

THIS **HEADS OF AGREEMENT** is entered into on

**BETWEEN**

- (1) whose principal place of business is at ("**Buyer**")
- (2) whose principal place of business is at ("**Seller**")

**WHEREAS**

The Parties wish to set out in this Heads of Agreement ("**HOA**") the general terms and conditions of a proposed acquisition of the % interest in (the "**Target**"), from all existing shareholders of the Target to (collectively, the "**Parties**"). The Target is in the business of .

The parties recognise that the various arrangements will need careful review but each will endeavour in good faith to agree the detailed terms of the acquisition, on the basis of the principles set out in this Heads of Agreement, and to take all necessary other actions in order successfully to complete the Proposed Transaction (as defined below).

For the purpose of this HOA, working day means a day other than a Saturday, Sunday or public holiday in .

## **1. The Proposed Transaction**

1.1 The Buyer will acquire % interest in the Target (the "**Proposed Transaction**"), including all of the assets, owned by the Target that are used in, or necessary for the conduct of its business activities, including, without limitation: the Target's license(s), subject to any obligations contained in such license(s) which are disclosed to the Buyer and subsisting at the time of signing of the SPA (defined below) and thereafter such further conditions imposed by a regulator relating to the change of ownership of the Target at or prior to completion of the Proposed Transaction.

1.1 The Buyer will acquire % interest in the Target (the "**Proposed Transaction**"), including all of the assets, owned by the Target that are used in, or necessary for the conduct of its business activities.

For the avoidance of doubt, the Buyer will change the name of the Target to within three months following the completion of the Proposed Transaction.

## **2. Purchase Price and Payment Terms**

2.1 The aggregate consideration to be paid by the Buyer for the Proposed Transaction is (the "**Purchase Price**"), comprising being the goodwill plus the following:

subject to adjustments determined by the net asset value ("**NAV**") of the Target as at the date of completion of the Proposed Transaction, following the satisfactory conclusion of due diligence in relation to the Proposed Transaction.

2.2 The following are to be paid:

(i) The sum of (the "**Deposit**") will be deposited by the Buyer with an escrow agent (the "**Escrow Agent**") on or before prior to the initiation of due diligence on the Target. The Escrow Agent is unless otherwise appointed by both parties in writing. The Parties and the Escrow Agent will enter into the escrow agreement relating to the Deposit. The arrangement shall be exclusive upon payment of Deposit until Termination.

(i) The sum of (the "**Deposit**") will be deposited by the Buyer with the Seller on or before prior to the initiation of due diligence on the Target. The arrangement shall be exclusive upon payment of Deposit until Termination.

(ii) Subject to the Buyer's reasonable satisfaction of the results of the due diligence and the Buyer's and the Parties' respective decisions to proceed with the Proposed Transaction, the Buyer and the Seller shall use all reasonable endeavors to ensure the signing of the Sales and Purchase Agreement relating to the Proposed Transaction containing substantially the terms in this HOA (the "**SPA**") and any other documents in relation to the Proposed Transaction within 5 working days after the date of expiry of the Due Diligence Period in accordance with Clause 5 of this HOA. For the avoidance of doubt, the Buyer shall notify the Seller in writing whether the Buyer is reasonably satisfied with the results of the due diligence on or before 5:00 p.m. on the date of expiry of the Due Diligence Period, failing which the Buyer shall be deemed to be reasonably satisfied with the results of due diligence;

(iii) On the date of signing of the SPA ("**Signing Date**"), the Buyer shall deposit the remaining Purchase Price (the "**Remainder**") with the Escrow Agent, which together with the Deposit will constitute all of the Purchase Price; and

(iv) Within working days (the "**Completion Date**") after the date of receipt of approval of the Proposed Transaction by the relevant regulator (the "**Approval Date**"), the Parties shall proceed to completion of the Proposed Transaction ("**Completion**");

(iv) Within working days (the "**Completion Date**") after the date of signing, the Parties shall proceed to completion of the Proposed Transaction ("**Completion**");

- the Purchase Price shall be released and remitted to the Seller in accordance with joint wire transfer instructions in writing made by the Parties to the Escrow Agent and shall be applied as part payment of the Purchase Price;
- against receipt of the Purchase Price, the Seller shall transfer ownership of all shares of the Target to the Buyer; and
- the Buyer shall engage an independent certified public accountant agreed by the Parties as auditor of the Target to audit the Proforma Completion Accounts within 5 working days of the Completion Date, the costs of which is to be borne by the Buyer, who shall procure such auditor to issue the audited financial statements of the Target as at Completion Date within 40 days. Based on the NAV as shown on the audited accounts of the Target, the Seller shall refund any overpaid amount of the NAV to the Buyer or, as the case may be, the Buyer shall pay to the Seller any shortfall of the NAV by cashier's order issued by a licensed bank in , within 7 days upon the issuance of the audited accounts of the Target.

(i) Subject to the Buyer's reasonable satisfaction of the results of the due diligence and the Parties' respective decisions to proceed with the Proposed Transaction, the Buyer and the Seller shall use all reasonable endeavors to ensure the signing of the Sales and Purchase

Agreement relating to the Proposed Transaction containing substantially the terms in this HOA (the “**SPA**”) and any other documents in relation to the Proposed Transaction within working days after the date of expiry of the Due Diligence Period in accordance with Clause 5 of this HOA. For the avoidance of doubt, the Buyer shall notify the Seller in writing whether the Buyer is reasonably satisfied with the results of the due diligence on or before 5:00 p.m. on the date of expiry of the Due Diligence Period, failing which the Buyer shall be deemed to be reasonably satisfied with the results of due diligence;

(ii) On the date of signing of the SPA (“**Signing Date**”), the Buyer shall provide the fund proof to the Seller as a condition to the Seller signing the SPA that it has sufficient fund to pay the Purchase Price on Completion; and

(iii) Within working days (the “**Completion Date**”) after the date of receipt of approval of the Proposed Transaction by the relevant regulator (the “**Approval Date**”), the Parties shall proceed to completion of the Proposed Transaction (“**Completion**”):

(iii) Within working days (the “**Completion Date**”) after the Signing Date, the Parties shall proceed to completion of the Proposed Transaction (“**Completion**”):

- the Buyer shall pay to the Seller the Purchase Price, namely, plus the NAV as determined from the unaudited proforma financial statements of the Target as at the Completion Date, as stipulated in the SPA. All payments hereunder shall be made by cashier order in favour of the Seller drawn from a licensed bank in in or wire transfer or such other payment method as agreed by the Parties in writing;
- against receipt of the Purchase Price, the Seller shall transfer ownership of all shares of the Target to the Buyer; and
- the Buyer shall engage an independent certified public accountant agreed by the Parties as auditor of the Target to audit the Proforma Completion Accounts within 5 working days of the Completion Date, the costs of which is to be borne by the Buyer, who shall procure such auditor to issue the audited financial statements of the Target as at Completion Date within 30 days. Based on the NAV as shown on the audited accounts of the Target, the Seller shall refund any overpaid amount of the NAV to the Buyer or, as the case may be, the Buyer shall pay to the Seller any shortfall of the NAV by cashier’s order issued by a licensed bank in , within 7 days upon the issuance of the audited accounts of the Target.

### 3. Transition Period

During the period following the execution of this HOA between the Parties and the earlier of Completion Date or Termination under Clause 6 of this HOA (the “**Transition Period**”), the Seller shall use all reasonable efforts to cooperate with the Buyer so as ensure the continued operation of the Target.

For the avoidance of doubt, the current management of the Target to remain as management of the Target during the Transition Period and the Target shall continue to use the current premises. All other operating expenses, including but not limited to the rental expenses would be borne by the Target during the Transition Period.

Further, Target’s existing members of its Board of Directors will resign on the Completion Date (other than those management who are required to stay on as managers as required by the

Buyer, with the new Board members to be appointed solely by the Buyer. The Seller will also change all the authorized signatories of the Target's bank accounts to persons nominated by the Buyer within 10 working days after the Completion Date.

#### **4. Due Diligence**

The Buyer shall complete the due diligence within working days after the sign date of the HOA (or such other date as the Parties agree in writing) ("**Due Diligence Period**"). The Proposed Transaction contemplated by this HOA is subject to the satisfactory completion of due diligence by the Buyer. The Seller undertakes to procure that during the period from the Signing Date of SPA to the date on which all applications and submissions have been made by the Buyer to the regulator, they shall not directly or indirectly (i) encourage, initiate, engage in or continue discussions or negotiations with, (ii) provide information to, or (iii) enter into any agreement or statement of intent or understanding with, any other party or entity other than the Buyer for the purpose of transfer or disposal of any issued shares of the Target to any third party.

The Buyer shall complete the due diligence within working days after the sign date of the HOA (or such other date as the Parties agree in writing) ("**Due Diligence Period**"). The Proposed Transaction contemplated by this HOA is subject to the satisfactory completion of due diligence by the Buyer.

#### **5. Termination**

The Proposed Transaction shall terminate and shall not proceed to completion if the Completion as stated in the SPA is not done within days from the date of the SPA, subject to extension as may be mutually agreed upon by the Parties in writing ("**Long Stop Period**").

The Deposit shall not be refundable if the Termination is caused by the Buyer which includes but not limited to (i) the Buyer's failure to proceed to Completion for whatever reason(s) and/or to pay any of the deposits and/or the Purchase Price as described in clause 2 and in accordance with the terms of the SPA, and/or (ii) failure of the Buyer in obtaining approval from the regulator regarding the Proposed Transaction for reason(s) not attributable to the fault of the Seller, or (iii) there is a breach by the Buyer of any of the obligations contained in this HOA in relation to Confidentiality.

#### **6. Closing Conditions**

The Seller shall undertake the following in the SPA, for the period from the Signing Date to the Approval Date:

- a) Target's licenses (if any) shall be valid and subsisting;
- b) After signing of the SPA that the Target shall carry on its business as a going concern in the ordinary course as carried on prior to the date of SPA and materially in compliance with all applicable laws and regulations;
- c) The representation and warranties made by the Seller are true and accurate in all material respects;

d) The SPA and other documents relating to the Proposed Transaction have been approved by the Target (where necessary); and

e) Target and its shareholders, directors, management are not subject to any legal proceedings or investigations which may affect Target's business.

Completion of the Proposed Transaction shall be subject only to the fulfillment of only the condition precedent that the Buyer having obtained approval from the regulator for implementation of the Proposed Transaction.

## **7. Fees**

In the event that the Parties fail to sign the SPA within working days upon the expiry of the Due Diligence Period, the Buyer shall reimburse reasonable due diligence costs and expenses in relation to the investigation, negotiation, obtaining of bank confirmations, bank statements, legal costs, and, as the case may be, other expenses incurred by the Seller in the Proposed Transaction from the date of this HOA up to the date of expiry of the Due Diligence Period which the Parties agree to be , and which shall be deducted from the Deposit and paid to the Seller and the Parties undertake and agree to proceed with such payment on the occurrence of such event, except if such event is caused by the fraud on the part of any of the Seller.

In the event that the Parties fail to sign the SPA within working days upon the expiry of the Due Diligence Period, the Buyer shall reimburse reasonable due diligence costs and expenses in relation to the investigation, negotiation, obtaining of bank confirmations, bank statements, legal costs, and, as the case may be, other expenses incurred by the Seller in the Proposed Transaction from the date of this HOA up to the date of expiry of the Due Diligence Period which the Parties agree to be , and which shall be paid to the Seller, except if such event is caused by the fraud on the part of any of the Seller.

## **8. Third Party Approvals**

8.1 The parties will use all reasonable efforts to identify as soon as possible any third party consents or approvals which may be required, including:

(a) consents of other partners;

(b) consents of relevant regulatory authorities;

(c) any tax clearances reasonably required by either party in relation to the proposed acquisition.

8.2 Material third party consents or approvals will be a pre-condition of Completion. Each party will endeavour to obtain them as speedily as possible and each will co-operate with the other for this purpose.

## **9. Confidentiality and Announcements**

9.1 Each of the parties shall keep confidential and not disclose to any other person, nor use for any purpose except the purposes of the acquisition, any information obtained from the other

party as a result of negotiating, entering into or implementing the acquisition. This does not apply to information which:

- (a) is required to be disclosed by operation of law or any stock exchange regulations or any binding judgment or order, or any requirement of a competent authority;
- (b) is reasonably required to be disclosed in confidence to a party's professional advisers for use in connection with the acquisition and/or matters contemplated in this Heads of Agreement;
- (c) is or becomes within the public domain (otherwise than through the recipient party's default).

9.2 No public announcement or press release in connection with the subject matter of this Heads of Agreement shall be made or issued by or on behalf of either party without the prior written approval of the other. This does not apply if the announcement or press release is required by law, by any stock exchange or by any governmental authority.

## **10. Dispute Resolutions**

## **11. Notices and service**

11.1 Any notice to be given by one party to the other under, or in connection with, this Agreement shall be in writing and signed by or on behalf of the party giving it. It shall be served by sending it by email to the address set out in clause 11.2, or delivering it by hand, or sending it by pre-paid recorded delivery, special delivery or registered post, to the address set out in clause 11.3 and in each case marked for the attention of the relevant party (or as otherwise notified from time to time in accordance with the provisions of this clause 11). Any notice so served by hand, e-mail, fax or post shall be deemed to have been duly given:

- a. in the case of delivery by hand, when delivered;
- b. in the case of fax or electronic mail on a Business Day prior to 5.00 pm, at the time of receipt;
- c. in the case of prepaid recorded delivery, special delivery or registered post, at 10am on the second Business Day following the date of posting

provided that in each case where delivery by hand or by fax occurs after 5pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9am on the next following Business Day. References to time in this clause are to local time in the country of the addressee.

11.2 The addresses of the parties for the purpose of clause 11.1 are as follows:

### **Buyer**

Address:

E-mail:

For the attention of:

### **Seller**

Address:

E-mail:

For the attention of:

11.3 A party may notify the other party to this Agreement/ of a change to its name, relevant addressee, address or fax number for the purposes of this clause 11, provided that, such notice shall only be effective on:

- (a) the date specified in the notice as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five Business Days after the date on which notice is given, the date following five Business Days after notice of any change has been given.

11.4 All notices under or in connection with this Agreement shall be in the English language or, if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

11.5 Service of any legal proceedings concerning or arising out of this Agreement shall be effected by causing the same to be delivered to the party to be served at its principal place of business as specified in this Agreement, or to such other address as may from time to time be notified in writing by the party concerned.

## **12. No Rights of Third Parties**

A person who is not a party to this Document shall have no right under the Contracts (Rights of Third Parties) Ordinance to enforce any of its terms.

## **13. Legal Obligations**

This Heads of Agreement represents the good faith intentions of the parties to proceed with the proposed transaction but is not legally binding and creates no legal obligations on either party other than those contained under Confidentiality, Termination, Deposit (if any), Abort Fee and Governing Law. The Proposed Transaction (defined below) will only proceed if and when definitive legally binding transaction documents containing the terms of the Proposed Transaction are agreed to and executed by the Parties (or their nominees).

## **14. Taxes and Stamp Duty**

Each Party shall bear its own taxes and 50% of the stamp duty for the Proposed Transaction.

**As witness** this Agreement has been signed by the duly authorised representatives of the parties the day and year above written.