dollars, the value of the consideration will be based on its Australian dollar equivalent applying the five day averaged currency exchange rate for the relevant foreign currency quoted on Reuters over the five days ending on the day prior to the relevant date;
- (c) if the consideration is in a form of securities in an entity listed on any securities exchange, the consideration will be valued based on the volume weighted average price of the relevant securities over the five days ending on the day prior to the relevant date. If that price is quoted in a currency other than Australian dollars that

price must be converted into Australian dollars applying the five day averaged currency exchange rate for the relevant foreign currency quoted on Reuters over the five days ending on the relevant date; or

- (d) in any other case, the value in A\$:
  - (i) as agreed by the parties (acting reasonably); or
  - (ii) in the absence of agreement, as determined by an independent expert appointed by Potentia (acting reasonably and taking into account any reasonable requests from the Shareholder). The independent expert will act as expert and not arbitrator and the decision of the interdependent expert will, in the absence of manifest error, be final and binding on both parties.

## 1.2 *Interpretation*

In this document, unless provided otherwise:

- (a) a reference to:
  - (i) the singular includes the plural and vice versa;
  - (ii) a gender includes all genders;
  - (iii) a person includes an individual, corporation or other body corporate, partnership, trust, joint venture, unincorporated body, government agency or other entity, whether or not it comprises a separate legal entity;
  - (iv) a clause, schedule or annexure is a reference to a clause, schedule or annexure of this document;
  - (v) this document includes any schedule or annexure to it;
  - (vi) a party includes that party's successors, permitted substitutes and permitted assigns;
  - (vii) dollars or \$ is a reference to Australian dollars;
  - (viii) this document or another document includes that document as amended, supplemented, novated or replaced from time to time;
  - (ix) legislation or a provision of legislation includes all regulations, orders or instruments issued under that legislation or provision and any modification, consolidation, amendment, re-enactment, replacement or codification of it;
  - (x) subsidiary, holding company, related body corporate or relative has the same meaning as in the Corporations Act;
  - (xi) a day, month, quarter or year means a calendar day, calendar month, calendar quarter or calendar year respectively;
  - (xii) time is to the time in Sydney, New South Wales; and
  - (xiii) writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible or tangible form (and includes communication by email);
- (b) where a word or expression is defined or given meaning, another grammatical form has a corresponding meaning;

- (c) any recital, heading or table of contents is for convenience only and does not affect the interpretation of this document;
- (d) a provision of this document must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this document or the inclusion of the provision in this document;
- (e) where an act would be required to be done, or a time limit or period would expire, on a day which is not a Business Day, the act must be done, or the limit or period will expire, on the following Business Day;
- (f) if a period of time is specified from or after a given day, the period is to be calculated exclusive of that day;
- (g) any phrase introduced by the terms “**including**”, “**include**”, “**in particular**” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (h) references to “the parties” are to the parties to this document and include their respective permitted successors in title and permitted assignees.

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## 2 Dealing in Grok Shares

The Shareholder must not Deal in the Grok Shares, except as expressly permitted by clause 3.

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## 3 Acceptance and voting

### 3.1 Definitions

In this clause 3:

**Agreed Bid Consideration** means, at the election of each shareholder of the Company:

- (a) 100% cash consideration (**Cash Consideration**);
- (b) 100% scrip consideration in the form of equity interests in HoldCo, the Bidder or their Related Entity or Related Body Corporate with an equivalent Value to the cash consideration per Share (**Scrip Consideration**); or
- (c) a combination of 50% Cash Consideration and 50% Scrip Consideration (**Mixed Consideration**),

with the amount of the Scrip Consideration provided to each shareholder to be scaled back, if necessary, on a pro-rata basis.

### 3.2 Obligation to accept Takeover Offer

Subject to clause 3.5, if the Bidder makes an announcement to the ASX on or before the End Date that it intends to make offers under a Takeover Bid to acquire all of the Shares in the Company:

- (a) where:
  - (i) the Value of the consideration is not less than the Bid Price; and
  - (ii) the consideration is in the form of the Agreed Bid Consideration; and
- (b) subject to conditions which are substantially in the form of those set out in **Schedule 1**, but with the incomplete items to be completed by the Bidder in

consultation with the Shareholder (both parties acting reasonably and in good faith having regard to the results of any due diligence investigations on the Company that the Bidder undertakes),

(such offers being the **Takeover Offer**), then the Shareholder agrees to irrevocably accept the Takeover Offer (electing for the Mixed Consideration) in respect of all of the Grok Shares by 7:00pm on the date that is two Business Days after the Takeover Offer becomes unconditional.

For the avoidance of doubt, but subject to clause 3.5, this clause 3.2 applies to any amended Takeover Offer proposed in response to a Competing Proposal provided that the amended Takeover Offer meets the conditions in sub-clauses 3.2(a) and 3.2(b) above.

### **3.3 Obligation to vote in favour of Scheme**

Subject to clause 3.5, if the Company makes an announcement to the ASX on or before the End Date that the Company will propose a Scheme under which the Bidder will acquire all of the Shares in the Company:

- (a) where:
  - (i) the Value of the consideration is not less than the Bid Price; and
  - (ii) the consideration is in the form of the Agreed Bid Consideration; and
- (b) subject to conditions which are substantially in the form of those set out in **Schedule 2**, but with the incomplete items to be completed by the Bidder in consultation with the Shareholder (both parties acting reasonably and in good faith having regard to the result of any due diligence investigations on the Company that the Bidder undertakes),

then the Shareholder irrevocably undertakes that it will, or will procure, that all of the Grok Shares are voted (whether in person or by proxy) in favour of the Scheme.

For the avoidance of doubt, but subject to clause 3.5, this clause 3.3 applies to any amended Scheme proposed in response to a Competing Proposal, provided that the amended Scheme meets the conditions in sub-clauses 3.3(a) and 3.3(b) above.

### **3.4 Voting restriction**

Subject to clause 3.5, the Shareholder must not cast any vote attaching to the Grok Shares on any Scheme or accept any Takeover Offer proposed or made by a Third Party, unless directed by the Bidder or as permitted by this document.

### **3.5 Exceptions**

The Shareholder will not be obliged to take any action under this clause 3 (and will be entitled to vote in favour of a Scheme proposed by a Third Party or to accept a Takeover Offer proposed by a Third Party):

- (a) if the Shareholder is prevented from taking the action required under this clause 3 either by law, or by a binding requirement of a Government Agency or a Court; or
- (b) if:
  - (i) after the date of this document, a Competing Proposal has been announced which has a Value which is more than \$0.25 per Share greater than the Value of the most recent Takeover Offer or Scheme made or announced by the Bidder or the Company; and



- (ii) the Bidder has not made a Matching Proposal within 10 Business Days of the announcement of that Competing Proposal.

## 4 Reimbursement Fee

### 4.1 Reimbursement Fee

- (a) Subject to this clause 4, the Shareholder must pay the Reimbursement Fee to Potentia if:
- (i) either:
    - (A) the Company announces that it has entered into an agreement or deed with a Third Party to effect a Competing Proposal (whether by way of a Takeover Bid, Scheme or other transaction or arrangement); or
    - (B) a Third Party announces a Takeover Bid for Shares in the Company; and
  - (ii) Potentia notifies the Shareholder and the Company that it is no longer pursuing the Transaction; and
  - (iii) the transaction referred to in clause 4.1(a)(i) Completes.
- (b) Subject to this clause 4, if:
- (i) a transaction referred to in clause 4.1(a)(i) is announced but has been terminated;
  - (ii) Potentia notifies the Shareholder and the Company that it is no longer pursuing the Transaction; and
  - (iii) the Shareholder sells, transfers, assigns or otherwise disposes of any or all of the Grok Shares within six months of the Competing Proposal referred to in clause 4.1(a)(i) terminating,
- then the Shareholder must pay the Reimbursement Fee to Potentia, provided that the Reimbursement Fee:
- (iv) must not include any fees, cost or expenses incurred after Potentia notifies the Shareholder that it is no longer pursuing the Transaction; and
  - (v) will not exceed the lesser of 50% of the Uplift Proceeds and the actual out-of-pocket fees, costs and expenses (exclusive of GST) that are properly and actually incurred by Potentia, the Bidder or their Related Entities in connection with the Transaction and for which tax invoices have been provided in accordance with clause 4.2 up until Potentia notifies the Shareholder that it is no longer pursuing the Transaction.
- (c) In this clause 4.1:
- (i) **Uplift Proceeds** means the amount calculated in accordance with the following formula:

$$\text{Uplift Proceeds} = (\text{Exit Price} - \text{Bid Price}) * \text{Number of Grok Shares}$$

- (ii) **Exit Price** means the average Value per Share paid or payable to the Shareholder in respect of the disposal of any Grok Shares during the six month period referred to in clause 4.1(b)(iii).

#### 4.2 **Payment of Reimbursement Fee**

If the Shareholder is required to pay the Reimbursement Fee under clause 4.1, the Shareholder must pay the Reimbursement Fee in immediately available funds into an account nominated by Potentia, without set off or withholding, within 20 Business Days of notification by Potentia under clause 4.1, provided that:

- (a) Potentia has provided the amount of the Reimbursement Fee to the Shareholder in writing, and nominated an account into which the Shareholder is to pay the Reimbursement Fee; and
- (b) Potentia has provided a reasonable breakdown of the actual out-of-pocket fees, costs and expenses properly incurred by Potentia, the Bidder or their Related Entities in connection with the Transaction, and provided to the Shareholder a copy of the tax invoice for each such fee, cost or expense from the Third Party who has provided the relevant service.

#### 4.3 **No payment**

The parties agree that the Reimbursement Fee will not be payable if:

- (a) the Transaction Completes; or
- (b) where the Bidder has entered into a scheme or bid implementation agreement with the Company in respect of a Transaction (**Implementation Agreement**) before the Reimbursement Fee becomes payable under clause 4.1:
  - (i) the Bidder or any of its Related Entities has a right to a break fee or other cost reimbursement from the Company under the Implementation Agreement and recovers that break fee (**Recovered Break Fee**) from the Company (provided that in the event there is a dispute between Potentia and the Company about the recovery of the break fee, the Shareholder is not obliged to make payment of any Reimbursement Fee until final resolution of such a dispute), except where Potentia can demonstrate that:
    - (A) the actual out-of-pocket fees, costs and expenses properly incurred by Potentia, the Bidder or their Related Entities in connection with the Transaction; *exceed*
    - (B) the Recovered Break Fee,
 in which case the Reimbursement Fee must also be paid but only an amount that results in the Recovered Break Fee and the Reimbursement Fee adding up to \$5,000,000; or
  - (ii) the Bidder or any of its Related Entities enters into an Implementation Agreement with the Company without having obtained a customary right to a break fee of 1% of the equity value of the Company implied by the Transaction.

#### 4.4 **Reimbursement Fee payable only once**

The Reimbursement Fee is payable by the Shareholder to the Bidder only once and where the Reimbursement Fee becomes payable to the Bidder under clause 4.1 and is actually paid

to the Bidder, the Bidder cannot make any claim against the Shareholder for any further payment of the Reimbursement Fee.

#### 4.5 **Reimbursement Fee deadline**

The Reimbursement Fee shall not include any amount for any fee, cost or expense incurred after the deadline for the Bidder to make a Matching Proposal under clause 3.5(b)(ii).

## 5 **Representations and warranties**

### 5.1 **Representations and warranties**

Potentia represents and warrants to the Shareholder, and the Shareholder represents and warrants to Potentia and the Bidder, that:

- (a) **(incorporation and existence)** it has been incorporated as a company limited by shares in accordance with the laws of its place of incorporation, is validly existing under those laws and has power and authority to carry on its business as it is now being conducted;
- (b) **(power)** it has power to enter into this document and comply with its obligations under it;
- (c) **(no contravention or exceeding power)** this document and the transactions under it which involve it do not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject or cause a limitation on its powers (or, to the extent applicable, the powers of its directors) to be exceeded;
- (d) **(authorisations)** it has in full force and effect the authorisations necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and allow it to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms;
- (f) **(solvency)** there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable;
- (g) **(no steps to wind up)** no meeting has been convened or resolution proposed or petition presented and no order has been made for its winding up;
- (h) **(no agreement with creditors)** no voluntary arrangement has been proposed or reached with any of its creditors; and
- (i) **(litigation)** there is no pending or threatened proceeding affecting it or any of its assets before a court, governmental agency, commission or arbitrator except those in which a decision against it (either alone or together with other decisions) would be insignificant.

### 5.2 **Representations and warranties from the Shareholder**

The Shareholder represents and warrants to Potentia and the Bidder that:

- (a) **(registered owner)** it is the registered owner of the Grok Shares;
- (b) **(no Encumbrances)** there are no Encumbrances over or affecting the Grok Shares; and

- (c) **(Grok Shares are fully paid)** the Grok Shares are fully paid.

### 5.3 ***Continuation of representations and warranties***

The representations and warranties in clause 5 are taken to be made on:

- (a) the date of this document;
- (b) the date of acceptance by the Shareholder under any Takeover Bid proposed by the Bidder that the Shareholder is required to accept under clause 3.2; and
- (c) the record date for voting in respect of any Scheme that the Shareholder is required to vote in favour of under clause 3.3.

### 5.4 ***Survival of warranties***

The representations and warranties in this clause 5 survive the execution of this document.

### 5.5 ***Reliance***

Each party acknowledges that the other party has entered into this document and agreed to take part in the transactions that it contemplates in reliance on the warranties made or repeated in this clause.

### 5.6 ***Indemnities***

- (a) The Shareholder indemnifies Potentia and the Bidder (each a **Potentia Indemnified Party**) against any loss suffered or incurred by a Potentia Indemnified Party as a result of breach of this document by the Shareholder.
- (b) Potentia indemnifies the Shareholder against any loss suffered or incurred by the Shareholder as a result of breach of this document by Potentia.

### 5.7 ***Benefit for third parties***

Potentia receives and holds the benefit of each warranty and indemnity in this document as trustee for each Potentia Indemnified Party.

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## 6 **Termination**

### 6.1 ***Termination***

This document:

- (a) automatically terminates on the earlier of the following to occur:
  - (i) the End Date;
  - (ii) the Bidder not having provided a proposal to the Company in respect of the Transaction substantially in the form of Annexure A within five Business Days of the date of this document; or
  - (iii) Potentia notifying the Shareholder that it is no longer pursuing the Transaction; and
- (b) may be terminated by Potentia at any time by written notice to the Shareholder.

## 6.2 **Survival**

Clauses 1, 4, 7, 8, 9 and 10 survive termination or expiry of this document as do any other clauses that are by their nature intended to survive the termination or expiry of this document.

## 7 **Notices**

### 7.1 **General**

A notice, demand, certification, process or other communication (**Notice**) relating to this document must be in writing in English and may be given by an agent of the sender.

### 7.2 **How to give a Notice**

In addition to any other Lawful means, a Notice may be given by being:

- (a) personally delivered;
- (b) left at the party's current delivery address for notices;
- (c) sent to the party's current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) attached to an email that states that the attachment is a communication under this document.

### 7.3 **Particulars for delivery of Notices**

- (a) The particulars for delivery of Notices are, as at the date of this document are as previously disclosed by the parties.
- (b) Each party may change its particulars for delivery of Notices by Notice to each other party.

### 7.4 **Notices by post**

Subject to clause 7.7, a Notice is given if posted:

- (a) within Australia to an Australian postal address, five Business Days after posting; or
- (b) outside of Australia to an Australian postal address, outside of Australia to an address outside of Australia or within Australia an address outside of Australia, 10 Business Days after posting.

### 7.5 **Notices by email**

Subject to clause 7.7, a Notice is given if sent by email and the sender does not receive an email receipt or other confirmation from the recipient to the sender which indicates that the email was not received at the email address of the recipient.

### 7.6 **Process service**

Any process or other document relating to litigation, administrative or arbitral proceedings in relation to this document may be served by any method contemplated by this clause 7 or in accordance with any applicable Law.

### 7.7 **After hours Notices**

If a Notice is given:

- (a) after 5:00pm in the place of receipt; or
  - (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,
- it is taken to have been given at 9:00am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

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## 8 Governing law and jurisdiction

This document is governed by the laws of New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of, and Commonwealth courts having jurisdiction in that place and waives any right to object to proceedings being brought in those courts on the basis that proceedings have been brought in an inconvenient forum.

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## 9 General

### 9.1 *Entire agreement*

This document embodies the entire agreement between the parties in respect of its subject matter.

### 9.2 *Variation*

This document can only be varied by a document signed by all of the parties.

### 9.3 *Further acts*

Each party must, at its own expense, do all things (including the execution and delivery of documents) required by Law or reasonably requested by another party to give effect to this document and the transactions contemplated by it.

### 9.4 *No assignment*

A party cannot assign or otherwise deal with its rights under this document without the consent of each other party.

### 9.5 *Waiver and exercise of rights*

- (a) A single or partial exercise or waiver of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.
- (b) No party will be liable for any Loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

### 9.6 *Indemnities*

Unless this document provides otherwise:

- (a) each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this document;
- (b) it is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this document; and
- (c) the making of a claim by a party under an indemnity contained in this document in respect of a particular event does not preclude that party from subsequently making further claims under that indemnity in respect of the same event.



**9.7 No merger**

The warranties, undertakings and indemnities in this document do not merge on completion of any transaction under or contemplated by this document.

**9.8 Severance**

If a provision of this document would, but for this clause 9.8, be void, unenforceable or illegal in a jurisdiction:

- (a) the provision is read down to the extent necessary to avoid that result; and
- (b) if the provision cannot be read down, to that extent, it is severed in that jurisdiction, without affecting the validity and enforceability of that provision in any other jurisdiction or any other provisions of this document. This clause 9.8 has no effect if its operation alters the basic nature of this document or is contrary to public policy.

**9.9 Clauses benefiting third parties**

Without limiting clause 5.7, if a provision of this document is expressed to be for the benefit of a person that is not a party to this document, the party to this document that receives that promise (the **promisee**):

- (a) does so not only in its own capacity but also as trustee for that third party;
- (b) must permit that third party to enforce the provision in the promisee's name on giving full indemnity and any reasonable security the promisee requires; and
- (c) assumes no other duty or liability whatever to the third party such as to inform the third party of anything, to supervise, to monitor or to claim anything.

**9.10 Remedies cumulative**

The rights and remedies provided in this document are in addition to other rights and remedies given by law independently of this document, unless this document expressly provides otherwise.

**9.11 Accrued rights**

Termination or expiry of this document for any reason does not affect the accrued rights of the parties under it.

**9.12 Costs and expenses**

- (a) Unless otherwise provided for in this document, each party must bear its own costs in relation to the negotiation, preparation, execution and performance of this document and any further document required in connection with it.
- (b) Any action to be taken by a party in performing their obligations under this document must be taken at its own cost and expense unless otherwise provided in this document.

**9.13 Publicity**

Except as contemplated by this document, a party may not make press or other announcements or releases (not including any substantial holder notice) relating to this document and the transactions the subject of this document without the approval of the other parties to the form and manner of the announcement or release unless that announcement or release is required to be made by law or by a stock exchange.

**9.14 Damages**

The Shareholder acknowledges that monetary damages alone would not be adequate compensation to Potentia or the Bidder for breach by the Shareholder of clause 2 or 3 and that Potentia or the Bidder are entitled to seek an injunction from a court of competent jurisdiction if:

- (a) the Shareholder fails to comply or threatens to fail to comply with clauses 2 or 3; or
- (b) Potentia or the Bidder have reason to believe the Shareholder will not comply with clauses 2 or 3.

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**10 Counterparts and execution**

This document may be executed in counterparts which together constitute one instrument but is not effective until each party has executed at least one counterpart and the counterparts have been exchanged. Each party consents to the exchange of counterparts by email or other electronic means.

## Schedule 1 – Takeover Offer conditions

### Part A – Takeover Offer conditions

The Takeover Offer will be subject to the following conditions:

#### 1 Minimum acceptance

During, or at the end of, the Offer Period, the Bidder and its Associates together have relevant interests in at least 90% of the Shares and becomes entitled to proceed with compulsory acquisition of all of the Shares under Part 6A.1 of the Corporations Act.

#### 2 No regulatory actions

Between the Announcement Date and the end of the Offer Period (each inclusive): there is not in effect any preliminary or final decision, order or decree issued by a Government Authority; no action or investigation is announced, commenced or threatened by any Government Authority; and no application is made to any Government Authority (other than by the Bidder or any of its Associates), in consequence of or in connection with the Offer (other than an application to, or a decision or order of, ASIC or the Takeovers Panel under, or relating to a breach of, Chapter 6, 6A, 6B or 6C of the Corporations Act or relating to unacceptable circumstances within the meaning of section 657A of the Corporations Act) that restrains, prohibits or impedes, or threatens to restrain, prohibit or impede, the making of the Offer or the acquisition of Shares under the Offer or the completion of any transaction contemplated by the Bidder's Statement, or seeks to require the divestiture by the Bidder of any Shares, or the divestiture of any material assets of the Company Group or the Bidder and its Related Bodies Corporate.

#### 3 No material adverse change

Before the end of the Offer Period, no event, change or condition occurs, is announced or becomes known to the Bidder (whether or not it becomes public) where that event, change or condition has had, or could reasonably be expected to have, a material adverse effect on the business, assets, liabilities, financial or trading position, profitability or prospects of the Company Group, taken as a whole.

#### 4 No material acquisitions, disposals or commitments during the Offer Period

Except for any proposed transaction publicly announced by the Company before the Announcement Date, none of the following events occurs during the period from the Announcement Date to the end of the Offer Period (each inclusive):

- (a) any member of the Company Group acquires, offers to acquire or agrees to acquire any one or more entities or assets for a consideration, or with a value, which when aggregated with all other such acquisitions, offers and agreements exceeds \$[●];
- (b) any member of the Company Group disposes, offers to dispose or agrees to dispose of any one or more entities or assets for a consideration, or with a value, which when aggregated with all other such disposals, offers and agreements exceeds \$[●];
- (c) any member of the Company Group enters into, or offers to enter into any agreement which would require expenditure or the foregoing of revenue by the Company Group which when aggregated with all other such agreements and offers exceeds \$[●]; or

- (d) the Company publicly announces, or it become known to the Bidder, that any of the events described in paragraphs (a) to (c) (inclusive) has occurred.

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## **5 No change of control under material contracts**

No person has or will have any right (whether subject to conditions or not) as a result of the Bidder acquiring Shares under the Offer to:

- (a) acquire, or require the disposal of, or require any member of the Company Group to offer to dispose of, any material asset of any member of the Company Group; or
- (b) terminate, or vary the terms or performance of, any material agreement with any member of the Company Group.

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## **6 No dividends**

Between the Announcement Date and the end of the Offer Period (each inclusive), neither the Company nor any of its Related Bodies Corporate makes, determines as payable or declares any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie).

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## **7 No prescribed occurrences**

During the period from the Announcement Date to the end of the Offer Period (each inclusive), none of the following occurrences (being the prescribed occurrences listed in section 652C of the Corporations Act) happens:

- (a) the Company converts all or any of its shares into a larger or smaller number of shares under section 254H of the Corporations Act;
- (b) the Company or a subsidiary of the Company resolves to reduce its share capital in any way;
- (c) the Company or a subsidiary of the Company enters into a buy-back agreement or resolves to approve the terms of a buy-back agreement under section 257C(1) or 257D(1) of the Corporations Act;
- (d) the Company or a subsidiary of the Company issues shares or grants an option over its shares, or agrees to make such an issue or grant such an option;
- (e) the Company or a subsidiary of the Company issues, or agrees to issue, convertible notes;
- (f) the Company or a subsidiary of the Company disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;
- (g) the Company or a subsidiary of the Company charges, or agrees to charge, the whole, or a substantial part, of its business or property;
- (h) the Company or a subsidiary of the Company resolves to be wound up;
- (i) a liquidator or provisional liquidator of the Company or of a subsidiary of the Company is appointed;
- (j) a court makes an order for the winding up of the Company or of a subsidiary of the Company;

- (k) an administrator of the Company or of a subsidiary of the Company is appointed under section 436A, 436B or 436C of the Corporations Act;
- (l) the Company or a subsidiary of the Company executes a deed of company arrangement;
- (m) a restructuring practitioner for the Company, or for a subsidiary of the Company, is appointed under section 453B of the Corporations Act;
- (n) the Company or a subsidiary of the Company makes a restructuring plan under Division 3 of Part 5.3B of the Corporations Act; or
- (o) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of the Company or a subsidiary of the Company.

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## 8 FIRB

One of the following occurs before the end of the Offer Period:

- (a) the Bidder receives a notice from the Treasurer of the Commonwealth of Australia (**Treasurer**) or his or her agent to the effect that there is no objection to the acquisition of the Shares by Bidder under the Commonwealth Government's foreign investment policy, such notice being unconditional;
- (b) the period provided under the *Foreign Acquisitions and Takeovers Act 1975* (as amended) (**FATA**) during which the Treasurer may make an order under section 18 or an interim order under section 22 of the FATA prohibiting the acquisition of Shares by Bidder has elapsed, without such an order being made; or
- (c) an interim order prohibiting such acquisition is made, the subsequent period for making a final order prohibiting the acquisition of Shares by Bidder has elapsed, without such final order being made.

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## 9 No market fall

The S&P/ASX 200 Index not closing at a level that is 10% or more below the level of that index at 5.00pm on the trading day immediately prior to the Announcement Date and remaining at or below that level for at least two consecutive trading days.

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## 10 No material change to the business of the Company Group

Between the date of Announcement Date and the end of the Offer Period, none of the following occur, without the written consent of the Bidder:

- (a) the Company or a subsidiary of the Company adopts a new constitution or makes any change to its constitution or passes any special resolution or proposes to do so;
- (b) the Company or a subsidiary of the Company gives or agrees to give any encumbrance (including a Security Interest or mortgage) over any of its assets otherwise than in the ordinary course of business; or
- (c) the Company or a subsidiary of the Company appoints any additional director to its board of directors whether to fill a casual vacancy or otherwise.

## 11 Litigation

Between the date of this Bidder's Statement and the end of the Offer Period (each, an event of **Material Litigation**), none of the following occur:

- (a) the Company or a Subsidiary of the Company has threatened or has commenced against it any material claims or proceedings in any court or tribunal (and a claim or proceeding is taken to be material if it may reasonably result in a judgment of \$[●] or more), other than that which has been fully and fairly publicly disclosed to the ASX prior to the date of this Bidder's Statement; or
- (b) the aggregate liability of the Company and its Subsidiaries under or in connection with any existing claim or proceeding in any court or tribunal is or is likely to be materially more than [●].

## Part B – Defined Terms

In this Schedule 1, the following definitions apply:

**Announcement** means the announcement of the Offer by the Bidder on the Announcement Date.

**Announcement Date** means [●], being the date of the Announcement.

**ASIC** means the Australian Securities and Investments Commission.

**Associates** has the meaning given in Division 2 of Part 1.2 of the Corporations Act.

**Bidder** means [●].

**Bidder's Statement** means this document, being the statement of [●] under Part 6.5 Division 2 of the Corporations Act relating to the Offer.

**Company** means Tyro Payments Ltd.

**Company Group** means the Company and its Subsidiaries.

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

**Government Authority** means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, ASIC, ASX, the Takeovers Panel and any regulatory organisation established under statute or any stock exchange.

**Offer** means the offer by [●] in section [●] on the Offer Conditions set out in section [●].

**Offer Period** means the period during which the Offer remains open.

**Related Bodies Corporate** has the meaning given in the Corporations Act.

**Security Interest** means any:

- (a) "security interest" as defined in the *Personal Properties Securities Act 2009* (Cth);
- (b) security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or title retention arrangement, right of setoff, assignment of income, garnishee order or monetary claim and flawed deposit arrangements);



- (c) a thing or preferential interest or arrangement of any kind giving a person priority or preference over claims of other persons or creditors with respect to any property or asset, and includes any agreement to create any of them or allow them to exist.

**Share** means a fully paid ordinary share in the capital of the Company

**subsidiary** has the meaning given to it in the Corporations Act.

**Takeover Offer** means the offer as set out in [●] of this Bidder's Statement itself and includes a reference to that offer as varied in accordance with the Corporations Act.

**Takeovers Panel** means the Australian Government Takeovers Panel.

## Schedule 2 – Additional Scheme conditions

### Part A – Additional Scheme conditions

The implementation of a Scheme in respect of the Transaction will be subject to the same conditions set out in conditions 2 to 11 (inclusive) of Schedule 1 (modified as necessary for a Scheme) and further standard conditions found in a scheme transaction of this type, including the following:

#### 1 Independent Expert's Report

The Independent Expert provides the Independent Expert's Report to the Company which concludes that the Scheme is in the best interests of shareholder of the Company Shareholders, and the Independent Expert does not change its conclusion or withdraw the Independent Expert's Report before 8:00am on the Second Court Date.

#### 2 Shareholder approval

The Scheme is approved by the requisite majorities of shareholders of the Company under section 411(4)(a)(ii) of the Corporations Act.

#### 3 Court approval of Scheme

The Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act.

#### 4 No restraints

No judgment, order, decree, statute, law, ordinance, rule or regulation, or other temporary restraining order, preliminary or permanent injunction, restraint or prohibition, entered, enacted, promulgated, enforced or issued by any court or other Government Agency of competent jurisdiction, remains in effect as at 8:00am on the Second Court Date that prohibits, materially restricts, makes illegal or restrains the completion of the Transaction unless such order, injunction, action or investigation has been disposed of to the reasonable satisfaction of the Bidder acting reasonably and in good faith.

### Part B – Defined Terms

In this Schedule 2, the following definitions apply:

**Bidder** means [●].

**Company** means Tyro Payments Ltd.

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

**Company Share Register** means the register of members of the Company maintained by or on behalf of the Company in accordance with section 168(1) of the Corporations Act.

**Company Shareholders** means each person who is registered in the Company Share Register as a holder of Company Shares

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

**Court** means the Federal Court of Australia, or such other court of competent jurisdiction agreed by the parties.

**Effective** when used in relation to the Scheme, means the coming into effect, under section 411(1) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme, but not before an office copy of the order of the Court is lodged with ASIC.

**Effective Date** means that date on which the Scheme becomes Effective.

**Government Agency** means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, ASIC, ASX, the Takeovers Panel and any regulatory organisation established under statute or any stock exchange.

**Independent Expert** means an expert, independent of the parties, engaged by the Company in good faith to opine on whether the Scheme is in the best interests of Company Shareholders.

**Independent Expert's Report** means the report from the Independent Expert commissioned by the Company for inclusion in the Scheme Booklet, which includes a statement by the Independent Expert on whether, in its opinion, the Scheme is in the best interests of Company Shareholders, and includes any update of that report by the Independent Expert.

**Record Date** means 5:00pm on the second Business Day following the Effective Date or such other date as the parties agree in writing.

**Scheme Booklet** means the explanatory booklet to be prepared by the Company in respect of the Transaction in accordance with the terms of this document and to be despatched to Company Shareholders.

**Scheme** means the proposed scheme of arrangement pursuant to Part 5.1 of the Corporations Act between [●] and Scheme Shareholders in respect of all Scheme Shares, substantially in the form set out in [●] or in such other form as the Scheme Parties agree in writing, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by each party.

**Scheme Parties** means each person who is a Company Shareholder at the Record Date other than the Bidder.

**Scheme Share** means a Company Share held by a Scheme Party at the Record Date.

**Second Court Date** means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme is heard or scheduled to be heard or, if the application is adjourned for any reason, means the date on which the adjourned application is heard or scheduled to be heard.

**Takeovers Panel** means the Australian Government Takeovers Panel.

**Transaction** means the proposed acquisition by Bidder, in accordance with the terms and conditions of this document, of all of the Company Shares through the implementation of the Scheme.

**Execution****EXECUTED** as a deed**Shareholder**

**Executed by CBC Co Pty Limited (ACN 108 337 104)** as trustee for **Cannon-Brookes Head Trust** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
Director signature\_\_\_\_\_  
Director/Secretary signature\_\_\_\_\_  
MICHAEL CANNON-BROOKES (Sole Director/Secretary)\_\_\_\_\_  
Director full name  
(BLOCK LETTERS)\_\_\_\_\_  
Director/Secretary full name  
(BLOCK LETTERS)**Potentia**

**Executed by Potentia Capital Management Pty Ltd** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
Director signature\_\_\_\_\_  
Director/Secretary signature\_\_\_\_\_  
Director full name  
(BLOCK LETTERS)\_\_\_\_\_  
Director/Secretary full name  
(BLOCK LETTERS)

## Execution

**EXECUTED** as a deed

### Shareholder

**Executed by CBC Co Pty Limited (ACN 108 337 104)** as trustee for **Cannon-Brookes Head Trust** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
Director signature

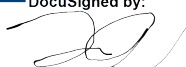
\_\_\_\_\_  
Director/Secretary signature


\_\_\_\_\_  
Director full name  
(BLOCK LETTERS)

\_\_\_\_\_  
Director/Secretary full name  
(BLOCK LETTERS)

### Potentia

**Executed by Potentia Capital Management Pty Ltd** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

DocuSigned by:  
  
36847CC9144C4E4 ...

DocuSigned by:  
  
59F40B4512CA4DE ...

\_\_\_\_\_  
Director signature  
  
Tim Reed

\_\_\_\_\_  
Director/Secretary signature  
Stacey Kelly

\_\_\_\_\_  
Director full name  
(BLOCK LETTERS)

\_\_\_\_\_  
Director/Secretary full name  
(BLOCK LETTERS)

**Annexure A – Form of proposal**

For personal use only