



27 February 2015

ASX/Media Release for Bid Announcement

RECOMMENDED TAKEOVER OFFER BY WEBSTER LIMITED TO CREATE LARGE DIVERSIFIED AGRIBUSINESS WITH SIGNIFICANT STRATEGIC WATER ENTITLEMENTS

Tandou Limited (**Tandou** or the **Company**) has entered into a Merger Implementation Agreement (**MIA**) with Webster Limited (**Webster**) under which Webster will make an off market takeover bid to acquire 100% of the fully paid and partly paid ordinary shares of Tandou (**Offer**).

Webster is offering **1** Webster share for every **2.25** Tandou fully paid ordinary shares (**Tandou shares**).

Based on the Webster closing price on 26 February 2015 of \$1.30 per share, the Offer consideration equates to 58¢ per Tandou share, and values Tandou at \$114m, representing a premium of 22% to the closing price of Tandou shares on 26 February of 47.5¢.

The Offer is conditional on Webster acquiring at least 50.1% of Tandou as well as being conditional on the approval by Webster shareholders under ASX listing rule 10.1 and certain other customary conditions, including there being no material adverse change, foreign investment approval and no prescribed occurrences.

The Offer is being made in parallel with a proposed \$124m acquisition by Webster of Bengerang Limited (**Bengerang**), a large scale cotton farming operation located in Northern NSW together with 50,000 ML of water entitlements. The consideration for the acquisition of Bengerang is approximately 107.7 million Webster shares at a value of \$1.15 per Webster share. The Bengerang and Tandou transactions are not inter conditional.

Should the acquisition of Bengerang and Tandou both proceed, Webster will be transformed from a company currently capitalised at around \$200m into a substantial diversified agricultural and water company capitalised at over \$400m¹, large enough for potential inclusion in the ASX300 Index. Set out in Appendix 1 is an overview of the enlarged Webster Group.

The Offer

The 3 month Volume Weighted Average Price (**VWAP**) of Webster shares to the close of trading on 26 February 2015 is \$1.22. Based on the Offer exchange ratio of 1 Webster share for every 2.25 Tandou shares, the consideration equates to 54¢ per Tandou share and represents a premium of **23%** to the 3 month VWAP of Tandou shares over the same period of 44¢.

¹ Based on a Webster share price of \$1.15



Using the \$1.15 price attributed to Webster shares for the proposed acquisition of Bengerang, the Offer consideration equates to 51¢ per Tandou share, representing a premium of **16%** to the 3 month VWAP of Tandou shares.

The Offer for Tandou and the acquisition of Bengerang by Webster requires approval by non-associated Webster shareholders at an extraordinary general meeting of Webster expected to be held on or around 4 May 2015. The Board of Webster has appointed Pitcher Partners as Independent Expert, to opine on both the Bengerang and Tandou transactions.

The Offer and its implementation is governed by the MIA which was signed by Tandou and Webster on 27 February 2015. The MIA includes mutual break fees of \$800,000 in certain circumstances, exclusivity arrangements and other customary clauses. In addition, should Webster achieve a relevant interest in at least 50.1% of Tandou shares and the Offer becomes unconditional, Webster will invite either Rob Woolley or a Tandou non executive Director to the Webster Board to represent the interests of Tandou shareholders in the enlarged group. A copy of the MIA is attached to this announcement as Appendix 3.

Recommendation

Given the significance of the proposed acquisitions of both Bengerang and Tandou, Tandou Directors will be appointing an Independent Expert to provide a report as to whether or not the proposed Offer is fair and reasonable to non-associated Tandou shareholders.

The Directors of Tandou have carefully considered the Offer and **unanimously recommend Tandou shareholders ACCEPT the Offer in the absence of a superior proposal and subject to the Tandou Independent Expert concluding that the Offer is reasonable to non associated Tandou shareholders.**

The above recommendation is made regardless of whether or not the Bengerang acquisition proceeds.

Tandou Directors will provide their formal response to the Offer to shareholders in the Target's Statement, after they have reviewed and considered the Bidders Statement from Webster and Tandou's Independent Expert's report, in conjunction with Tandou's financial and legal advisers. Shareholders will have ample time to consider the Offer and the Target's Statement.

Commentary

Mr. Rob Woolley, Chairman of Tandou said "With the assistance of the Company's advisers and after due diligence on Webster, the Board of Tandou has carefully considered the current value, prospects and future outlook for Tandou shares, relative to the potential value and prospects for Tandou shareholders as part of a larger, more diversified, agribusiness and water group. The Board believes that the Offer from Webster is attractive.

Mr Woolley said “Webster's recent \$117m acquisition of *Kooba* fits particularly well with Tandou's *Hay* aggregation, and brings with it substantial development opportunities and a large and strategic portfolio of water entitlements.” He added that “Tandou Directors are mindful of the fact that Tandou shares have for several years continued to trade at a material discount to underlying net asset value (around 30%). In addition to the analysis already undertaken, in providing our formal response to shareholders in the Target's Statement, Tandou Directors will assess the Offer against any competing proposal, should one emerge, as well as Tandou's Independent Expert's report.

Mr Woolley said “Because of Tandou's relatively small size and its lack of geographic and product diversity, it is difficult for Tandou to compete for and fund the acquisition of larger agribusiness assets in a highly capital intensive industry. It has accordingly proven difficult for Tandou to achieve real scale and generate the sustainable growth in earnings required to build shareholder value and narrow or eliminate the discount between underlying net assets and the share price”.

“The Offer, if successful, should provide Tandou shareholders with the opportunity to both realise a premium to the market price of their shares and to become part of a significantly larger, more diversified agribusiness group. The enlarged group will have better economies of scale and offer superior growth prospects to Tandou. It will also have the capacity to acquire larger assets to build further shareholder value. Importantly, relative to Tandou on its own, Webster should be able to extract more value from the enlarged water portfolio either through trading or by utilising that water to generate the highest return from a broader suite of cropping assets.”

Transaction Rationale

Should Webster's acquisition of Bengorang and the Offer for Tandou be successful, Tandou shareholders who accept the Offer will become shareholders in a substantially enlarged Webster Group comprising the largest portfolio of water entitlements in Australia (over 235,000 megalitres) which Tandou management estimate had a market value at 31 December 2014 of approximately \$228m.

In addition, the expanded farming operations will include:

- annual walnut production of approximately 7,000 tonnes p.a. from orchards in NSW and Tasmania, strengthening Webster's position as the largest walnut producer in Australia;
- over 40,000 hectares of irrigated land for cotton farming operations representing around 11% of cotton area planted across Australia with operations geographically spread across Northern and Southern NSW and becoming a top three cotton grower in Australia.

The enlarged Webster group should benefit significantly from scale, diversification and enhanced water security.

Timing

Tandou understands that Webster intends to lodge its Bidder's Statement with ASIC and serve it on Tandou on or around 8 April 2015. The Bidder's Statement will set out the full details of the Offer. The Target's Statement which will be sent to Tandou shareholders together with the Bidder's Statement on or around 15 April 2015, will set out the Tandou Board's formal response. The indicative timetable for the Offer is set out in Appendix 2.

Advisers

In considering this Offer, the Board of Tandou has retained Miles Advisory Partners as financial adviser and Minter Ellison as its legal adviser.

For further information contact:

Rob Woolley

Chairman

PH: 0414 508 130

Guy Kingwill

Chief Executive Officer / Managing Director

PH. 03 5018 6500

TANDOU LIMITED

ABN 81 001 014 562

Appendices

- 1 – Overview of enlarged Webster Group
- 2 – Indicative Timetable
- 3 – Merger Implementation Agreement

About Tandou

Tandou is a major Australian water investment and agribusiness company focused on large scale irrigated production of cotton and cereal crops. It is one of the largest cotton producers in Australia. The Company's total land holdings are approximately 141,000 hectares, comprising 18,500 hectares of irrigated row crop land, in addition to approximately 122,500 hectares of pastoral land. Cropping operations are conducted at Tandou Farm, located near Menindee in NSW, and around Hay in NSW. Tandou operates its own gin at Lake Tandou. Tandou also has pastoral operations involving the breeding of organic lambs.

Tandou holds approximately 84,000 megalitres of water entitlements. This holding is one of the largest, most diverse, actively managed water portfolios in the Southern connected Murray Darling Basin.

About Webster

Webster, currently capitalised at approximately \$200m is Australia's largest vertically integrated producer of Walnuts. In 2014, Webster's walnut production was approximately 7,000 tonnes, derived from 2,200 hectares of owned / managed walnut orchards in the NSW Riverina and Tasmania.

In December 2014, Webster acquired *Kooba* from AgReserves Australia Limited for [\$117m]. Kooba comprises a substantial portfolio of water entitlements (94,000 megalitres) as well as 11,800 hectares of irrigated land, 25,800 hectares of pastoral land and 9,100 hectares of dry land and support farms which will allow Webster to expand its Walnut operations and facilitate complementary annual cropping of cotton. The Kooba properties are located in the prime cropping zone on the Murrumbidgee River at Darlington Point in NSW.

Appendix 1 – Overview of enlarged Webster Group

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Key assets/operations	Tandou	Webster plus Tandou	Webster plus Tandou plus Bengerang
Land assets (hectares)			
– Irrigated	18,483	30,319	39,878
– Orchard	-	2,878	2,878
– Dryland	-	6,938	9,326
– Grazing	122,526	148,710	160,602
– Other	-	3,118	4,911
Total (ha)	141,009	191,963	217,595
Water assets (ML)			
– High Security	17,465	20,747	20,747
– General Security	57,398	105,241	122,871
– Supplementary/groundwater	9,150	34,558	42,475
– Unregulated/other	-	21,326	51,368
Total (ML)	84,013	181,872	237,461

Appendix 2 – Indicative Timetable

Action	Date
Webster serves Bidder's Statement on Tandou	8 April 2015
Tandou serves Target's Statement on Webster	8 April 2015
Webster and Tandou despatch the Bidder's Statement and Target's Statement respectively to Tandou shareholders	15 April 2015
Webster Shareholder meeting to approve the Offer and Bengerang acquisition	4 May 2015

This timetable is subject to change.



Appendix 3 – Merger Implementation Agreement



Merger Implementation Agreement

Webster Limited
(ACN 009 476 000)

Tandou Limited
(ACN 001 014 562)

Watson Mangioni Lawyers Pty Limited
Corporate and Commercial Lawyers
Level 13, 50 Carrington Street
SYDNEY NSW 2000
Tel: (02) 9262 6666
Fax: (02) 9262 2626
Email:
Ref: PAV 214 4642

Merger Implementation Agreement (WM01186515-009)

ME_119663332_1 (W2007)

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Parties:

1. **Webster Limited** (ACN 009 476 000) of 349 Forth Road, Devonport TAS 7310 (**WBA**);
2. **Tandou Limited** (ACN 001 014 562) of 31 Alan Mathews Drive, Mildura VIC 3502 (**TAN**).

Recitals:

- A. WBA proposes to make the Bid and the TAN Directors propose to recommend that TAN Shareholders accept the Offer in respect of the TAN Shares on the basis referred to in Clause 4.1.
- B. TAN and WBA have agreed certain matters in relation to the Bid, as set out in this Agreement.

1. Definitions and Interpretation

1.1. Definitions

In this Agreement:

Agreed Bid Terms means the terms set out in Schedule 2.

ASIC means the Australian Securities & Investments Commission.

Associate has the meaning given in the Corporations Act.

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

Bengerang Transaction means the proposed acquisition by WBA of Bengerang Limited (ACN 127 984 123).

Bid means an off-market bid by WBA for all the TAN Shares under Chapter 6 of the Corporations Act, as constituted by the Offers.

Bid Date means the date on which WBA serves the Bidder's Statement on TAN in accordance with Item 3 of Section 633(1) of the Corporations Act.

Business Day means a weekday on which trading banks are open for business in Sydney and Melbourne, Australia, excluding any Saturday, Sunday or public holiday.

Competing Proposal means any proposal by a Third Party in relation to a transaction or arrangement under which if the transaction or arrangement is completed:

- (a) a person would acquire (whether directly or indirectly) or become the holder of, or otherwise have a right to acquire or have an economic interest in, all or a material part of the business conducted by TAN, the assets of TAN or the Water Rights of TAN;
- (b) a person would acquire (whether directly or indirectly) Control of TAN;
- (c) a person would acquire a Relevant Interest in, or voting power of, 20% or more of the TAN Shares;

- (d) a person would otherwise acquire, or merge or amalgamate with TAN; or
- (e) TAN would be required to abandon or otherwise fail to proceed with the Transaction,

irrespective of how it is structured including by way of takeover bid, scheme of arrangement, shareholder approved acquisition, capital restructure, sale or purchase of assets, joint venture or synthetic merger.

Confidentiality Agreement means the confidentiality and exclusivity agreement between WBA and TAN dated 10 December 2014.

Control has the meaning given in section 50AA of the Corporations Act.

Controlled Entity means an entity under the Control of another entity.

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

Director means a director of TAN.

End Date means 31 July 2015.

Exclusivity Period means the period commencing on the date of this Agreement and ending on the first to occur of:

- (a) the date on which this Agreement is terminated in accordance with Clause 11;
- (b) the Offer Close Date;
- (c) the date on which the Offers are withdrawn by WBA in accordance with Section 652B of the Corporations Act; and
- (d) the End Date.

Independent Expert means the independent expert appointed by TAN to determine whether the Offer is fair and reasonable to non associated TAN Shareholders.

Insolvency Event means the occurrence of any one or more of the following events in relation to any person:

- (a) an application is made to a court for an order, or an order is made, that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed;
- (b) a liquidator or provisional liquidator is appointed;
- (c) an administrator is appointed to it under sections 436A, 436B or 436C of the Corporations Act;
- (d) a controller (as defined in section 9 of the Corporations Act) is appointed to it or any of its assets;
- (e) a receiver is appointed to it or any of its assets;
- (f) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
- (g) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;

- (h) it otherwise proposes, or effects, a winding-up, whether under the terms of a constituent document, the Corporations Act or any other applicable law;
- (i) it is insolvent as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under an applicable law (including under sub-section 459C(2) or section 585 of the Corporations Act) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
- (j) it is taken to have failed to comply with a bona fide statutory demand as a result of sub-section 459F(1) of the Corporations Act which has not been set aside or withdrawn;
- (k) a notice is issued under sections 601AA or 601AB of the Corporations Act;
- (l) a writ of execution is levied against it or a material part of its property;
- (m) it ceases to carry on business or threatens to do so; or
- (n) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the events set out in the above paragraphs of this definition.

Listing Rules means the official listing rules of the ASX.

MAC means a change occurs or is announced that would reasonably be expected to have a material adverse affect on the capital structure, business, financial or trading position, future profitability, condition of assets or liabilities of a Party and which:

- (a) diminishes or could reasonably be expected to diminish the net assets of a Party by \$5,000,000 or more;
- (b) has resulted in or could reasonably be expected to result in a Party incurring obligations, liabilities, costs, claims or expenses (contingent or otherwise) where the quantum (whether individually or when aggregated) exceeds \$5,000,000, except in the ordinary course of business;
- (c) diminishes or could reasonably be expected to diminish the net profit after tax of a Party by \$500,000 or more,

but does not include any of the following:

- (d) a matter disclosed in writing by one Party to the other including through advisers, agents or employees prior to the execution of this Agreement;
- (e) a matter which is publicly known (including on public registers of Supreme Courts and Federal Courts, the PPSR and the registers of ASX and ASIC) or announced to ASX, in each case before the execution of this Agreement;
- (f) any event, occurrence circumstances or matter generally affecting the cotton industry, water rights industry, walnut industry or beef industry;
- (g) changes in general economic conditions, currency exchange rates, securities markets or commodities prices;
- (h) changes occurring as a result of any matter, event or circumstance required by this Agreement, the Offer or the transactions contemplated by them or otherwise consented to by the other Party; or
- (i) arising as a result of any generally applicable change in accounting standards required by law or government policy in Australia.

Material Contract means any contract or commitment by TAN involving an amount of not less than \$1,000,000 or which is for a period of not less than 60 days, other than the commencement of the *Round 4 On-Farm Irrigation Efficiency Programs* as disclosed by TAN to WBA prior to the date of this Agreement.

Offer means the offer to be made by WBA to TAN Shareholders for their TAN Shares under the Bid and **Offers** means all such offers.

Offer Close Date means the date on which the Offer closes, as referred to in Clause 2 of Schedule 2.

Offer Conditions means the conditions set out in Clause 3 of Schedule 2.

Offer Consideration has the meaning given in Schedule 2.

Offer Date means the date on which the first of the Offers is made.

Offer Period means the period starting on the Offer Date and ending on the Offer Close Date.

Party means a party to this Agreement.

PPSA means the Personal Property Securities Act 2009 (Cth).

PPS Law means:

- (a) the PPSA and any regulation made at any time under the PPSA, including the PPS Regulations; and
- (b) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a).

PPSR means the register of Security Interests maintained under the PPSA.

PPS Regulations means the *Personal Property Securities Regulations 2010 (Cth)*.

Proceeding means any suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, audit, examination or investigation commenced, brought, conducted or heard by or before or otherwise involving any court or other Regulatory Body or any arbitrator or arbitration panel.

Recommendation has the meaning given in Clause 4.1(a).

Register means the register of members of TAN.

Regulatory Body means any Australian or foreign government or governmental, semi-governmental fiscal, regulatory or judicial body, department, commission, entity or authority. It includes a self-regulatory organisation established under statute or a stock exchange, ASIC, ASX and the Australian Taxation Office.

Related Body Corporate has the meaning set out in the Corporations Act.

Relevant Circumstance has the meaning given in Clause 3.1(b)(i).

Relevant Conditions has the meaning given in Clause 6.1(a).

Relevant Interest has the meaning given in Sections 608 and 609 of the Corporations Act.

Representative in respect of a Party, means each director, officer, employee, adviser, agent or representative of that Party or any of its Subsidiaries.

Security Interest means any:

- (a) *security interest* as defined in the PPS Law;
- (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 set off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements); and
- (c) 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.

Subsidiary has the meaning set out in the Corporations Act.

Superior Proposal means a bona fide unsolicited written Competing Proposal received by TAN after the date of this Agreement which the TAN Directors have determined, acting in good faith and in accordance with their fiduciary duties, and after the receipt of written advice from TAN's external legal advisers, is:

- (a) reasonably capable of being completed, taking into account all aspects of the Competing Proposal and the person making it; and
- (b) more favourable to TAN Shareholders (as a whole) than the Transaction, taking into account all the terms and conditions of the Competing Proposal.

Takeover Document means a document required to be made by WBA or TAN under Chapter 6 of the Corporations Act in connection with the Bid and includes:

- (a) the Bidder's Statement and the Target's Statement;
- (b) any supplementary statement in respect of the Bidder's Statement or the Target's Statement; and
- (c) any notices required to be prepared by WBA (including under Sections 630(3), 650D(1) or 650F(1) of the Corporations Act).

TAN Board means the board of Directors of TAN.

TAN Director means a director of TAN.

TAN Director Share means, in relation to a TAN Director, a TAN Share which a TAN Director holds or Controls or in which that TAN Director has a Relevant Interest.

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

TAN Shareholder means a person who is shown in the Register as the holder of one or more TAN Shares.

Target's Statement means the target's statement to be prepared by TAN in connection with the Bid in accordance with Chapter 6 of the Corporations Act.

TAN Warranties means the warranties and representations provided by TAN under Clause 7.2.

Third Party means a person other than WBA and its Representatives.

Timetable means the indicative timetable for the implementation of the Transaction set out in Schedule 1.

Transaction means the acquisition by WBA of all of the TAN Shares under the Bid.

Water Rights means all water access licences, entitlements and allocations, both permanent and temporary allocations, including all such licences and allocations issued under the Water Management Act, 2000 (NSW).

Water Rights Restructure Transaction means the potential restructure of the holding and management of Tandou's Water Rights by way of creation of a water fund (or similar structure) involving all, or part of, Tandou's existing Water Rights and provided it does not include trading in Water Rights in the normal and ordinary course of business.

WBA Board means the board of directors of WBA.

WBA Director means a director of WBA.

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

WBA Shareholder means a person who is shown in the WBA shareholder register as the holder of one or more WBA Shares.

WBA Warranties means the warranties and representations provided by WBA under Clause 7.1.

1.2. Interpretation

In this Agreement, headings and bold type are for convenience only and do not affect interpretation and, unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (d) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture, a partnership, a trust and any Regulatory Body;
- (e) a reference to a Clause, Party, Attachment or Schedule is a reference to a clause of, and a party, attachment and schedule to this Agreement, and a reference to this Agreement includes any Attachment and Schedule;
- (f) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another Regulatory Body with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (g) a reference to any document (including this Agreement) is to that document as varied, novated, ratified or replaced;
- (h) a reference to **\$** or **dollar** is to Australian currency;
- (i) a reference to any time, unless otherwise indicated, is a reference to the time in Sydney, Australia;
- (j) if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day;

- (k) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this Agreement; and
- (l) a reference to the Listing Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a Party.

1.3. Inclusive expressions

Specifying anything in this Agreement after the words **include** or **for example** or similar expressions does not limit what else is included unless there is express wording to the contrary.

2. Facilitating the Bid

2.1. Agreement to make and respond to the Bid

Subject to the terms of this Agreement:

- (a) WBA agrees to make the Bid in compliance with Chapter 6 of the Corporations Act and to make the Offers on the Agreed Bid Terms; and
- (b) TAN agrees to comply with Chapter 6 of the Corporations Act in respect of the Bid.

2.2. WBA may use wholly-owned Subsidiary

- (a) Subject to Clause 2.2(b), WBA may satisfy its obligations under Clause 2.1(a) by causing an entity which is a wholly-owned Subsidiary of WBA to perform the obligations referred to in Clause 2.1(a), in which case references to:
 - (i) the Bid are references to the takeover bid by that Subsidiary; and
 - (ii) WBA making the Bid are references to WBA causing that Subsidiary to make the Bid.
- (b) If, pursuant to Clause 2.2(a), WBA elects to cause a Subsidiary to perform its obligations under Clause 2.1, WBA guarantees the due performance of those obligations.

2.3. Timetable

WBA and TAN each agree:

- (a) to use reasonable endeavours to implement the Transaction in accordance with the Timetable; and
- (b) that, in the event any step in the Timetable is not completed by the relevant date, they will use reasonable endeavours to complete that step as quickly as reasonably practicable (unless an alternative timetable is agreed by WBA and TAN, in which event the Transaction will be implemented in accordance with that timetable and otherwise in accordance with the terms of this Agreement).

2.4. Co-operation in preparing Takeover Documents

- (a) WBA and TAN must each provide the other Party with all assistance reasonably requested by that Party in connection with the preparation of Takeover Documents and to do so in a timely manner. For the avoidance of doubt, the assistance referred to in this Clause 2.4(a) includes providing any information reasonably requested by WBA or TAN (as the case may be) for the purpose of preparing a Takeover Document.
- (b) Without limitation to Clause 2.4(a), TAN must provide WBA with a reasonable opportunity to review an advanced draft of the Target's Statement and any supplementary target's statement

and to consult in good faith with WBA in relation to any comments WBA may have on that draft. The draft of the Target's Statement provided to WBA for the purposes of this clause will not include a draft of the Independent Expert's report other than extracts for the purposes of a factual review.

- (c) Without limitation to Clause 2.4(a), WBA must provide TAN with a reasonable opportunity to review an advanced draft of the Bidder's Statement and any supplementary bidder's statement and to consult in good faith with TAN in relation to any comments TAN may have on that draft.
- (d) The co-operation between WBA and TAN contemplated in this Clause 2.4 does not result in either of them having any responsibility for a Takeover Document prepared by the other Party.

2.5. Dispatch of Bidder's Statement

Subject to Clause 2.4(c) and provided that TAN has first had a reasonable opportunity to notify TAN Shareholders after WBA makes its ASX announcement regarding the Offer, TAN agrees that the Offers and accompanying documents may be sent to TAN Shareholders on **15 April 2015**, being a date that is earlier than the date prescribed by Item 6 of Section 633(1) of the Corporations Act.

2.6. Information regarding acceptances of the Offer

- (a) During the Offer Period, WBA must give TAN notice by email of any acceptance of the Offer received by WBA within 2 Business Days of receipt of that acceptance by WBA.
- (b) Upon a request by email from TAN, WBA must within a reasonable time (and no later than within 2 Business Days) give to TAN notice by email providing details of all acceptances of the Offer received by WBA.

3. Offer Conditions and other terms

3.1. Offer Conditions

- (a) For the purposes of this Clause 3 and Clauses 7.1(h) and 7.2(i), the Offer Conditions are taken to apply from the date of this Agreement.
- (b) During the Exclusivity Period, WBA and TAN agree that:
 - (i) if they become aware of the occurrence of any fact or circumstance which, either individually or together with other facts or circumstances of which they are aware, will cause any of the Offer Conditions to be breached or not satisfied or to become incapable of satisfaction (**Relevant Circumstance**), they will promptly give the other Party a written notice including details of the Relevant Circumstance;
 - (ii) they will use reasonable endeavours to ensure that (as applicable):
 - (A) the Offer Conditions are satisfied as soon as practicable after the date of this Agreement; and
 - (B) none of the Offer Conditions are breached or not satisfied or become incapable of satisfaction; and
 - (iii) they will not do or omit to do, or cause to be done or not done, anything which will or is likely to result in any of the Offer Conditions being breached or not satisfied or becoming incapable of satisfaction.

3.2. Other Offer or related terms

- (a) WBA agrees that WBA Shares issued as Offer Consideration will rank equally in all respects with existing WBA Shares.
- (b) WBA agrees that if it intends to declare or pay a dividend or other distribution (**Distribution**) to WBA Shareholders after the date of this Agreement it will provide sufficient notice of the record date for the Distribution to allow TAN Shareholders to participate in the Distribution after accepting the Offer.
- (c) WBA agrees that any TAN Shareholder fractional entitlements to WBA Shares under the Offer will be rounded up to the nearest whole number.
- (d) WBA agrees to comply with section 619(3) of the Corporations Act in relation to foreign registered TAN Shareholders, except in relation to shareholdings by Peter Joy, Belfort Investment Advisers Limited, Eagle Securities Limited, Ashfield Farm Limited, Custodial Services Limited, REL-Trust Management Limited, RGH Holdings Limited and James Beeland Rogers & Paige Anderson Parker, each of whom will receive the Offer Consideration.
- (e) WBA agrees that it will not extend the Offer beyond the End Date other than with the agreement in writing of TAN and where the TAN Board is comprised at the relevant time of a majority of WBA nominee TAN Directors, the non WBA nominee TAN Directors must unanimously agree to that extension.

4. TAN's support of the Bid

4.1. TAN Directors' recommendation and acceptance of the Offer

TAN represents and warrants to WBA that the TAN Directors have passed a unanimous resolution, that:

- (a) they will recommend that TAN Shareholders accept the Offer, subject to the qualification that there is no Superior Proposal and the Independent Expert concluding that the Offer is reasonable to non associated TAN shareholders (**Recommendation**);
- (b) they will not withdraw or change in any way (including by revising or qualifying), or make any public statement inconsistent with, the Recommendation unless:
 - (i) a Superior Proposal is received by TAN and TAN did not in any way breach its obligations under Clause 9 in connection with that Superior Proposal; and
 - (ii) they consider, acting in good faith and after taking advice from TAN's legal or financial advisers on the matter, that their fiduciary or statutory duties require them to do so; or
 - (iii) the Independent Expert concludes that the Offer is not reasonable to non associated TAN Shareholders; and
- (c) they will accept, or procure the acceptance of, the Offer in respect of all their TAN Director Shares no later than 2 Business Days after WBA Shareholder approval is obtained for the Bengerang Transaction and, in effect, the Offer, in the absence of a Superior Proposal and subject to the Independent Expert concluding that the Offer is reasonable to non associated TAN shareholders.

4.2. Kingwill exercise of options

TAN represents and warrants to WBA that Guy Kingwill has confirmed in writing to the TAN Directors that once WBA achieves a relevant interest in at least 50.1% of TAN Shares and its Offer is unconditional, he will exercise all options to acquire TAN Shares that he holds and will accept the Offer in respect of all TAN Shares issued on exercise of those options.

4.3. Target's Statement

TAN must ensure that the Target's Statement:

- (a) prominently displays the Recommendation (including on the cover of the Target's Statement); and
- (b) includes a statement that each TAN Director's current intention is that he will accept the Offer in respect of all his TAN Director Shares no later than 2 Business Days after WBA Shareholder approval is obtained for the Bengerang Transaction and, in effect, the Offer, in the absence of a Superior Proposal and subject to the Independent Expert concluding that the Offer is reasonable to non associated TAN shareholders.

4.4. Promotion of the Offer

Unless a majority of the TAN Directors withdraw their Recommendation in the circumstances contemplated in Clause 4.1(b), TAN must ensure that each TAN Director and such other senior executives of TAN as reasonably requested by WBA and subject to their fiduciary obligations, reasonably participate in efforts to promote the merits of the Offer including meeting with key TAN Shareholders, analysts, media and other stakeholders.

4.5. Register details

Without limitation to TAN's obligations under Clause 2.1(b) (including its obligation to comply with Section 641 of the Corporations Act, if applicable), TAN must provide WBA with such information about TAN Shareholders as WBA reasonably requires to make the Offers and solicit acceptances.

5. Conduct of business and access

5.1. Conduct of Business

Until the end of the Exclusivity Period, each of TAN and WBA must, except with the prior written consent of the other party or unless they have otherwise announced an intention, act or conduct to the contrary prior to the date of this Agreement:

- (a) conduct its business in the ordinary and usual course consistent with its usual business practices and does not make any significant change to the nature or scale of any activity comprised in the business; and
- (b) conducts its business in accordance with all applicable laws, regulations and the terms of all applicable authorisations.

5.2. Consultation

Until the end of the Exclusivity Period, TAN and WBA must:

- (a) notify the other party as to all material decisions concerning the operation of their business; and
- (b) not make any material change to the operation of its business without the prior approval of the other party.

5.3. Specific matters

- (a) Until the end of the Exclusivity Period, each of TAN and WBA must make all reasonable efforts to (as applicable to each):
 - (i) operate its business in accordance with current business plans and budgets;

- (ii) keep available the services of its directors, officers and employees;
 - (iii) maintain and preserve satisfactory relationships with its suppliers, lenders, and others having business dealings with it (including, if applicable, using reasonable endeavours to obtain consents from third parties to any change of control provisions in contracts or arrangements to which it is a party);
 - (iv) not enter into any lines of business or other activities in which it is not engaged as of the date of this Agreement;
 - (v) preserve intact its assets and business organisation;
 - (vi) ensure that no transaction takes place that results in the book value of all Water Rights held by:
 - (A) Tandou falling below \$57.3 million; or
 - (B) WBA falling below \$65 million initially and on WBA's completion of the Bengerang Transaction, falling below \$140 million;
 - (vii) not allow any tax payment that is due and payable to remain unpaid; and
 - (viii) manage its working capital in the ordinary course of ordinary business consistent with past practice.
- (b) Subject to WBA achieving a relevant interest in TAN Shares of at least 50.1% and its Bid not being subject to the Offer Conditions, the Parties must consult with each other in good faith immediately after execution of this Agreement and for the period up to the end of the Exclusivity Period, to discuss and assist in preparing a transition plan.
- (c) Other than in respect of any matter which has been announced to ASX before execution of this Agreement, until the end of the Exclusivity Period TAN must not do any of the following:
- (i) do any act or thing or suffer or permit any omission in contravention of Applicable Law;
 - (ii) terminate or novate any Material Contract or to amend any such contract in a material respect;
 - (iii) except in the normal and ordinary course of business, enter into any contract involving total expenditure in excess of \$1,000,000 or not capable of termination on 90 days' notice or less or any service or employment agreement not capable of termination on 90 days' notice or less;
 - (iv) except in the normal and ordinary course of business, purchase or sell any asset for more than \$1,000,000 or total assets for more than \$1,000,000;
 - (v) except in the normal and ordinary course of business, assume any liability in an amount of more than \$1,000,000 or total liabilities in excess of \$1,000,000;
 - (vi) increase the remuneration of, or pay any bonus or issue any securities or options to, or otherwise vary the employment agreements with, any of the TAN Directors, or the key employees or contractors of TAN except as expressly required under the terms of any employee agreement existing as at the date of this Agreement or as required for the salary review processes that are in place and adopted by TAN as at the date of this Agreement;
 - (vii) accelerate the rights of any of the TAN Directors or employees of TAN to benefits of any kind or pay a termination payment to a TAN Director or employee other than as

provided for in employment contract existing as at the date of this Agreement and disclosed in writing to WBA before the date of this Agreement;

- (viii) give or agree to give a financial benefit to a related party of TAN within the meaning of Chapter 2E of the Corporations Act, other than the financial benefits that are given to a related party of TAN under existing obligations of TAN as at the date of this Agreement and disclosed in writing to WBA before the date of this Agreement;
 - (ix) grant any Security Interest or other third party interest over any asset;
 - (x) amend or permit the amendment of its constituent documents;
 - (xi) pay any dividend or undertake any other distribution;
 - (xii) undertake any reduction of its share capital, share buy-back, or any restructure of its capital;
 - (xiii) take any action or refrain from taking any action which will or may result in the appointment of a liquidator, receiver, manager, administrator or other external controller to TAN or to any of the material assets of TAN;
 - (xiv) issue any securities including options to acquire any shares in TAN;
 - (xv) enter into any pre-emptive rights, voting agreements or other similar arrangements; and
 - (xvi) agree to (whether in writing or otherwise) or attempt any of the above.
- (d) Other than in respect of any matter which has been announced to ASX before execution of this Agreement or pursuant to the Bengerang Transaction, until the end of the Exclusivity Period WBA must not do any of the following:
- (i) do any act or thing or suffer or permit any omission in contravention of Applicable Law;
 - (ii) terminate or novate any Material Contract or to amend any such contract in a material respect;
 - (iii) except in the normal and ordinary course of business, enter into any contract involving total expenditure in excess of \$1,000,000 or not capable of termination on 90 days' notice or less or any service or employment agreement not capable of termination on 90 days' notice or less;
 - (iv) except in the normal and ordinary course of business, purchase or sell any asset for more than \$1,000,000 or total assets for more than \$1,000,000;
 - (v) except in the normal and ordinary course of business, assume any liability in an amount of more than \$1,000,000 or total liabilities in excess of \$1,000,000;
 - (vi) increase the remuneration of, or pay any bonus or issue any securities or options to, or otherwise vary the employment agreements with, any of the WBA Directors, or the key employees or contractors of WBA except as expressly required under the terms of any employee agreement existing as at the date of this Agreement or as required for the salary review processes that are in place and adopted by WBA as at the date of this Agreement;
 - (vii) accelerate the rights of any of the WBA Directors or employees of WBA to benefits of any kind or pay a termination payment to a WBA Director or employee other than as

provided for in employment contract existing as at the date of this Agreement and disclosed in writing to TAN before the date of this Agreement;

- (viii) give or agree to give a financial benefit to a related party of WBA within the meaning of Chapter 2E of the Corporations Act, other than the financial benefits that are given to a related party of WBA under existing obligations of WBA as at the date of this Agreement and disclosed in writing to TAN before the date of this Agreement or pursuant to the Bengerang Transaction;
 - (ix) grant any Security Interest or other third party interest over any asset;
 - (x) amend or permit the amendment of its constituent documents;
 - (xi) pay any dividend or undertake any other distribution other than a dividend paid to the holders of quoted preference shares in WBA in respect of the half year ended 31 December 2014 in an amount of \$18,000;
 - (xii) undertake any reduction of its share capital, share buy-back, or any restructure of its capital;
 - (xiii) take any action or refrain from taking any action which will or may result in the appointment of a liquidator, receiver, manager, administrator or other external controller to WBA or to any of the material assets of WBA;
 - (xiv) issue any securities including options to acquire any shares in WBA;
 - (xv) enter into any pre-emptive rights, voting agreements or other similar arrangements; and
 - (xvi) agree to (whether in writing or otherwise) or attempt any of the above.
- (e) An obligation or limitation contained in this Clause 5 does not apply if:
- (i) a party has given its prior written consent to the other party in respect of a failure to comply with that obligation or limitation; or
 - (ii) this Agreement permits or contemplates that conduct.

5.4. Access to information

- (a) Subject to Clause 5.4(b) and WBA achieving a relevant interest in TAN Shares of at least 50.1% and its Bid not being subject to the Offer Conditions, until the end of the Exclusivity Period, TAN must, and must cause TAN to, afford to WBA reasonable access to the books and records (subject to any existing confidentiality obligations owed to third parties), premises and personnel of members of TAN at mutually convenient times and afford WBA reasonable co-operation for the purpose of:
- (i) implementation of the Transaction, provided that nothing in this sub-clause requires TAN to provide information to WBA concerning TAN's directors, management's and advisers' consideration of the Transaction;
 - (ii) WBA obtaining an understanding of the operations of the business, financial position, prospects and affairs of TAN in order to allow and facilitate the development and the implementation of the plans of WBA for those businesses following implementation of the Transaction (including, for the avoidance of doubt, to formulate the transition plan referred to in Clause 5.3(b));
 - (iii) after TAN has contacted its top 20 TAN Shareholders, WBA contacting TAN Shareholders with a view to encouraging their support for the Transaction; and

- (iv) any other purpose agreed between the parties.
- (b) Nothing in this Clause 5.4 requires TAN to provide access to the extent that:
 - (i) it places an unreasonable burden on the ability of TAN to conduct its business; or
 - (ii) it gives rise to a breach of law or a breach of contractual obligation of TAN or otherwise exposes TAN to potential liability.
- (c) Other than Clause 5.4(a)(iii), nothing in this Clause 5.4 limits any steps WBA may take to solicit support for the Transaction from TAN Shareholders.

5.5. Reasonable endeavours regarding certain filings and approvals

- (a) TAN and WBA must cooperate in:
 - (i) determining whether any action by or in respect of, or filing with, any Regulatory Body is required, or any actions, consents, approvals or waivers are required to be obtained from parties to any Material Contracts, in connection with the implementation of the Transaction; and
 - (ii) taking such actions or making any such filings, furnishing information required in connection therewith and seeking to obtain any such actions, consents, approvals or waivers in a timely manner.
- (b) TAN and WBA must each use its reasonable endeavours to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable law to:
 - (i) prepare and file as promptly as practicable with any Regulatory Body or other Third Party all documentation to effect all necessary filings, notices, petitions, statements, registrations, submissions of information, applications and other documents; and
 - (ii) obtain and maintain all approvals, consents, registrations, permits, authorisations and other confirmations required to be obtained from any Regulatory Body or other Third Party that are necessary, proper or advisable to implement the Transaction.

6. Changes to TAN Board, WBA Board and senior management

6.1. Changes to TAN Board

Subject to Clauses 6.1(d) - 6.1(f), TAN must procure that, as soon as practical upon both WBA having acquired a Relevant Interest in more than 50% of TAN's Shares and the Offers becoming unconditional (**Relevant Conditions**):

- (a) it appoints nominees of WBA to the TAN Board so that WBA nominees represent a majority of the TAN Board;
- (b) all but 2 TAN Directors:
 - (i) resign as directors of TAN; and
 - (ii) they confirm in their written resignation that they have no outstanding claims against TAN (subject to any existing entitlements or benefits payable on termination or retirement and any such claims arising between the date of this Agreement and the date on which WBA requests that they resign, and for the avoidance of doubt, without prejudice to their rights under existing deeds of access and indemnity and director's and officer's insurance policies); and

- (c) each TAN Director does everything reasonably within his power to give effect to the reconstitution of the TAN Board in accordance with WBA's reasonable wishes and applicable laws and subject to such persons signing consents to act as a director of the relevant entity and providing those consents to TAN,

in each case provided that:

- (d) a proper board is constituted at all times having regard to TAN's constitution and applicable laws;
- (e) WBA's nominees will not participate in decisions of TAN relating to the Offer until after the Offer Close Date; and
- (f) until the Offer Close Date, at least 2 members of the TAN Board must not be a nominee of WBA.

6.2. Changes to WBA Board

Simultaneously with the changes to the TAN Board set out in Clause 6.1, WBA must procure the appointment of Rob Woolley or another non-executive director of TAN nominated by TAN to the WBA Board, subject to receipt of his consent to act as a director of WBA.

7. Representations and undertakings

7.1. WBA's representations

WBA represents and warrants to TAN (in its own right and separately as trustee or nominee for each of the other Indemnified Parties) that:

- (a) WBA is a validly existing corporation registered under the laws of its place of incorporation;
- (b) it has the power and capacity to enter into and perform its obligations under or in connection with this Agreement;
- (c) WBA and its directors have taken all necessary action to authorise the signing, delivery and performance of this Agreement and the documents required under this Agreement in accordance with their respective terms;
- (d) subject to laws generally affecting creditors' rights and the principles of equity, this Agreement constitutes valid and binding obligations upon WBA enforceable in accordance with its terms by appropriate legal remedy;
- (e) the signing and delivery of this Agreement and the performance by WBA of its obligations under it complies with, and will not breach until the end of the Exclusivity Period:
 - (i) each material applicable law;
 - (ii) the constitution of WBA;
 - (iii) any material Listing Rules; and
 - (iv) a Security Interest or the material terms of a material document binding on WBA, including any finance facility documents;
- (f) no Insolvency Event has occurred in relation to WBA or any of its material related bodies corporate;
- (g) as at the date of this Agreement, it has complied in all material respects with its continuous disclosure obligations under the Listing Rules and the Corporations Act and it is not

withholding any information from disclosure relying on Listing Rule 3.1A (other than information in relation to the proposed Transaction or which it has otherwise provided to TAN in writing prior to the date of this Agreement);

- (h) as at the date of this Agreement, it is not aware of any fact or circumstance (whether or not existing at the date of this Agreement) that will or is reasonably likely to result in:
 - (i) any of the Offer Conditions not being satisfied or being breached or becoming incapable of satisfaction; or
 - (ii) the Transaction not being implemented in accordance with the Timetable and the terms of this Agreement;
- (i) make all reasonable endeavours to obtain all necessary Regulatory Body or WBA Shareholder approvals for the Transaction; and
- (j) so far as it is aware, all information provided by WBA, its officers, employees or advisers to TAN, its officers, employees or advisers in the course of negotiations relating to the Transaction up to the date of this Agreement is:
 - (i) true and accurate in all material respects; and
 - (ii) not misleading in any material particular, whether by omission or otherwise.

7.2. TAN's representations

TAN represents and warrants to WBA and its directors and officers (in its own right and separately as trustee or nominee for each of the WBA directors and officers) that:

- (a) TAN is a validly existing corporation registered under the laws of its place of incorporation;
- (b) it has the power and capacity to enter into and perform its obligations under or in connection with this Agreement;
- (c) TAN and its directors have taken all necessary action to authorise the signing, delivery and performance of this Agreement and the documents required under this Agreement in accordance with their respective terms;
- (d) subject to laws generally affecting creditors' rights and the principles of equity, this Agreement constitutes valid and binding obligations upon TAN enforceable in accordance with its terms by appropriate legal remedy;
- (e) the signing and delivery of this Agreement and the performance by TAN of its obligations under it complies with, and will not breach until the end of the Exclusivity Period:
 - (i) each material applicable law;
 - (ii) the constitution of TAN;
 - (iii) any material Listing Rules; and
 - (iv) a Security Interest or a material term of a material document binding on TAN, including any finance facility documents;
- (f) no Insolvency Event has occurred in relation to TAN;
- (g) TAN has no Controlled Entities or material investments in any other corporation;

- (h) as at the date of this Agreement, it has complied in all material respects with this continuous disclosure obligations under the Listing Rules and the Corporations Act and it is not withholding any information from disclosure relying on Listing Rule 3.1A (other than information in relation to the proposed Transaction or which it has otherwise provided to WBA in writing prior to the date of this Agreement);
- (i) as at the date of this Agreement, it is not aware of any fact or circumstance (whether or not existing at the date of this Agreement) that will or is reasonably likely to result in:
 - (i) any of the Offer Conditions not being satisfied or being breached or becoming incapable of satisfaction; or
 - (ii) the Transaction not being implemented in accordance with the Timetable and the terms of this Agreement; and
- (j) so far as it is aware, all information provided by TAN, its officers, employees or advisers to WBA, its officers, employees or advisers in the course of negotiations relating to the Transaction up to the date of this Agreement is:
 - (i) true and accurate in all material respects; and
 - (ii) not misleading in any material particular, whether by omission or otherwise.

7.3. Survival of representations

Each representation and warranty in Clauses 7.1 and 7.2:

- (a) is severable;
- (b) survives the termination of this Agreement; and
- (c) is given with the intention that liability under it is not confined to breaches which are discovered before the date of termination of this Agreement.

8. Public announcement

8.1. Announcement of Transaction

As soon as practicable after the execution of this Agreement, each of WBA and TAN must issue a public announcement.

8.2. Public announcement and submissions

- (a) Subject to Clause 8.3, no public announcement in connection with the Transaction may be made other than in a form agreed by both Parties.
- (b) Each Party must use all reasonable endeavours to provide the approval and constructively participate in the consultation contemplated by Clauses 8.2(a) as soon as practicable.

8.3. Required disclosure

If a Party is required by law or the Listing Rules to make any announcement or disclosure relating to matter the subject of this Agreement, it may do so only after it has given the other Party at least 1 Business Day's notice (or any lesser period of notice required or permitted by the effect of a legal obligation), but in any event prior notice must be given to the other Party and the Party must consult to the fullest extent possible with the other Party regarding the form and content of the announcement or disclosure.

8.4. Terminations of obligations

The obligations of the Parties under Clause 8.2 terminate on the earlier of:

- (a) end of the Exclusivity Period;
- (b) the date a majority of the TAN Directors have withdrawn their Recommendation in the circumstances contemplated in Clause 4.1(b).

9. No talk and no shop obligations

9.1. No talk

Subject to Clause 9.3, during the Exclusivity Period, TAN must not, and must ensure that none of its Representatives:

- (a) directly or indirectly participates in or continues any discussions or negotiations with a Third Party;
- (b) provides or makes available any information to a Third Party (including by way of providing information and access to perform due diligence);
- (c) enters into any agreement, arrangement or understanding with a Third Party; or
- (d) communicates to a Third Party any intention to do any of these things,

in relation to, or which:

- (e) may reasonably be expected to lead to, a Competing Proposal;
- (f) may reasonably be expected to otherwise lead to the Transaction not being implemented; or
- (g) in the case of Clause 9.1(b), may reasonably be expected to result in a material detriment to a member of TAN.

9.2. No shop

During the Exclusivity Period, TAN must not, and must ensure that none of its Representatives:

- (a) solicits (including by way of providing information concerning TAN to any person), invite, directly or indirectly, enquiries, discussions or proposals in relation to, or which may reasonably be expected to lead to, a Competing Proposal; or
- (b) communicates to any person an intention to do any of the things referred to in Clause 9.2(a).

9.3. Limitation to no talk

TAN and its Representatives may undertake any action that would otherwise be prohibited by Clause 9.1 in relation to an actual or reasonably expected to be bona fide Competing Proposal which was not solicited by it and was not otherwise brought about as a result of any breach by it of its obligations under this Clause 9 where the TAN Board, acting in good faith, determines after having taken advice from its legal advisers, that not undertaking that act would be likely to involve a breach of the fiduciary duties owed by any TAN Director or would otherwise be unlawful and the Competing Proposal is more favourable to TAN Shareholders than the Transaction, taking into account all the terms and conditions of the Competing Proposal including whether it is capable of being valued and completed on a timely basis and including having regard to legal, regulatory and financial matters, including any conditions precedent.

9.4. Notification of approaches

- (a) During the Exclusivity Period and subject to TAN Director's fiduciary obligations, TAN must notify WBA immediately in writing if it, or any of its Representatives becomes aware of any:
- (i) negotiations or discussions, approach or attempt to initiate any negotiations or discussions, or intention to make such an approach or attempt to initiate any negotiations or discussions in respect of any expression of interest, offer or proposal of a kind referred to in Clause 9.1 or 9.2 including details of the party making the expression of interest, offer or proposal, their terms and any updates to the expression of interest, offer or proposal;
 - (ii) proposal whether written or otherwise made to TAN or any of its Representatives, in connection with, or in respect of any exploration or consummation of, a Competing Proposal or a proposed or potential Competing Proposal, whether unsolicited or otherwise, including details of the party making the proposal, the terms of the proposal and any updates to the proposal;
 - (iii) provision by TAN or its Representatives of any information relating to TAN or its business or operations to any person in connection with or for the purposes of a current or future Competing Proposal; and
 - (iv) action by TAN, or any intention of it to take any action, in reliance on Clause 9.3, prior to undertaking the relevant act (which acts are only permitted to be undertaken pursuant to Clause 9.3).

9.5. Provision of information

- (a) Prior to providing any information to any Third Party who is or may be considering a Competing Proposal, TAN must enter into a confidentiality agreement with such Third Party on terms no less favourable to TAN than those contained in the Confidentiality Agreement (and containing provisions that expressly permit TAN to comply with the terms of Clause 9.4 and this Clause 9.5 to the extent applicable).
- (b) Subject to TAN Director's fiduciary obligations, TAN must within 2 Business Days provide WBA with any information or due diligence materials (including responses to requests for further information) provided to any Third Party who is or may be considering a Competing Proposal (other than identical copies of documents that have previously been provided to WBA).
- (c) Such provision of information of materials under Clause 9.5 is only permitted to be undertaken pursuant to Clause 9.3.

9.6. Compliance with law

- (a) Without limiting Clause 9.3, if it is finally determined by a court, or the Takeovers Panel, that the agreement by TAN under this Clause 9 or any part of it:
 - (i) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the TAN Board; or
 - (ii) constituted, or constitutes, or would constitute, unacceptable circumstances within the meaning of the Corporations Act; or
 - (iii) was, or is, or would be, unlawful for any other reason,
 then, to that extent (and only to that extent) TAN will not be obliged to comply with that provision of Clause 9.

- (b) The parties must not make or cause to be made any application to a court or the Takeovers Panel for or in relation to a determination referred to in Clause 9.6(a)(i).

9.7. Warranty and representation

TAN represents and warrants to WBA that, as at the date of this Agreement:

- (a) no agreement, arrangement or understanding exists with any Third Party in relation to any expression of interest, offer or proposal of the kind referred to in Clause 9.1 or 9.2; and
- (b) all discussions with Third Parties with respect to a possible Water Rights Restructure Transaction have been suspended.

10. Break Fee

10.1. TAN Break Fee

Subject to Clause 10.3, if WBA terminates this Agreement in accordance with Clauses 11.1(a), 11.2(a), 11.2(b) or TAN terminates this Agreement in accordance with Clause 11.3(a), and in all instances other than because the Independent Expert concludes that the Offer is not reasonable to non associated TAN Shareholders, then TAN must pay to WBA a break fee equal to the lower of the costs incurred by WBA in formulating, proposing and seeking to implement the Transaction and \$800,000 (**TAN Break Fee**).

10.2. WBA Break Fee

Subject to Clause 10.3, if TAN terminates this Agreement in accordance with Clause 11.1(a) or if Offer Condition 3(b) is not satisfied (except where this Agreement has been terminated or another Offer Condition cannot be satisfied and WBA has confirmed it will not waive that Offer Condition, in each case prior to the date on which the resolutions are to be considered by WBA Shareholders), then WBA must pay to TAN a break fee equal to the lower of the costs incurred by TAN in formulating, proposing and seeking to implement the Transaction and \$800,000 (**WBA Break Fee**).

10.3. Compliance with law

If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a court that all or any part of either the TAN Break Fee or WBA Break Fee required to be paid under Clause 10.1 or 10.2 respectively (**Impugned Amount**):

- (a) is unlawful;
- (b) involves a breach of directors' duties; or
- (c) constitutes unacceptable circumstances,

then:

- (d) the requirement to pay the TAN Break Fee or WBA Break Fee respectively does not apply to the extent of the Impugned Amount; and
- (e) if WBA or TAN (as applicable) has received the Impugned Amount, it must refund it within 10 Business Days of the final determination being made.

10.4. Acknowledgments

- (a) The Parties acknowledge that both Parties will incur significant costs, expenses, outgoings and losses if Transaction is not successful, but that it is not possible to accurately ascertain these costs.

- (b) Each Party confirms that:
- (i) it has received legal advice on this agreement and the operation of this clause; and
 - (ii) it considers this Clause to be fair and reasonable and that it is appropriate to agree to the terms in this Clause in order to secure the significant benefits to it (and its shareholders) resulting from the Transaction.

10.5. Payment

Any payment of either the TAN Break Fee or WBA Break Fee required under this Clause 10 must be made within 5 Business Days of receipt of a bona fide written demand from the other Party. The demand may only be made after the Bid fails to become Effective by the End Date or this Agreement is terminated in accordance with its terms.

10.6. Regulatory intervention

If any regulatory body (including ASIC or the Takeovers Panel) or a court requires any modification (including requiring such a modification as a condition of consenting to or approving the Transaction or as a condition of not opposing the Transaction) to the TAN Break Fee or the WBA Break Fee, including as to the amount or circumstances in which it is to be paid, then:

- (a) the Parties will accept this determination and amend this Agreement to that extent, and
- (b) it will not result in a breach of this Agreement or termination of the transactions contemplated by it.

10.7. Other claims and payment of break fees only once

- (a) The maximum aggregate amount which WBA and TAN respectively are required to pay in relation to a breach of this Agreement or related cause of action and/or in connection with the payment of the WBA Break fee or TAN Break Fee as the case may be is \$800,000 and in no event will the aggregate liability for WBA or TAN under or in connection with a breach of this Agreement exceed \$800,000.
- (b) Where the WBA Break Fee or TAN Break Fee becomes payable, and is actually paid to TAN or WBA as the case may be, neither TAN nor WBA (as the recipient of that break fee) may make a claim for any subsequent TAN Break Fee or WBA Break Fee.

10.8. Liability of TAN Directors, officers and employees

- (a) WBA releases its rights against, and will not make any claim against any past or present director, officer or employee of TAN in relation to information provided to it, or in relation to their execution of this Agreement, except to the extent the past or present director, officer or employee has acted in bad faith or fraudulently or has intentionally engaged in misleading or deceptive conduct.
- (b) TAN holds the benefit of the releases in Clause 10.8(a) as trustee for past or present directors, officers and employees of TAN.

10.9. Liability of WBA Directors, officers and employees

- (a) TAN releases its rights against, and will not make any claim against any past or present director, officer or employee of WBA in relation to information provided to it, or in relation to their execution of this Agreement, except to the extent the past or present director, officer or employee has acted in bad faith or fraudulently or has intentionally engaged in misleading or deceptive conduct.

- (b) WBA holds the benefit of the releases in Clause 10.9(a) as trustee for past or present directors, officers and employees of WBA.

11. Termination

11.1. Termination by either Party

Without prejudice to any other rights of termination under this Agreement, either Party may terminate this Agreement by written notice to the other Party at any time before the end of the Exclusivity Period if:

- (a) the other Party is in material breach of any provision of this Agreement (except to the extent that those breaches can be and have been waived in writing by the aggrieved Party) the Party wishing to terminate has given written notice to the other Party setting out the relevant circumstances and stating an intention to terminate, and the relevant circumstances continue to exist 5 Business Days (or any shorter period ending at 5.00pm on the day before the end of the Exclusivity Period) from the time the notice is given;
- (b) a Court or Regulatory Body has taken any action permanently restraining or otherwise prohibiting the Transaction, and the action or refusal has become final and cannot be appealed (but this does not limit a Party's right to seek damages or other relief in those proceedings);
- (c) a MAC occurs in relation to TAN or WBA but only if the MAC relates to the Party not seeking to terminate this Agreement;
- (d) WBA withdraws the Offer or it lapses without the Offer Conditions being fulfilled, satisfied or waived; or
- (e) if a TAN Break Fee or WBA Break Fee is paid.

11.2. WBA's other termination rights

In addition to its termination rights under Clause 11.1, WBA may terminate this Agreement by written notice to TAN if:

- (a) during the Exclusivity Period, a Competing Proposal is recommended, endorsed or otherwise supported by a TAN Director;
- (b) any TAN Director:
 - (i) publicly withdraws or changes in any way; or
 - (ii) makes any public statement inconsistent with,
 - his Recommendation (including in the circumstances contemplated in Clause 4.1(b)); or
- (c) a person other than WBA or any of its Subsidiaries or Associates holds 20% or more Voting Power in TAN and does not accept the Offer before the termination of this Agreement.

11.3. TAN's other termination rights

In addition to its termination rights under Clause 11.1, TAN may terminate this Agreement by written notice to WBA if the TAN Directors withdraw their Recommendation:

- (a) in the circumstances contemplated in Clause 4.1(b); or
- (b) if a bona fide change of Control transaction for WBA is announced or occurs.

11.4. Automatic termination

This Agreement automatically terminates (without any action being required to be taken by either WBA or TAN) when the Exclusivity Period ends.

11.5. Termination by agreement

WBA and TAN may at any time agree in writing to terminate this Agreement on such terms as they may agree.

11.6. Effect of termination

If this Agreement is terminated by either TAN or WBA under this Clause 11, except to the extent that the termination results from a breach by either Party of its obligations under this Agreement, this Agreement becomes void and is of no effect, without any liability or obligation on the part of TAN or WBA, other than the provisions of Clauses 1, 7, 8, 10, 12, 13, which will remain in force after termination.

12. Duty, GST, costs and expenses

12.1. Costs and expenses

Except as otherwise provided in this Agreement, each Party must pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this Agreement and the proposed, attempted or actual implementation of this Agreement and the Transaction.

12.2. Stamp duty

WBA must:

- (a) pay all stamp duties and any fines and penalties with respect to stamp duty in respect of this Agreement or the Transaction or the steps to be taken under this Agreement or the Transaction; and
- (b) indemnify TAN against any liability arising from failure to comply with Clause 12.2(a).

12.3. GST

- (a) Any consideration or amount payable under this Agreement, including any non-monetary consideration (as reduced in accordance with Clause 12.3(e) if required) (**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this Agreement, an additional amount (**Additional Amount**) is payable by the party providing consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (Supplier) in accordance with the GST Law.
- (c) The Additional Amount payable under Clause 12.3(b) is payable at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a Tax Invoice. However, the Additional Amount is only payable on receipt of a valid Tax Invoice.
- (d) If for any reason the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under Clause 12.3(b):
 - (i) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;

- (ii) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
 - (iii) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within 7 days after receiving such notification, as appropriate.
- (e) Despite any other provision in this Agreement:
- (i) if an amount payable under or in connection with this Agreement (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a Party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred; and
 - (ii) no Additional Amount is payable under Clause 12.3(b) in respect of a Supply to which section 84-5 of the GST Law applies.
- (f) Any reference in this clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of a GST Group of which the party is a member is entitled.
- (g) Any term starting with a capital letter that is not defined in this Agreement has the same meaning as the term has in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

13. General

13.1. No representation or reliance

- (a) Each Party acknowledges that no Party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this Agreement, except for representations or inducements expressly set out in this Agreement.
- (b) Each Party acknowledges and confirms that it does not enter into this Agreement in reliance on any representation or other inducement by or on behalf of any other Party, except for any representation or inducement expressly set out in this Agreement.
- (c) Each Party acknowledges and confirms that Clauses 13.1(a) and 13.1(b) do not prejudice any rights a Party may have in relation to information which has been filed by the other Party with the ASIC or ASX.

13.2. No merger

The rights and obligations of the Parties do not merge on implementation of the Transaction. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Transaction.

13.3. Consents

Any consent referred to in, or required under, this Agreement from any Party may not be unreasonably withheld, unless this Agreement expressly provides for that consent to be given in that Party's absolute discretion.

13.4. Notices

Any communication under or in connection with this Agreement:

- (a) must be in writing;
- (b) must be addressed as shown below:

TAN

Address: 31 Alan Mathews Drive
Mildura VIC 3502

Fax no: + 61 3 5018 6555

Attention: Bernie Woollard
Email: berniew@tandou.com.au

WBA

Address: 3549 Forth Road
Devonport TAS 7310

Fax no: 61 3 6427 5001

Attention: Susan Stegmann
Email: susan.stegmann@websterltd.com.au

(or as otherwise notified by that Party to the other Party);

- (c) must be signed by the Party making the communication or by a person duly authorised by that Party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number or by email to the address, of the addressee, in accordance with Clause 13.4(b); and
- (e) is regarded as received by the addressee:
 - (i) if sent by prepaid post, on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting to an address outside Australia;
 - (ii) if sent by fax, at the local time (in the place of receipt of that fax) which then equates to the time at which that fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety, unless that local time is not a Business Day, or is after 5.00pm on a Business Day, when that communication will be regarded as received at 9.00am on the next Business Day; and
 - (iii) if sent by email, at the local time (in the place of receipt of that email) which then equates to the time at which that email is received unless a transmission error is received by the sender;

- (iv) if delivered by hand, on delivery at the address of the addressee as provided in Clause 13.4(b), unless delivery is not made on a Business Day, or after 5.00pm on a Business Day, when that communication will be regarded as received at 9.00am on the next Business Day.

13.5. Governing law and jurisdiction

- (a) This Agreement is governed by the laws of the State of New South Wales.
- (b) Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of the State of New South Wales and courts competent to hear appeals from those courts.

13.6. Waivers

- (a) Failure to exercise or enforce, a delay in exercising or enforcing, or the partial exercise or enforcement of any right, power or remedy provided by law or under this Agreement by any Party does not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Agreement.
- (b) Any waiver or consent given by any Party under this Agreement is only effective and binding on that Party if it is given or confirmed in writing by that Party.
- (c) No waiver of a breach of any term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

13.7. Variation

This Agreement may only be varied by a document signed by or on behalf of each of the Parties.

13.8. Assignment

A Party may not assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party.

13.9. Further action

Each Party will do all things and execute all further documents necessary to give full effect to this Agreement.

13.10. Entire agreement

This Agreement supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the Parties.

13.11. Costs

Each Party must bear its own costs in relation to the preparation, negotiation and execution of this Agreement.

13.12. Counterparts

- (a) This Agreement may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A Party may execute this Agreement by signing any counterpart.

Schedule 1

Timetable

No.	Event	Target Date
1.	Announcement of Transaction	27 February 2015
2.	WBA serves Bidder's Statement on TAN	8 April 2015
3.	TAN serves Target's Statement on WBA	8 April 2015
4.	WBA and TAN despatch the Bidder's Statement and Target's Statement respectively to TAN shareholders	15 April 2015
5.	WBA Shareholder approval for Offer and Bengerang Transaction obtained	4 May 2015

Schedule 2

Agreed Bid Terms

1. Offer Consideration

The Offer Consideration will be one WBA Share for every 2.25 TAN Shares on issue.

2. Offer Period

The Offer will remain open for a minimum period of one month (unless withdrawn during that period under Section 652B of the Corporations Act).

3. Offer Conditions

The Offer will be subject to the following conditions:

- (a) **Minimum acceptance condition:** the number of TAN Shares in which WBA and its Associates have a Relevant Interest at the expiry of the Offer Period is not less than 50.1% of the TAN Shares then on issue;
- (b) **WBA Shareholder approval:** WBA Shareholders in general meeting pass all resolutions under the Listing Rules necessary to permit WBA to complete the acquisition of all TAN Shares under the Offer;
- (c) **Foreign investment approval:** either:
 - (i) WBA receives notice from the Treasurer of the Federal Government (or his agent) to the effect that there is no objection under the government's foreign investment policy to WBA acquiring TAN Shares pursuant to the Offer; or
 - (ii) the period provided under the *Foreign Acquisitions and Takeovers Act, 1975 (Cth)* during which the Treasurer may make an order or interim order under that Act prohibiting the acquisition, lapses without that type of order being made;
- (d) **No breach of Merger Implementation Agreement:** during the period commencing on the Announcement Date and ending on the expiry of the Offer Period TAN has not materially breached its obligations under Clause 5 of the Merger Implementation Agreement;
- (e) **No acquisition or disposal of material asset:** except for any proposed transaction publicly announced by TAN before the Announcement Date or otherwise agreed under the Merger Implementation Agreement or otherwise in writing with WBA, none of the following events occurs during the period from the Announcement Date to the end of the Offer Period:
 - (i) TAN acquires, offers to acquire or agrees to acquire one or more companies, businesses or assets (or any interest in one or more companies, businesses or assets) for an amount in aggregate greater than \$1,000,000 or makes an announcement in relation to such an acquisition, offer or agreement outside the ordinary course of business; or
 - (ii) TAN or any Controlled Entities completes, enters into, offers to enter into or agrees to enter into any agreement, joint venture, partnership or commitment which:
 - (A) would require expenditure, or the foregoing of revenue by TAN and/or its Controlled Entities of an amount which is, in aggregate, more than

\$1,000,000, other than in the ordinary course of business or makes an announcement in relation to such an entry, offer or agreement; or

(B) results in the book value of all Water Rights held by TAN falling below \$57.3 million;

(f) **No change of control:** no person having, or being entitled to have, as a result of any change in control in respect of TAN, any right to:

(i) in respect of a material contract relating to TAN, terminate or alter any contractual relations between any person and TAN or any of its Controlled Entities including under any lease granted pursuant to the *Western Lands Act, 1901 (NSW)* held by TAN as at the Announcement Date; or

(ii) require the sale of any securities in TAN,

exercises that right during the period commencing on the Announcement Date and ending on the expiry of the Offer Period or notifies TAN during that period that it intends to exercise that right;

(g) **No material adverse change:** during the period commencing on the Announcement Date and ending on the expiry of the Offer Period, no MAC occurs in respect of TAN;

(h) **No litigation:** during the period commencing on the Announcement Date and ending on the expiry of the Offer Period, no litigation or arbitration proceedings have been or are instituted or threatened against TAN or a Controlled Entity of TAN which are material in the context of TAN's operations as a whole;

(i) **No regulatory intervention:** during the period commencing on the Announcement Date and ending on the expiry of the Offer Period, no Governmental Agency or any other person takes any action to:

(i) prohibit, prevent or inhibit the acquisition of, or trading in, TAN Shares;

(ii) impose conditions on the Offer which impose unduly onerous obligations upon WBA or would materially adversely affect the business or capital structure of TAN;

(iii) require the divestiture by WBA of securities or assets of TAN or any of its Controlled Entities,

other than an application to or a decision or order of ASIC or the Takeovers Panel for the purpose of or in the exercise of the powers and discretions conferred on it by the Corporations Act;

(j) **No Prescribed Occurrences:** none of the following happens during the period commencing on the Announcement Date and ending on the expiry of the Offer Period (each being a separate condition):

(i) the shares of TAN or any of the Controlled Entities of TAN are converted into a larger or smaller number of shares;

(ii) TAN or a Controlled Entity of TAN resolves to reduce its share capital in any way;

(iii) TAN or a Controlled Entity of TAN:

(A) enters into a buy-back agreement; or

(B) resolves to approve the terms of a buy-back agreement under sections 257C or 257D of the Corporations Act;

- (iv) TAN or a Controlled Entity of TAN makes an issue of or grants an option to subscribe for any of its Securities or agrees to make such an issue or grant such an option;
- (v) TAN or a Controlled Entity of TAN issues or agrees to issue convertible notes;
- (vi) TAN or a Controlled Entity of TAN disposes or agrees to dispose of the whole or a substantial part of its business or property;
- (vii) TAN or a Controlled Entity of TAN grants or agrees to grant an Encumbrance over the whole or a substantial part of its business or property; or
- (viii) an Insolvency Event occurs with respect to TAN or a Controlled Entity of TAN;

Executed by the Parties as an agreement:

SIGNED by)
Webster Limited (ACN 009 476 000) in)
accordance with section 127 of the)
Corporations Act:)
)
)

Director/Secretary

Director


Name (please print)

Name (please print)

SIGNED by)
Tandou Limited (ACN 001 014 562) in)
accordance with section 127 of the)
Corporations Act:)
)
)



Director



Director

ROBERT WOOLLEY

Name

GUY KINGWILL

Name