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**Due Diligence Planning Memorandum** (**DDPM**)

**Prospectus Share Offering**

AFMA Standard Documentation – January 2018

*Disclaimer*

*The AFMA Due Diligence Planning Memorandum (DDPM) is provided through AFMA for the convenience and ready reference of users as an industry guide to commonly followed practice in Australia as part of AFMA Standard Documentation.* *The DDPM is an industry standard due diligence process document designed for the offer of ordinary shares in an initial public offering (IPO) under an Australian law Corporations Act compliant prospectus. The document aims to assist issuers and their advisers by setting out a roadmap for the establishment of a due diligence committee and the implementation of a due diligence process for an IPO. However, ultimate responsibility rests with the issuer for the conduct of due diligence, sign-offs/reports and opinions provided by Reporting Persons, compliance with legal and regulatory disclosure requirements and the possible availability of due diligence defences.*

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**KEY DETAILS**

|  |  |  |
| --- | --- | --- |
| **Offer Details** | | |
| Offer | **[**insert**]** |  |
| Offer Structure | **[**insert**]** |  |
| Purpose of Offer | **[**insert**]** |  |
| Offer Securities | **[**insert**]** |  |
| Prospectus | Prospectus to be issued under **[**s710**]**/**[**713**]** of the Corporations Act 2001 (Cth) (**Corporations Act**) |  |
| Issuer**[**s**]** of the Prospectus | **[**insert**]** (**Company**)  **[**insert**]** **[**(**SaleCo**)**]** |  |

| **Due Diligence Committee** (**DDC**) **members and their representatives** (**including any alternate representatives**) | | |
| --- | --- | --- |
| **Member** | **Represented by** | **Alternate** |
| **Company** | **Management**  **[**insert**]**  **Directors**  **[**insert**]** | **[**insert**]** |
| **[SaleCo]** | **Directors**  **[**insert**]** | **[**insert**]** |
| **[**insert for each JLM**]**  **[Joint] Lead Manager**(**s**)**]**(**JLMs**) | **[**insert**]** | **[**insert**]** |
| **[**insert**]** (**Australian Legal Advisor**) | **[**insert**]** | **[**insert**]** |
| **[**insert**]** (**Investigating Accountant**) | **[**insert**]** | **[**insert**]** |
| **[**Others**]** | **[**insert**]** | **[**insert**]** |
| **Observers** | | |
| **Directors of the Issuer[s] [and SaleCo]** | All directors are invited to attend DDC meetings at their option | |
| **[Foreign legal advisor]** | **[**insert**]** | |
| **[Experts** (**e.g. tax advisor**)**]** | **[**insert**]** | |
| **[Others]** | **[**insert**]** | |
| **Others** | **Represented by** | **Alternate** |
| **DDC Chair** | **[**insert**]**, **[**Entity**]** | **[**insert**]**, **[**Entity**]** |
| **DDC Secretary** | **[**insert**]**, **[**Entity**]** | **[**insert**]**, **[**Entity**]** |

| **Reports, sign-offs and other documentation** | | **Recipients** |
| --- | --- | --- |
| **DDC** | |  |
| DDC | DDC Report (**Schedule 5**)  DDC Key Issues List  New Circumstances Certificate (**0**)  DDC Minutes | Issuer**[**s**]** and **[**its**][**their respective**]** directors,  DDC members and their respective representatives, **[**Others (e.g. sponsors or significant shareholders)**]** |
| **Reporting Persons** | | |
| Australian Legal Advisor | Legal advice – Prospectus content & liability advice **[**and advertising/publicity guidelines**]** (**Appendix 1**)  Legal Due Diligence Report  Legal opinion – Prospectus content & due diligence process  Verification guidelines **[**Verification certificate (Legal)**]** | Issuer**[**s**]** and **[**its**]]**their respective**]**directors,  DDC members and their respective representatives, **[**Others (e.g. sponsors or significant shareholders)**]** |
| Investigating Accountant | Materiality Guidance (**Appendix 2**)  Financial Due Diligence Report  Agreed Upon Procedures Report  APES 350 due diligence sign-off  **[**Other**]** | Issuer**[**s**]** and **[**its**][**their respective**]** directors,  DDC members and their respective representatives, **[**Others (e.g. sponsors or significant shareholders)**]** |
| **[**Independent Limited Assurance Report (public) on Historical **[**and Forecast**]** Financial Information**]**  **[**Historical **[**and Forecast**]** Investigating Accountant's Report(s)**]** | Issuer**[**s**]** |
| Tax Advisor | **[**Tax Due Diligence Report**]**  **[**Tax Structuring Paper**]**  **[**Tax opinion**]** | Issuer**[**s**]** and **[**its**][**their respective**]** directors,  DDC members and their respective representatives, **[**Others (e.g. sponsors or significant shareholders)**]** |
| **[**Tax letter for Prospectus**]** | Issuer**[**s**]** |
| **[**insert any other experts**]** | **[**insert**]** | **[**insert**]** |
| Management  **[**List management reporting persons**]** | Management presentation to the DDC  **[**Management questionnaire**]**  Management sign-offs (**Schedule 4**)   1. Verification certificates | Issuer**[**s**]** and **[**its**][**their respective**]** directors,  DDC members and their respective representatives, **[**insert any others, e.g. Seller**]** |

1. Objectives of the due diligence process
   1. Purpose of the Process

The due diligence process to be undertaken in relation to the Offer (**Process**) is intended, so far as is possible, to:

* + 1. facilitate the appropriate preparation of the Prospectus;
    2. satisfy the board of directors of the Issuer**[**s**]** (**Board[s]**) and the DDC that the process is sufficient to make all enquiries as are reasonable in the circumstances to identify and verify information which should be disclosed in the Prospectus;
    3. assist the Board**[**s**]**, the DDC members and their representatives to be satisfied that the Prospectus:
       1. complies with the requirements of the *Corporations Act 2001* (Cth), as in force from time to time (**Corporations Act**); and
       2. does not contain any statement that is misleading or deceptive or omit information required to be included in it;
    4. assist persons who may be liable in connection with the Prospectus in minimising, and establishing a defence to, liability if the Prospectus is defective;
    5. assist the Board**[**s**]**, DDC members and their representatives to ensure that any new matter arising after lodgement of the Prospectus and before issue of the Offer Securities is dealt with in accordance with the Corporations Act; and
    6. assist DDC members, as a committee, to be able to give the confirmations in the DDC Report to the Recipients.

The Prospectus test is set out in the content and liability advice prepared by the Australian Legal Advisor. Nothing in this due diligence planning memorandum setting out the terms of reference for the Process and as adopted by the DDC (**DDPM**) or the Process is intended to give rise to, or to constitute an assumption by any DDC member or their representatives of, any duty or responsibility to any investor.

Unless adopted earlier by the DDC and the Board**[**s**]**, this DDPM will be used while in draft form to guide the Process, and should receive final approval by the DDC and the Board**[**s**]** at the same time as the final DDC Report is approved by the DDC.

This DDPM describes the Process to be followed in gathering, assessing, including and verifying material in the Prospectus in order to assist in satisfying Australian disclosure requirements in relation to the Offer. It outlines the due diligence system to be implemented in connection with the Offer in order to minimise, to the extent possible, potential liability under Australian law.

The Process and this DDPM apply solely to the Australian component of the Offer. They do not deal with the regulation or conduct of the Offer in other jurisdictions, nor the liabilities or defences that may apply under laws in those other jurisdictions. In relation to other foreign jurisdictions in which the Offer is to be made, advice from legal advisors in the relevant foreign jurisdictions must be obtained as required.

* 1. Functions of the DDC

The DDC will propose an appropriate Process for approval by the Board**[**s**]** and will oversee and coordinate the implementation of the Process, including the consideration of the scope of work of Reporting Persons and whether they are appropriately qualified and ensure that there is adequate oversight at all stages of the Process.

The DDC will report to the Board**[**s**]** on the conduct of the Process in relation to the Prospectus and will, where considered appropriate, escalate material matters arising during the course of the Process to the Board**[**s**]**.

The DDC has been established with the approval of the Board**[**s**]**, but is not a sub-committee of the Board**[**s**]** and is not performing a management function. The Board**[**s**]** retain**[**s**]** ultimate responsibility for determining whether to proceed with the Offer and to issue the Prospectus (including the content of the Prospectus).

* 1. Pathfinder

In the event that an advanced draft of the Prospectus (**Pathfinder**) is proposed to be distributed to certain professional and/or sophisticated investors before lodgement of the Prospectus withthe Australian Securities and Investments Commission (**ASIC**) to allow consideration of the proposed Offer by those investors before the opening of the Offer, then before distribution of the Pathfinder:

* + 1. the DDC will ensure that an appropriate level of verification has been undertaken in connection with the Pathfinder; and
    2. each Reporting Person and the DDC members will confirm that, except as noted, they are not aware of any reason why their reports (including the DDC Report), sign-offs and opinions could not be provided in respect of the Pathfinder, if required.

The verification and confirmations will be documented in the minutes of the meeting for the relevant DDC meeting.

1. Relationship between DDC members
   1. References to membership

References in this section to DDC members, or to membership of or participation in the DDC, include a reference to:

* + 1. representatives of those members; and
    2. Observers and their representatives (as to observation of, without further participation in, the DDC).
  1. DDC roles do not create additional duties

DDC members:

* + 1. are not, and expressly disclaim that they are, agents or fiduciaries of other DDC members;
    2. do not act or make representations on behalf of, or assume responsibility for, other DDC members;
    3. do not have any authority to affect the legal obligations of other DDC members;
    4. are not in any contractual arrangement with other DDC members;
    5. who are specialist advisors, do not purport to advise on matters beyond their scope of engagement or expertise or as set out in this DDPM;and
    6. do not cause the issue of any report or sign-off by any other DDC member,

simply by virtue of performing their roles on the DDC.

* 1. No additional liabilities, rights or obligations

Each DDC member acknowledges (to the maximum extent permitted by law) that:

* + 1. membership of the DDC;
    2. participating in meetings, decisions and inquiries of the DDC;
    3. participating in the drafting of the Prospectus, and reviewing and commenting on drafts of the Prospectus; and
    4. giving the DDC Report and signing any New Circumstances Certificate,

does not give rise to any liability between any DDC members, or affect the rights or obligations of any DDC member under any agreement between DDC members, notwithstanding any other part of this DDPM, except:

* + 1. in respect of a matter the subject of a written report, presentation, sign-off or opinion which the DDC member has provided to the DDC (other than the DDC Report and any New Circumstances Certificate), to the extent specified by and subject to the terms of that report, presentation, sign-off or opinion as accepted by the DDC;
    2. to the extent specified in any written engagement or other written agreement between a DDC member and the Issuer**[**s**]**, and only as applicable between that DDC member and the Issuer**[**s**]** (and otherwise not applicable to the other DDC members);
    3. where a DDC member knowingly or recklessly misleads any other DDC member; or
    4. where a DDC member has no reasonable basis for a statement, representation or views communicated to any other DDC member (acknowledging that a DDC member may have a reasonable basis for a statement, representation or view where the DDC member has reasonably relied on another DDC member).

For the avoidance of doubt, the acknowledgments above do not affect the extent to which DDC members may otherwise be entitled to rely on the information provided by other DDC members or any other Reporting Person, for the purposes of establishing a defence to liability.

1. Responsibilities
   1. Responsibilities of DDC members

References in this section 3.1 to DDC members include a reference to representatives of those members.

***Satisfaction with Process***

DDC members must consider and be satisfied (in the context of their knowledge and expertise) that the Process conducted is adequate to ensure (as far as could reasonably be expected) that the Prospectus and the Offer comply with the requirements of the Corporations Act.

Each DDC member must be satisfied that every expert or other person whose statements are relied on is competent and trustworthy to make those statements and that their reliance on those persons is reasonable.

***Satisfaction with information***

DDC members must consider and be satisfied (in the context of their knowledge and expertise) that the information provided to the DDC is adequate for them to reasonably rely on, and may reasonably request that:

* + 1. further enquiries be made or information be supplied to the DDC; or
    2. changes be made to the Prospectus.

Copies of DDC materials

Copies of all materials provided to, and produced by, the DDC will be made available to all DDC members and Directors.

Assessment of the Prospectus and other matters

DDC members must be diligent and use their respective knowledge and expertise in questioning and assessing the completeness, accuracy and reliability of the content of the Prospectus and other matters brought to the attention of the DDC, subject always to section 3.4 and **Schedule 3** ("**Information Management Arrangements and Conflicts**"). This should include statements of expectations, belief as to future events and evaluation of aspects of the Company's business. These obligations should have regard to the relevant DDC member's particular area of expertise and their agreed responsibilities.

Particular obligations

DDC members must:

* + 1. raise with other members any matter that they believe requires investigation (or further investigation) as part of the Process;
    2. review materials circulated to the DDC including drafts of the Prospectus and reports from Reporting Persons;
    3. apply an independent and enquiring mind to the Prospectus and the Process;
    4. raise any matter that the DDC member believes has not been adequately dealt with or any material departure from the methodology set out in this DDPM;
    5. consider and, as a committee, adopt quantitative and qualitative materiality thresholds to be applied in the Process having regard to **Schedule 1** ("**Materiality Thresholds**");
    6. as a committee, ensure that a register is maintained of all key issues raised in the Process and how each matter has been resolved or addressed (**Key Issues List**);
    7. satisfy themselves that:
       1. all potentially material issues identified during the course of the Process are escalated to the Board**[**s**]** and are either appropriately disclosed in the Prospectus or resolved as not being material, and that there are no outstanding issues at the end of the Process;
       2. they have no outstanding questions concerning any statement included in, or any matter omitted from, the Prospectus or the material generated in the course of implementing the Process;
       3. an appropriate process of verification of the Prospectus has been conducted; and
       4. they are in a position to sign the DDC Report;
    8. make themselves available to the Board**[**s**]** in order to answer any relevant questions which any Board member may have in relation to the Prospectus, the scope of enquiry undertaken or any aspects of the Process; and
    9. following lodgement of the Prospectus and until the Offer Securities are issued or transferred, monitor developments and consider whether a supplementary or replacement prospectus should be issued, having regard to the materiality thresholds, the relevant requirements of the Corporations Act and section 4.8.
  1. Responsibilities of Reporting Persons

***Scope of work and reliance***

Each Reporting Person will undertake the scope of work as described or referred to in **Schedule 2** ("**Reporting Persons**' **scope of work**"), relevant to each Reporting Person.

All reports, advices, opinions and sign-offs to be given by a DDC member or a Reporting Person, are to be addressed to and may be relied upon by the Recipients where permitted by, and subject to, the terms on which those reports, advices, opinions and sign-offs are provided. DDC members are to be consulted regarding those terms.

***Areas of expertise***

DDC members and Reporting Persons will participate in the Process having regard to their particular areas of knowledge and expertise and agreed responsibilities.

DDC members and Reporting Persons without particular expertise on a matter may rely on those DDC members or Reporting Persons with the appropriate expertise who report to the DDC on matters requiring that expertise.

DDC members and Reporting Persons with expertise on a matter may rely on another DDC member or Reporting Person with expertise in respect of the same matter to the extent that matter has been specifically delegated to that person.

* 1. Joint Lead Managers

***Not a Reporting Person***

Neither the JLMs nor any of their respective representatives are a Reporting Person and they will not:

* + 1. have any responsibility for legal, financial, accounting, taxation, operational or regulatory matters;
    2. make any enquiries on behalf of the DDC or be required to make any formal presentations to the DDC without their express consent;
    3. have any reporting or sign-off obligations except to:
       1. sign the DDC Report; and
       2. provide a New Circumstances Certificate,

on the same basis as each other DDC member, and after determining that they are satisfied with the adequacy of the Process, the form and content of the Prospectus and that the Process has been complied with;

* + 1. be expected to provide any statement for inclusion in the Prospectus;
    2. be responsible for verification of any statements in the Prospectus; or
    3. have any responsibility for the form and content of the Prospectus (to the maximum extent permitted by law, other than to review and consent to references to their name in the form and context in which it appears).

***No fiduciary relationship***

A JLM acts pursuant to a contractual relationship with the Issuer**[**s**]** on an arm's length and several basis.

In no event is it intended that a JLM acts or is responsible as a fiduciary to, or act as agent of, any member of the **[**Issuer's/Issuers'**]** group, **[**its**][**their respective**]** members, creditors or any other person (including any other DDC member, Reporting Person, Observer or their respective representatives). Each JLM expressly disclaims any fiduciary relationship with any of those persons.

Despite any assistance provided by a JLM in the preparation of the Prospectus, the Issuer**[**s**]** will at all times be solely responsible for the form and content of the Prospectus.

* 1. Conflicts and information management arrangements

DDC members acknowledge and agree that the Reporting Persons and the JLMs participate in the Process and the Offer on the basis of the relevant information management arrangements and conflicts disclosures set out in **Schedule 3** ("**Information Management Arrangements and Conflicts**"), which the DDC members consider reasonable.

1. Due diligence process
   1. DDC Meetings

DDC meetings are to be held as agreed upon by the DDC members.

Meetings may be held in person, by video conference or teleconference (or a combination of any of these).

It is important that (in the absence of exceptional circumstances) all DDC members' representatives (or their alternates) attend all meetings held after their respective appointments.

An agenda will be circulated before each meeting. Minutes of meetings will be prepared by the DDC Secretary and made available to all members' and Observers for comment following each meeting. To the extent necessary action lists will be compiled after each meeting.

* 1. DDC decisions

Decisions of the DDC, including the determination of whether the Process adopted is adequate and whether the Prospectus is satisfactory and complies with the requirements of the Corporations Act, must be made unanimously. Any minority or dissenting view (such that a unanimous decision cannot be reached) must be brought to the attention of the Board**[**s**]** for resolution.

* 1. Chairperson and DDC Secretary
     1. The Chairperson will be responsible for ensuring that:
        1. meetings of the DDC are properly conducted;
        2. all DDC members are appropriately heard; and
        3. all agenda items and issues are adequately discussed.
     2. The DDC Secretary will be responsible for preparing and circulating agendas for, and the minutes of, the DDC meetings, maintaining the Key Issues List and collating the records referred to in section 5.1 below.
  2. Due diligence work programme

The Process will be guided by a four-phase work programme which is issues-driven rather than checklist-driven.

Phase 1: Scoping and review

Phase 2: Investigations

Phase 3: Verification and sign-offs

Phase 4: Ongoing due diligence after lodgement

* 1. Phase 1 – Scoping and review

**Establish** – form the DDC and agree scope of work for Reporting Persons and advisors.

**Briefing** – one or more briefings by the Australian Legal Advisor on content and liability, the Process and sign-offs expected.

**Expert engagements** – identification of all material matters that may require an expert opinion and engagement of appropriate advisors with the necessary skills, knowledge and experience.

**Company overview** – presentations by and/or Q&A with Management about the Company and on key business drivers, risks and issues relevant to the Company and its business.

**Due diligence review** – commencement of due diligence reviews by appropriate Reporting Persons.

**Key issues identification** – identification of initial key issues (e.g. from Management presentations, early stages of due diligence reviews) and of investigations or actions to be undertaken for those key issues and compiling these on the Key Issues List.

**Reporting and sign-offs** – identification of the reports and sign-offs to be obtained from Reporting Persons in relation to relevant key issues.

* 1. Phase 2 – Investigations

**Key issues analysis** – consideration and investigation of key issues for potential disclosure in the Prospectus:

* + 1. Key tasks may be allocated to appropriate Reporting Persons for further investigation.
    2. The DDC must meet with Management by way of interviews, Management presentations, responding to questionnaires or otherwise.
    3. Information must be sought by Reporting Persons or other DDC members from Management, the directors (or proposed directors) of the Company **[**and/or SaleCo**]** (**Directors**) and, where considered necessary by the DDC to obtain information required in order to meet the Prospectus content requirements, other appropriate persons, including by the use of questionnaires, if appropriate.
    4. A Key Issues List and other records will be kept to document the nature of the issue, the analysis and the manner in which the issue has been resolved.

**Internal reporting systems** – where appropriate, reports from Management, drawing on internal reporting systems, may be provided to the DDC for consideration.

**Due diligence reviews** – results of due diligence reviews by, and the written reports of, Reporting Persons (as outlined in the Key Details section) will be presented to the DDC for consideration.

**Prospectus preparation** – the Prospectus disclosure will be considered (and drafted) in light of the review and analysis of the findings of these investigations.

* 1. Phase 3 – Verification and sign-offs

**Prospectus verification** – involves checking statements, information and data in the Prospectus (whether presented by text or graphically) (**Statements**):

* + 1. The Issuer**[**s**]**, with coordination assistance from the Australian Legal Advisor, will be responsible for collecting and collating materials for the verification of the Prospectus. The JLMs will not be responsible for verification.
    2. Where possible, each Statement should be checked against an independent source, and with particular focus on material statements, information or data.
    3. Where Statements have been made as to an opinion, a future matter or are based on a matter of analysis, evidence will be gathered to demonstrate the basis on which that Statement has been made with a view to establishing that the Statements are reasonably based, and these Statements will be specifically reviewed and approved by the Board**[**s**]**.
    4. Verification guidelines will be circulated by the Australian Legal Advisor to the verifying parties and the DDC to guide the verification procedures and the giving of verification certificates.
    5. The Australian Legal Advisor will review the verification allocations to check that each statement is signed off by the relevant verifying party, perform the other verification functions described in **Schedule 2** ("**Reporting Persons**' **scope of work**") and report to the DDC on the outcome of its reviews.

**Pathfinder** – if applicable, the DDC will approve the distribution of any Pathfinder to institutions, once the DDC members are satisfied that the relevant procedures in connection with the Pathfinder, as set out in section 1.3, have been complied with.

**Reports for the Prospectus** – where an expert's report is to be published in the Prospectus, it will be provided in final form for that purpose.

**Sign-offs from Reporting Persons** (**external**) – the final form of reports, sign-offs and opinions from the external Reporting Persons will be delivered to the DDC.

**Management sign-offs** – the final form of sign-offs from Management will be delivered to the DDC.

**Key Issues List** – the Key Issues List will be finalised so that there are no issues which remain outstanding.

**DDC Report** – upon the DDC members being satisfied with the form and content of the Prospectus and the outcome of the Process, the DDC will finalise and sign the DDC Report.

**Consents** – consents from the relevant parties to be named in the Prospectus, or to the inclusion of statements in the Prospectus, will be provided.

**Documents for the Board[s]** – the final form of this DDPM and all reports, consents and sign-offs will be provided to the Board**[**s**]**.

**Board meeting** – the consent of each member of the Board**[**s**]** is required for the Prospectus to be lodged with ASIC.

* 1. Phase 4 – Ongoing due diligence after lodgement

**Notification of new circumstances** – DDC members must notify the DDC of any new or emerging circumstances of which they become aware before the issue of Offer Securities that may affect the Prospectus disclosure. In these circumstances, the DDC will be recalled to consider the materiality of the issue and determine what (if any) additional diligence needs to be undertaken, sign-offs are required and disclosure needs to be made. In those circumstances, each DDC member must give the Issuer**[**s**]** reasonable assistance (having regard to the nature of the new or emerging circumstance and the DDC member's role and expertise.)'

**Bring-down meetings** – DDC meetings will be held as agreed before the issue of the Offer Securities under the Offer to confirm no unforeseen (or further) new circumstances have emerged.

**New Circumstances Certificates** – DDC members will provide the New Circumstances Certificates at the final DDC meeting prior to the issue of the Offer Securities.

1. Record keeping, access and confidentiality
   1. Maintaining due diligence files

***Records***

Each Reporting Person and any person responsible for verifying statements in the Prospectus must keep detailed and ordered records of their enquiries or verification and copies of all relevant documents.

***DDC materials***

The DDC Secretary will collate in files:

* + 1. final versions of reports, sign-offs to the DDC and other documents distributed to the DDC;
    2. copies of the verification guidelines and verification certificates, annotated verified Prospectus, supporting material provided to the DDC and any reports produced for the verification process; and
    3. agendas and minutes of all DDC meetings.

The DDC materials may be retained by the Australian Legal Advisor or by the Company.

* 1. Period for maintaining files

The records and DDC materials are to be retained until the time limit for a possible cause of action has expired and any proceeding, action, claim, investigation or inquiry commenced during the period has been finally resolved (including any appeal proceedings).

* 1. Access to files

All DDC members, the Directors and their respective representatives will, at their request, have reasonable access to (and the right to make copies of) the DDC materials referred to in section 5.1 at any time during the Process or in the future in connection with any actual or potential proceeding, action, claim, investigation or inquiry relating to the Offer (until the expiry of the time limit referred to above in section 5.2).

* 1. Confidentiality

All documents circulated to the DDC (including to Observers) and statements made to the DDC must be regarded as strictly confidential (**Confidential Information**), other than the final Prospectus lodged with ASIC and other documents or marketing materials for the Offer approved by the Issuer**[**s**]**.

Confidential Information must not be distributed, reproduced or used by any person, except:

* + 1. (**consent**) with the consent of the DDC or the person who prepared the material or report or made the statement (as the case may be) and on the terms of that consent;
    2. (**ordinary course**) where provided on a confidential and non-reliance basis to:
       1. a related body corporate (as defined in the Corporations Act) of a DDC member for the purposes of obtaining necessary confirmations and approvals in connection with the Offer or meeting regulatory obligations; or
       2. a person who, in the ordinary course of business, has access to the papers and records of the authorised recipient on the basis that the person agrees that they will make no further disclosure of it,

provided that each DDC member (or Observer) seeking to rely on this section 5.4(b) is liable for any act or omission by a person who receives Confidential Information in reliance on this section 5.4(b) that would, if done by the DDC member (or Observer), be a breach of this DDPM;

* + 1. (**legal requirements**) if required or directed to be produced by a court, by a regulatory or self-regulating authority, by the requirements of law or regulation, or by the rules of any stock exchange;
    2. (**claims**) if needed by a DDC member, Observer or their respective representatives or related bodies corporate in relation to an actual or potential action, claim or proceeding made against, or by, or involving that person in connection with the Offer, the Prospectus or the Process;
    3. (**investigations**) if needed by a DDC member, Observer or their respective representatives or related bodies corporate in relation to any actual or potential regulatory investigation, enquiry or hearing in relation to the Offer, the Prospectus or the Process;
    4. (**legal advisors**) to a DDC member's, Observer's or their respective representatives' legal advisors to obtain legal advice in relation to the Offer, the Prospectus or the Process, in each case on a confidential basis;
    5. (**possession**) to the extent the information has been developed by that DDC member or Observer independently of, and without reference to, the Offer, the Prospectus or the Process, or is already lawfully in, or lawfully comes into the possession of, the DDC member or Observer; or
    6. (**public information**) where the information is or has become publicly available other than by a breach of this section 5.4, or any other obligation of confidentiality agreed to by the DDC member or Observer seeking to rely on this section 5.4.

Each DDC member (and Observer) is responsible for ensuring that any person attending a DDC meeting who is invited by them will comply with the confidentiality obligations set out in this section 5.4.

The obligations under this section 5.4 will terminate on the earlier of the date the relevant information is no longer confidential (in accordance with the above) and the date that is two years after the date of adoption of this DDPM.

1. Adoption

This DDPM (including all Schedules and Appendices) has been read and adopted by the members of the DDC (and their representatives) and will be referred to and recommended to the Board**[**s**]** for approval by the Board**[**s**]**.

| 1. **Member** | 1. **Representative** | 1. **Signed** | 1. **Dated** |
| --- | --- | --- | --- |
| 1. Company | 1. **[**⚫**]** (Management) 2. **[**⚫**]** (Directors) |  |  |
| 1. **[**Sale Co**]** | 1. **[**⚫**]** (Directors) |  |  |
| 1. Australian Legal Advisor | 1. **[**⚫**]** |  |  |
| 1. Investigating Accountant | 1. **[**⚫**]** |  |  |
| 1. **[**Tax Advisor - if applicable**]** | 1. **[**⚫**]** |  |  |
| 1. **[**JLM**]** | 1. **[**⚫**]** |  |  |
| 1. **[**JLM**]** | 1. **[**⚫**]** |  |  |



Materiality Thresholds

The Process requires materiality guidelines for efficient operation, and both qualitative and quantitative materiality must be considered.



Qualitative thresholds

The test for qualitative materiality will be to assess whether there is a reasonable likelihood that a reasonable investor would consider the matter important in making an investment decision (that is, would it influence the investment decision?).

For the purpose of this test, the DDC should consider who is likely to be the "typical" reasonable investor under the Offer.

From a qualitative viewpoint, issues should be identified if, for example, they:

affect the reputation or prospects of the Company;

involve a breach of any law or regulation or duty;

are outside the ordinary course of business;

could seriously affect the Company's ability to carry on business; or

on an individual or cumulative basis, are of such a nature as to give rise to any liability or obligation exceeding the quantitative materiality thresholds identified below.

Accordingly, issues which may not have a financial impact at the levels identified in the materiality guidance in **Appendix 2** ("**Materiality Guidance**") (and which are therefore quantitatively immaterial) may nevertheless be qualitatively material.



Quantitative thresholds

A quantitative assessment of materiality may be undertaken in respect of financial matters in addition to, but not in substitution for, the qualitative assessment.

See the materiality guidance provided by the Investigating Accountant at **Appendix 2** ("**Materiality Guidance**").

These quantitative guidelines should be treated as indicative only and the qualitative test referred to above is the overriding requirement.



Reporting Persons' scope of work



Issuer['s][s'] Management and Directors

The primary responsibility for making business, commercial, financial, risk, industry and market enquiries and providing business, commercial, financial, risk, industry and market information to the DDC rests with the Management and the Directors of the Issuer**[**s**]**.

Management will:

* + 1. participate in Management presentations and interviews, and where considered necessary by the DDC, complete a Management questionnaire, regarding the business and operations of the Company and the impact of the Offer on that business and those operations;
    2. participate in drafting of the Prospectus and review and comment on drafts of the Prospectus circulated to them for review (including the final version of the Prospectus to be lodged with ASIC);
    3. review all reports provided to, or presented at, the DDC and bring any matter they consider material to the attention of the DDC;
    4. verify information in the Prospectus allocated to them and within their area of experience and responsibility; and
    5. provide the Management sign-off in the form set out in **Schedule 4** ("**Management sign-off**")if they are identified in the Key Details section as Reporting Persons.

Directors are expected to participate in the Process by:

* + 1. ensuring appropriate expert advisors are engaged;
    2. ensuring they are satisfied that the Process provides an effective system of enquiry and adequate supervision at all stages of the due diligence enquiries during preparation of the Prospectus;
    3. assisting in the verification process, where requested by the DDC (with their agreement);
    4. considering and, if thought appropriate, addressing any material issues identified during the Process;
    5. and reviewing and commenting on drafts of the Prospectus circulated to them for review and applying their own skills, knowledge and experience in questioning and assessing the completeness, accuracy and reliability of all statements in the Prospectus (including the final version of the Prospectus to be lodged with ASIC).

Australian Legal Advisor

The Australian Legal Advisor will have responsibility for Australian legal matters concerning the Prospectus, the Process and the Offer generally. The Australian Legal Advisor will:

* + 1. assist with the design and implementation of the Process;
    2. provide legal advice on the Australian legal requirements in relation to the Prospectus and in connection with the Process and the Offer generally, including advice, copies of which are to be made available to the DDC on a reliance basis, on:
       - 1. content and liability for the Prospectus; and
         2. **[**Australian publicity restrictions**]**;
    3. provide guidance to the Issuer on the following:
       - 1. requirements of ASIC RG 228: *Prospectuses: Effective disclosure for retail investors* and any other applicable regulatory guidance issued by ASIC or by ASX, in each case that is in force from time to time;
         2. the application for listing on the ASX; and
         3. ASIC/ASX relief (if any) required in relation to the Offer;
    4. carry out a review of the Australian legal issues relevant to the Offer and report to the DDC in relation to those issues (including by issuing a legal due diligence report), in accordance with an agreed scope and in a form agreed with the DDC;
    5. review and comment on drafts of the Prospectus (including the final version of the Prospectus to be lodged with ASIC) circulated to it for review;
    6. to the extent required, review and comment on drafts of opinions, sign-offs and reports provided to the DDC;
    7. prepare verification guidelines and assist in coordinating verification of the Prospectus, including checking that all statements are signed off by the relevant verifying party;
    8. verify legal statements in the Prospectus for which the Australian Legal Advisor agrees to be, and is, allocated responsibility;
    9. conduct a verification review of an agreed number of Statements in accordance with the verification guidelines (and being no less than 20 statements);
    10. if requested, coordinate the obtaining of foreign legal advice in relation to the permitted foreign jurisdictions; and
    11. provide legal sign-off in relation to the Prospectus and the Process to the Recipients (in the form agreed with the DDC).

References above to Australian legal and regulatory matters, and to the legal sign-off, exclude taxation, stamp duty, financial, accounting and any other non-legal matters.



Investigating Accountant

The Investigating Accountant will perform the scope of work set out in the engagement letter between the Investigating Accountant and the Issuer**[**s**]**, a copy of which is attached at **Appendix 3** ("**Investigating Accountant**'**s engagement letter**"). This scope of work will include reviewing the Prospectus and delivery of the reports and sign-offs in relation to the Investigating Accountant referred to in the Key Details section.



Tax Advisor

The Tax Advisor will perform the scope of work set out in the engagement letter between the Tax Advisor and the Issuer**[**s**]**, a copy of which is attached at **Appendix 4** ("**Tax Advisor**'**s engagement letter**").

This scope of work will include delivery of the reports and sign-offs in relation to the Tax Advisor referred to in the Key Details section.



Other Reporting Person(s)

1. **[***Note: To be included on a case-by-case basis***]**

Information MANAGEMENT arrangements and Conflicts

1. **[***Note: To be updated by Australian Legal Advisor, Investigating Accountant and the JLMs, as appropriate***]**

**Information Management Arrangements**

Each of the Australian Legal Advisor, Investigating Accountant and the JLMs have in place information management arrangements designed to protect confidential information and ensure that the information of one client is not made available to, or used for the benefit of, other clients. As such, the Australian Legal Advisor, Investigating Accountant and the JLMs, as the case may be, may have access to information of its clients which cannot be accessed, disclosed or taken into account for the purpose of the Process or the Offer.

All DDC members and Observers acknowledge and agree that, notwithstanding any other provision of this DDPM, participation in the Process, and any information, reports, opinions or sign-offs given, by any DDC member, Observer or their respective representatives, as the case may be, is on the basis of the actual knowledge of the DDC member's or Observer's representatives who have been directly involved in the Process.

These limitations are considered appropriate on the basis that investors could not reasonably expect confidential information of other clients of the Australian Legal Advisor, Investigating Accountant and the JLMs (as the case may be) to be included in the Prospectus.

**Conflicts of Interest Disclosure**

Without limiting the above, each JLM, together with its affiliates and/or related bodies corporate (**JLM Group**), is a full service financial institution. The JLM Group is engaged in various activities, which may include (but not be limited to) underwriting, corporate and financial advisory services, lending, hedging, principal investing, securities trading, investment management, research, commercial banking, financing and brokerage activities and financial planning and benefits counselling for a wide variety of clients, customers and counterparties including (without limitation) companies, governments, institutions and individuals.

In the ordinary course of these activities, the JLM Group and its officers and employees may at any time for their own account, or for the account of their clients or customers, make or hold long or short positions and investments, as well as actively trade or otherwise effect transactions in the debt and equity securities (or related derivative securities) or other financial products (including bank loans and other obligations) of the Issuer**[**s**]** and **[**its/their respective**]** related bodies corporate, shareholders, associates and third parties as well as those of other entities and persons and their affiliates which may or may not be involved in or affected by the transaction arising from or relating to the Offer or otherwise have relationships with the Issuer**[**s**]**, may finance the acquisition of those securities and/or financial products or take or enforce security over those securities and/or financial products. The JLM Group may receive fees for, or profits and other financial benefits from, those activities.



Management sign-off

To:

**[**insert Company**]** (**Company**) and its directors

**[[**insert SaleCo**]** (**SaleCo**) and its directors**]**

1. Members of the DDC and their representatives
2. **[**Others**]**
3. Dear Sir/Madam
4. Prospectus
   1. I, **[*insert role*]** of the Company have been involved in the Process relating to the Offer. I have been provided with, and have read, a copy of each of:
      * 1. the draft prospectus relating to the Offer (in the form as at the date of this sign-off) (**Prospectus**);
      1. the due diligence planning memorandum in relation to the Offer (**DDPM**); and
      2. the Australian Legal Advisor's content and liability advice.
   2. I understand the Prospectus will be lodged with ASIC and filed with the Australian Securities Exchange.
   3. Capitalised terms used, but not otherwise defined in this sign-off, have the same meaning given to them in the DDPM.
5. Due diligence process
   1. I confirm that:
      * 1. I have answered all questions and requests for information put to me in the course of the Process to the best of my knowledge and ability and after due enquiry and I believe that such answers do not omit material information and are not misleading or deceptive;
        2. I am satisfied that all matters which I consider to be material relating to my knowledge of the Company's business, its assets and operations and the effect of the Offer on the Company's group have been identified to the DDC;
        3. I am the appropriate person to provide this certificate for matters in my area of responsibility and that, as far as I am aware, the sign-offs being sought from Management are being sought from persons who would be expected to have, between them, knowledge and responsibility for all the material business operations and risks of the Company; and
        4. for the purposes of answering such questions and requests for information I have discussed the questions and answers with those persons reporting to me whom I considered to have relevant knowledge and have satisfied myself as to the accuracy of the information provided by them or otherwise I confirm that I am the person with the appropriate knowledge.
6. Misleading or deceptive statements and omissions
   1. Having regard to my particular area of responsibility, I confirm that nothing has come to my attention that causes me to believe, and I do not believe that:
      * 1. any statement in the Prospectus is misleading or deceptive;
        2. there is an omission from the Prospectus of material that is required by the CorporationsAct to be included in it; or
        3. the information in the Prospectus is not worded or presented in a clear, concise and effective manner.
7. Ongoing due diligence
   1. I confirm that I will inform the Issuer**[**s**]** and the DDC Chair promptly if, after the Prospectus has been lodged with ASIC and before the Offer Securities are issued, I become aware that:
      * 1. any statement in the Prospectus is misleading or deceptive;
        2. there is an omission from the Prospectus of any material that is required by the Corporations Act to be included in it; or
        3. a new circumstance has arisen since the Prospectus was lodged with ASIC which would have required disclosure in the Prospectus if it had arisen before that time.
8. Additional confirmations and acknowledgment
   1. I confirm that:
      * 1. **[**where the Prospectus contains a statement to the effect that Management hold a certain intention, opinion or belief, in relation to my particular area of responsibility, I hold such intention, opinion, or belief; and**]** **[*Note: Include if applicable*]**
        2. **[**there is no information regarding my suitability to hold office as **[**an officer/director**]** of the Company (as described in ASIC Regulatory Guide 228 or the ASX Listing Rules), such as criminal charges (whether substantiated or not) or bankruptcy proceedings, or my interests in the Company or the Offer (as described in section 711 of the Corporations Act) that has not been disclosed to the DDC; and**]** **[*Note: Include for IPOs*]**
        3. the opinions and confirmations in this document are given solely for the benefit of, and may be relied upon by, the Recipients referred to in the Key Details section of the DDPM.

|  |  |
| --- | --- |
|  |  |
| 1. Signed |  |
|  |  |
| 1. Print name |  |
|  |  |
| 1. Dated |  |



Form of the DDC Report

To:

**[**insert Company**]** (**Company**) and its respective directors

**[[**insert SaleCo**]** (**SaleCo**) and its directors**]**

1. Members of the DDC and their representatives
2. **[**Others**]**
3. Introduction

It is noted that:

* + - 1. the DDC was established by the Board**[**s**]** of the Issuer**[**s**]** to oversee and coordinate the Process for the Offer and facilitate the preparation of the Prospectus for the Offer (**Prospectus**) for lodgement with ASIC; and
      2. the DDC comprised the members (and their representatives) set out in the Key Details section of the DDPM in relation to the Offer (which is attached as Report Annex A).

Capitalised terms used, but not otherwise defined, in this report have the meanings given to them in the DDPM.

1. Confirmations
   1. The Process

DDC members, confirm that:

* + - 1. they have reviewed in detail the final draft of the Prospectus and each of the documents, sign-offs and reports annexed to this DDC Report;
      2. the DDC minutes, the Key Issues List and reports annexed to this Report are, together, an accurate record of the proceedings and conclusions of the DDC, and of the enquiries made by or on behalf of the DDC;
      3. nothing has come to their attention which causes them to believe, and they do not believe that:
         1. the Process has not been conducted in accordance with the DDPM and the verification guidelines;
         2. all potentially material issues identified during the course of the Process have not been: (A) appropriately disclosed in the Prospectus; (B) resolved as not being material; or (C) otherwise dealt with so that they no longer remain outstanding; and
         3. the establishment and supervision of the Process and the enquiries made do not constitute the taking of reasonable steps and the making of all reasonable enquiries in the circumstances.
  1. Compliance with Corporations Act

DDC members confirm that nothing has come to their attention that causes them to believe, and they do not believe, that the Prospectus does not comply with the content requirements of the Corporations Act, and, in particular, that:

* + - 1. any statement in the Prospectus is misleading or deceptive;
      2. there is an omission from the Prospectus of any material that is required by the Corporations Act to be included in it; or
      3. the information in the Prospectus is not worded or presented in a clear, concise and effective manner.
  1. Annexures

The following annexures are attached:

* + - 1. the DDPM is attached as Report Annex A;
      2. the DDC met on a number of occasions and the key issues raised at those meetings were discussed and resolved in accordance with the Key Issues List (referred to below) and as set out in the copies of the minutes of those meetings, attached as Report Annex B;
      3. the DDC received the sign-offs, opinions, certificates and reports in Report Annex C;
      4. the DDC prepared a Key Issues List detailing the key issues identified by the DDC, the analysis of and action taken to resolve each key issue, as well as recording the outcome of each issue – a copy of the Key Issues List is attached as Report Annex D;
      5. consents were obtained from each person to be named in the Prospectus and are attached as Report Annex E;
      6. **[**the DDC received presentations from Reporting Persons which are included in Report Annex F**]**; and
      7. the verification report (comprising the verification guidelines, the verification certificates and verification allocations) is attached as Report Annex G.
  1. Basis for confirmations

It is noted that:

* + - 1. the DDC met on the dates and dealt with the issues set out in the copies of the minutes attached as Annex B;
      2. the Prospectus has been verified in accordance with instructions in the verification guidelines;
      3. DDC members have reasonably relied, in the case of matters falling outside a DDC member’s expertise, on those DDC members and Reporting Persons with the appropriate expertise in accordance with the DDPM;
      4. DDC members have participated in the Process, and give the confirmations in this Report, subject to and on the basis set out in sections 1.1, 1.2, 2 and 3 and **Schedule 5** of the DDPM;
      5. the DDC members have assumed that the directors of the Issuer**[**s**]** will, at the final meeting of the Board**[**s**]** to be held before lodgement of the Prospectus:

consent to the lodgement of the Prospectus; and

confirm before lodgement that they are not personally aware of any misleading or deceptive statement in, or omission from, the Prospectus,

and each DDC member is entitled to rely on such consents and confirmations; and

* + - 1. each DDC member has assumed the accuracy of information and documents provided to DDC members by third parties (such as Prospectus verification material) and is not aware of any reason why that assumption is incorrect.

1. Reliance

These confirmations are given as at the date of this document and may be relied upon by the Recipients referred to in the Key Details section of the DDPM.

The confidentiality restrictions referred to in section 5.4 of the DDPM apply to this Report.

1. Counterparts

The DDC members agree that this report may be executed in any number of counterparts, all of which when taken together shall be treated as a single document.

1. Signatures

| 1. **Member** | 1. **Representative** | 1. **Signed** | 1. **Dated** |
| --- | --- | --- | --- |
| 1. Company | 1. **[**⚫**]** (Management) 2. **[**⚫**]** **[**(Directors)**]** |  |  |
| 1. **[**Sale Co**]** | 1. **[**⚫**]** (Directors) |  |  |
| 1. Australian Legal Advisor | 1. **[**⚫**]** |  |  |
| 1. Investigating Accountant | 1. **[**⚫**]** |  |  |
| 1. **[**Tax Advisor - if applicable**]** | 1. **[**⚫**]** |  |  |
| 1. **[**JLM**]** | 1. **[**⚫**]** |  |  |
| 1. **[**JLM**]** | 1. **[**⚫**]** |  |  |

1. **[*Note: Annexures to be included:***
2. *Report Annex A: DDPM;*
3. *Report Annex B: Agenda and Minutes of DDC meetings;*
4. *Report Annex C: Sign-offs, certificates, reports and other documents;*
5. *Report Annex D: Key Issues List;*
6. *Report Annex E: Consents to be named in the Prospectus;*
7. *Report Annex F: Reporting Persons*' *presentations;*
8. *Report Annex G: Verification Certificates and Verification Table.***]**

New Circumstances Certificate

To:

**[**insert Company**]** (**Company**) and its directors

1. **[[**insert SaleCo**]** (**SaleCo**)and its directors**]**
2. Members of the DDC and their representatives
3. **[**Others**]**
4. **New circumstances: Prospectus dated ⚫** (**Prospectus**) **for the [Note: insert description of offer]** (**Offer**)
5. Capitalised terms used, but not defined in this certificate, have the meanings given to them in the DDPM.
6. **[**I/We**]** confirm, having regard to the contents of the Prospectus and the disclosure obligations relating to the Prospectus under the Corporations Act, that nothing has come to **[**my/our**]** attention that causes **[**me/us**]** to believe, and **[**I/we**]** do not believe, that:
   * 1. any statement in the Prospectus is misleading or deceptive;
     2. there is an omission from the Prospectus of material that is required by the Corporations Act to be included in it; or
     3. a new circumstance has arisen since the Prospectus was lodged with ASIC which would have required disclosure in the Prospectus if it had arisen before that time.

These confirmations are given subject to and on the basis set out in sections 1.1, 1.2, 2 and 3 and **Schedule 5** of the DDPM.

|  |  |
| --- | --- |
|  |  |
| 1. Signed |  |
|  |  |
| 1. Print name |  |
|  |  |
| 1. Dated |  |



Content, Liability and Advertising Advice

Materiality Guidance

Investigating Accountant's Engagement Letter

Tax Advisor's Engagement Letter