

## Consortium Bid Conduct Agreement

in relation to a proposed takeover offer

Dated 4 August 2022

REMGRO LIMITED

and

SAS SHIPPING AGENCIES SERVICES SÀRL

**CONSORTIUM BID CONDUCT AGREEMENT** dated 4 August 2022 between:

- (1) **Remgro Limited** whose address is Millennia Park, 16 Stellas Avenue, Stellenbosch, 7600, South Africa ("**Remgro**"); and
- (2) **SAS Shipping Agencies Services S.à r.l.** whose address is Boulevard Joseph II, 11B, Luxembourg ("**SAS**"),

each a "**Party**" and together the "**Parties**".

**Introduction:**

- (A) On 25 May 2022, Remgro and SAS entered into a consortium bid conduct agreement (the "**Original Agreement**") for the purpose of forming a consortium to evaluate and implement a potential cash-only offer as joint offerors under the Code for the entire issued and to be issued share capital of the Target (other than the Remgro Shares).
- (B) Remgro and SAS, acting via Bidco, now intend to make a firm offer announcement in accordance with Rule 2.7 of the Code on or around the date of this Agreement (the "**2.7 Announcement**") to acquire the entire issued and to be issued share capital of the Target (other than the Remgro Shares) (the "**Offer**").
- (C) Remgro currently owns an indirect interest in the Remgro Shares, which it is intended will be transferred to Bidco in connection with the Offer, in exchange for an issuance of shares in Bidco (the "**Rollover**").
- (D) This Agreement sets out the terms on which the Parties will conduct and implement the Offer and the Rollover.

## **1 Interpretation**

### **1.1** In this Agreement:

"**2.7 Announcement**" has the meaning given in Recital (B);

"**Affiliate**" of any person means any person who or which, directly or indirectly, controls, or is controlled by, or is under common control with, such person, and "control" (together with its correlative meanings, "controlled by" and "under common control with") means, with respect to any other person, the possession, directly or indirectly, of power to direct or cause the direction of management or policies of such person (whether through ownership of voting securities or partnership or other ownership interests, by contract or otherwise);

"**Bidco**" means Manta Bidco Limited;

"**Budget**" means the budget for Joint Expenses as agreed by the Consortium from time to time;

"**Business Day**" means a day which is not a Saturday, a Sunday or a bank or public holiday in London, Luxembourg, South Africa and Switzerland;

"**Code**" means the City Code on Takeovers and Mergers;

"**Concert Party**" means, in respect of a Consortium Member, any person that falls within the definition of "acting in concert" under the Code in relation to such Consortium Member, other than: (i) any person whom the Panel does not, from time to time, consider to be acting in concert with such Consortium Member; (ii) the other Consortium Member and their Concert Parties; and (iii) Bidco;

**"Condition"** means any condition to the Offer to be set out in the 2.7 Announcement and the scheme or offer document;

**"Confidentiality Agreement"** means the confidentiality agreement entered into between the Parties dated 21 November 2021;

**"Consortium"** means Remgro and SAS, and **"Consortium Member"** shall mean either one of them;

**"Cooperation Agreement"** means the cooperation agreement entered into between the Parties, Bidco and the Target dated 4 August 2022;

**"Defendant Party"** has the meaning given in Clause 6.7;

**"Group"** means in relation to any entity, that entity and any of its group undertakings (group undertakings having the meaning given to it in section 1161 of the UK Companies Act 2006);

**"Individual Approval"** means any Regulatory Clearance or approval which relates to only either Remgro or SAS in their individual capacity, and any related submissions, communications or filings;

**"Individual Consortium Member Expenses"** has the meaning given in Clause 6.3.2;

**"JSE"** means the securities exchange operated by the JSE Limited, registration number 2005/022939/06, a limited liability public company duly incorporated in accordance with the laws of South Africa;

**"Joint Advisers"** means the advisers listed in Clause 6.1 and any other advisers or third parties appointed jointly by the Consortium in relation to the Offer;

**"Joint Expenses"** has the meaning given in Clause 6.3.1;

**"Offer Completion"** means the Scheme becoming effective or, if the Offer is implemented by way of a Takeover Offer, the Takeover Offer being declared wholly unconditional;

**"Official List"** means the Official List of the UK Financial Conduct Authority;

**"Original Agreement"** has the meaning given in Recital (A);

**"Other Party"** has the meaning given in Clause 6.7;

**"Panel"** means the Panel on Takeovers and Mergers;

**"Regulatory Authority"** means any central bank, ministry, governmental, quasi-governmental, supranational, statutory, court, regulatory, administrative or investigative body, agency or authority, including, but not limited to, those exercising powers in relation to anti-trust, competition or merger control, exchange control, regulatory (including financial regulatory), taxing, importing or foreign investment matters, or any other authority, trade agency, association, institution, stock exchange or professional or environmental body, in any relevant jurisdiction and any other regulatory authority (in each case) whose consent, or with whom a submission, filing or notification, is necessary in order to satisfy any Condition;

**"Regulatory Clearances"** means:

- (i) any approvals, authorisations, consents, certificates, clearances, determinations, findings of suitability, permissions, confirmations, comfort letters, and exemptions or waivers that are required to be obtained;

- (ii) all filings and notifications that are required to be made and documents that are required to be registered and/or issued; and
- (iii) all waiting periods that are necessary to have expired,

from or under any of the laws, regulations or practices applied by any Regulatory Authority (or under any agreement or arrangements to which any Regulatory Authority is a party) in connection with the satisfaction of one or more of the Conditions, including:

- (i) the Financial Surveillance Department of the South African Reserve Bank having accorded exchange control approval for the Offer, in terms of the Regulations issued in terms of the South African Currency and Exchanges Act, 9 of 1933 (as amended), either without conditions and without qualification or on conditions accepted, proposed or offered by Bidco; and
- (ii) the approval of the relevant competition authorities in South Africa, Namibia, Switzerland and Cyprus, as well as any other competition authorities in other jurisdictions where required, such approval being either unconditional and without qualification, or on terms and conditions accepted, proposed or offered by Bidco,

and any reference to any Regulatory Clearances having been “**satisfied**” shall be construed as meaning that the foregoing have been obtained or, where appropriate, made, registered, issued and/or expired;

“**Relevant Securities**” means any Target Shares or any Spire Shares or any other securities of the Target or Spire or any rights to subscribe for Target Shares or Spire Shares or options in respect of, or derivatives, or contracts for difference referenced to, Target Shares or Spire Shares or any such other securities of the Target or Spire;

“**Remgro Framework Shares**” means the interests in Relevant Securities held by associates of Remgro from time to time in connection with securities trading carried out as principal traders and/or asset managers, in each case in a “client-serving” capacity, and which are disclosed to the Panel on a yearly basis in connection with the Target’s annual general meeting in accordance with the concert party framework agreed with the Panel;

“**Remgro Shares**” means (i) the 256,382,504 Target Shares held by Remgro Healthcare Holdings Proprietary Limited, (ii) the 36,057,692 Target Shares held by Remgro Jersey GBP Ltd, and (iii) the 36,057,692 Target Shares held by Remgro Health Ltd;

“**Rollover**” has the meaning given in Recital (C);

“**Scheme**” means a scheme of arrangement under Part 26 of the Companies Act 2006;

“**Spire**” means Spire Healthcare Group plc, whose shares are listed on the Official List and approximately 29.9 per cent. owned by the Target;

“**Spire Shares**” means shares in the capital of Spire;

“**Takeover Offer**” means a contractual takeover offer for the Target Shares as defined in Chapter 3 of Part 28 of the UK Companies Act 2006;

“**Target**” means Mediclinic International plc;

“**Target Group**” means the Target and its subsidiary undertakings from time to time;

“**Target Shares**” means shares in the capital of the Target;

**“Taxation” or “Tax”** means all forms of taxation and statutory, governmental, state, provincial, local governmental or municipal impositions, duties, contributions and levies, whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value or otherwise and shall further include payments to a Tax Authority on account of Tax, the clawback or other recovery of any credit or other amount previously paid by a Tax Authority and the payment of any amount pursuant to any funding or reimbursement of an amount on account or in respect of tax discharged (or to be discharged) by another person, in each case of the United Kingdom or elsewhere in the world wherever imposed and whether chargeable primarily against or attributable directly or primarily to a Group Company or any other person, and whether any amount in respect of them is recoverable from any other person, and all penalties, fines and interest relating thereto; and

**“Tax Authority”** means any taxing or other authority competent to impose any liability in respect of Taxation or responsible for the administration and/or collection of Taxation or enforcement of any law in relation to Taxation.

## **1.2 Singular, plural, gender**

References to one gender include all genders and references to the singular include the plural and vice versa.

## **1.3 References to persons and companies**

References to:

**1.3.1** a person include any individual, company, partnership or unincorporated association (whether or not having separate legal personality); and

**1.3.2** a company include any company, corporation or body corporate, wherever incorporated.

## **1.4 References to subsidiaries**

The words **“subsidiary”** and **“subsidiary undertaking”** shall have the same meaning in this Agreement as their respective definitions in the Companies Act 2006.

## **1.5 Headings**

Headings shall be ignored in interpreting this Agreement.

## **1.6 Reference to documents**

References to any document (including this Agreement), or to a provision in a document, shall be construed as a reference to such document or provision as amended, supplemented, modified, restated or novated from time to time.

## **1.7 Non-limiting effect of words**

The words “including”, “include” and words of similar effect shall not be deemed to limit the general effect of the words that precede them.

## **1.8 Obligations to procure**

Unless otherwise expressly provided, the expression “procure” where used in the context of a Consortium Member’s Affiliates, means taking such steps to procure the relevant matter, including undertaking to exercise its voting rights and to use any and all other powers vested in it from time to time and, where used in the context of a Consortium Member’s Concert

Parties, means only undertaking to exercise its voting rights and to use any and all other powers vested in it from time to time.

## **2 Termination of Original Agreement**

**2.1** Effective as of the date of this Agreement, the Original Agreement shall be terminated in accordance with clause 8.2.3 therein, provided that:

**2.1.1** subject to Clause 2.1.2, such termination shall not affect any Party's accrued rights and obligations pursuant to the Original Agreement as of the date of this Agreement; and

**2.1.2** clause 5.6 of the Original Agreement shall not apply upon termination of the Original Agreement.

## **3 Bid Conduct**

**3.1** Each Consortium Member agrees:

**3.1.1** to negotiate, co-operate and work together in good faith and act reasonably in connection with the implementation and conduct of the Offer as joint offerors under the Code by way of a Scheme;

**3.1.2** to seek to agree and implement a strategy for making the Offer;

**3.1.3** to keep the other Consortium Member regularly informed of:

(i) any discussions and/or correspondence between them and/or their advisers and the Panel; and

(ii) any developments, progress and other matters related to the Offer (including, for the avoidance of doubt, progress in obtaining any Individual Approvals);

**3.1.4** that it shall immediately notify the other Consortium Member if:

(i) it is approached by any possible competing bidder with a view to making an offer in respect of the Target as joint offerors; and/or

(ii) it becomes aware of any possible competing bidder which intends to make an offer in respect of the Target; and

**3.1.5** to comply with all applicable laws, rules and regulations relating to the Offer and/or the Rollover (including, without limitation, the Code).

**3.2** The Consortium Members shall jointly make all decisions with respect to the Offer. Without limitation, the following shall require the consent of both Consortium Members and both Consortium Members agree to work together in good faith towards reaching unanimous agreement in relation thereto:

**3.2.1** the decision as to whether to make the Offer and the timing thereof;

**3.2.2** the pricing and other terms of the Offer, including the manner of announcement and implementation of the Offer (and any strategy or revisions thereto);

**3.2.3** subject to Clause 3.4, the manner and timing of all discussions with the Target, its management (including in relation to any management incentivisation), any of its shareholders and any of its stakeholders (including employee representatives, pension trustees, lenders, customers and/or suppliers);

- 3.2.4 the general conduct of the Offer and the obtaining of any Regulatory Clearances and/or other approvals, relating to it, other than in respect of any Individual Approval;
- 3.2.5 the structure of the Offer, including as to its form and its terms and Conditions and any pre-conditions;
- 3.2.6 any decisions to approach a third party in connection with any potential participation in the Consortium;
- 3.2.7 subject to the Code, the actual or purported waiver, treating as satisfied, invocation or amendment of any Condition or pre-condition to the Offer, the extension of any acceptance period in respect of the Offer, or the lapsing or withdrawal of the Offer;
- 3.2.8 the giving of any consent to the Target under Rule 21.1 (or any other Rule) of the Code;
- 3.2.9 the Budget;
- 3.2.10 the structure of the Offer and the Rollover;
- 3.2.11 any debt financing required in connection with, or as a result of, the Offer;
- 3.2.12 the appointment of any further Joint Advisers, provided that each Consortium Member may appoint any adviser in respect of the Offer on its own behalf provided it has consulted with the other Consortium Member in good faith prior to doing so;
- 3.2.13 the scope and implementation of any due diligence undertaken on the Target Group;
- 3.2.14 the definitive documentation required to implement the Offer (and subject to applicable law and regulation including the Code, the timing of the release of any such documentation) including:
  - (i) the public documents required or desirable to publish and implement the Offer, including the 2.7 Announcement, the scheme or offer document and any announcement required by the JSE;
  - (ii) any irrevocable undertakings and/or letters of intent to be provided by Target shareholders and/or directors in respect of the Offer;
  - (iii) subject to the Joint Advisers corresponding with each of the Panel and any other applicable Regulatory Authority, in each case to the extent they consider reasonably necessary in connection with the Offer, any regulatory filings or correspondence to be made by or on behalf of the Consortium or Bidco (including any material written correspondence with and/or any submissions to the Panel), other than in respect of any Individual Approval; and
  - (iv) any other agreements or documents as may be required or desirable to announce and implement the Offer;
- 3.2.15 the incorporation of an entity required jointly to implement the Offer;
- 3.2.16 other than in respect of any Individual Approval (but without prejudice to the provisions of clause 4 that relate to obtaining such Individual Approval by the relevant Consortium Member):
  - (i) the timing for seeking any Regulatory Clearances;

- (ii) the submission of any regulatory filings or notifications; and
  - 3.2.17 any decision regarding the timing and content of any conditions, remedies or divestitures that might be proposed to, or required by, a Regulatory Authority in connection with the Offer concerning the Target Group, including all matters regarding the negotiations and terms and conditions of any such conditions, remedies or divestitures (provided that where such decision concerns the asset(s) of a Consortium Member: (i) such decision shall be made at the sole discretion of that Consortium Member; but (ii) to the extent that such decision could reasonably be expected to have a material impact on the other Consortium Member, Bidco or the Target, either at the time it is taken or in the future, then, to the extent legally permissible, the relevant Consortium Member shall promptly notify the other Consortium Member of its decision);
  - 3.2.18 any decision relating to Target's management;
  - 3.2.19 any decision as to whether to switch from a Scheme to a Takeover Offer and any related amendments to the Offer or post-Offer Completion structure; and
  - 3.2.20 any decision regarding the seeking or making of an application to cancel the admission to trading of the Target on the Main Market of the London Stock Exchange (as its primary listing), and the main boards of the Johannesburg and Namibian Stock Exchanges (as secondary listings), and the re-registration of Target as a private limited company.
- 3.3** Each Consortium Member agrees that it shall not, and that it shall procure that its Concert Parties shall not, without the prior written consent of the other Consortium Member:
- 3.3.1 except in accordance with the Confidentiality Agreement, take any Joint Prohibited Activity as defined in clause 12.1(a) of the Confidentiality Agreement, being any of the following:
    - (i) acquiring, or offering, committing or otherwise seeking to acquire any direct or indirect interest in the shares (as defined in the Code) of the Target and/or Spire, including rights to acquire, rights to subscribe for, options in respect of, and derivatives referenced to, such securities;
    - (ii) entering into any agreement, understanding or arrangements (conditionally or otherwise and whether legally binding or not) with any person in relation to the acquisition of such an interest in the Target and/or Spire;
    - (iii) making a general offer, including a mandatory offer, for all or any part of the share capital of the Target and/or Spire;
    - (iv) subject to paragraph 10 (*Permitted Disclosure*) of the Confidentiality Agreement, announcing, or taking any action which, under the Code or otherwise, would require the announcement of, any proposals for any takeover, merger, consolidation or share exchange or similar transaction involving the securities of the Target and/or Spire;
    - (v) taking any step which might give rise to any obligation under the Code or its equivalent in any jurisdiction to make any offer for all or any part of the share capital of the Target and/or Spire; or
    - (vi) assisting or advising any person in relation to any of the foregoing;



- 3.3.2 make any amendments to the terms and/or structure of the Offer, including without limitation, the offer price, the Offer timetable, any Conditions, the form of consideration and the means of implementing the Offer;
  - 3.3.3 make any announcement or other public statement in respect of the Offer, whether formal or informal, other than in accordance with the leak protocol as agreed between the Consortium Members from time to time or as may be required by the Panel or by law or regulation (including, in respect of Remgro, the JSE Listings Requirements);
  - 3.3.4 take any action which might reasonably be expected to be prejudicial to the completion of the Offer, or may reasonably be expected to have the effect of delaying, disrupting or otherwise causing the Offer not to complete at the earliest practicable time;
  - 3.3.5 subject to Clause 3.4, approach the Target or any of its shareholders in connection with the Offer;
  - 3.3.6 approach any third party in connection with any potential participation in the Consortium for the Offer; and/or
  - 3.3.7 other than in respect of any Individual Approval, approach any Regulatory Authority and/or submit any filing for Regulatory Clearances and/or other correspondence to any applicable Regulatory Authority in relation to the Offer.
- 3.4 SAS acknowledges that Remgro indirectly owns the Remgro Shares (and that associates of Remgro hold the Remgro Framework Shares) and that directors nominated by Remgro may from time to time be appointed to the board of directors of the Target (each a “**Remgro Nominated Director**”). SAS and Remgro acknowledge and agree that:
- 3.4.1 any ordinary course discussions between the Target or any shareholder therein and a Remgro Nominated Director (in their capacity as a director of the Target) shall be permitted and that:
    - (i) any Remgro Nominated Director shall, subject to their statutory and fiduciary duties to the Target, seek to recuse themselves from any discussions and any decision-making of, and will not receive any information from, the Target board in relation to the Offer; and
    - (ii) the provision of any information relating to the Target Group by such Remgro Nominated Director to the Consortium Members shall continue to be subject to such Remgro Nominated Director’s statutory and fiduciary duties to the Target; and
  - 3.4.2 any ordinary course discussions between the Target or any shareholder therein and Remgro (in its capacity as a substantial shareholder of the Target) shall be permitted, provided that, to the extent that such ordinary course discussions could reasonably be expected to be relevant to the Offer then Remgro shall promptly notify SAS of the substance of such discussions.
- 3.5 The Consortium Members hereby agree that they shall not, and shall procure that none of their Concert Parties or Affiliates shall, take any action which could reasonably be expected to change the conclusions of the Panel in relation to the joint offeror status of the Consortium Members and the non-application of the chain principle in respect of any shares in Spire

which are held by the Target without first obtaining the prior written consent of the other Consortium Member.

## **4 Regulatory Filings**

**4.1** Each Consortium Member confirms that it shall continue to collaborate around obtaining necessary or appropriate information from the Target in respect of any Regulatory Clearances which may be required or advisable for the Offer and the Rollover and, in particular, acknowledges the terms of Clause 4 of the Cooperation Agreement and agrees with the other Consortium Member to comply with such terms.

**4.2** Each Consortium Member agrees that it shall take all such actions as are required under the Code to obtain any Regulatory Clearances as promptly as reasonably practicable, including making such filings and notifications to applicable Regulatory Authorities as may be required or desirable; provided that:

**4.2.1** except in relation to Individual Approvals, Remgro and SAS shall cooperate in accordance with Clause 3.2 above to obtain any Regulatory Clearances on behalf of Bidco in respect of any Regulatory Clearance which is a competition, merger control, anti-trust or foreign investment clearance including in respect of: (i) the timing and content of all notifications, submissions, correspondence, and meetings to or with any Regulatory Authority; and (ii) the discussion, offer or agreement of any remedies with any Regulatory Authority, and each Consortium Member shall take all such actions as are required under the Code or by the Panel to procure that Bidco obtains any such Regulatory Clearance (including each Consortium Member promptly providing information, documents and/or materials that are reasonably necessary to procure Regulatory Clearances), provided that the Consortium Members acknowledge that Remgro shall (subject to the terms of this Agreement) lead the process for obtaining such approvals;

**4.2.2** in relation to any Individual Approval which may be required to implement the Offer or the Rollover (which is not otherwise covered by this clause 3.2), the relevant Consortium Member shall: (i) take all such actions as may be required to be taken by it by the Panel under Rule 13.2 of the Code to obtain the relevant Individual Approval; and (ii) consult with the other Consortium Member in relation to the content of any material submissions to a Regulatory Authority that contain information relating to the other Consortium Member, Bidco or the Target. Each Consortium Member shall cooperate with each other to provide any information reasonably required in connection with an Individual Approval; and

**4.2.3** nothing in this Agreement shall oblige a Consortium Member to waive any Conditions or to treat them as satisfied.

**4.3** Neither Consortium Member shall, and each Consortium Member shall procure that none of its Affiliates shall, take any action that could reasonably be expected to materially adversely affect the satisfaction of any Condition.

**4.4** Nothing in this Agreement shall oblige a Consortium Member or any member of its Group (the “**disclosing party**”) to disclose any information to the other:

**4.4.1** which the disclosing party reasonably considers (acting in good faith and having regard to its historical practices in respect of dissemination of information) to be commercially or competitively sensitive or where disclosure would reasonably be

expected to have an adverse impact on the disclosing party's legitimate business interests;

4.4.2 which the disclosing party is prohibited from disclosing by applicable law or a Regulatory Authority; or

4.4.3 where such disclosure would result in the loss of privilege that subsists in relation to such information (including legal advice privilege).

4.5 Where the circumstances referred to in Clauses 4.4.1 or 4.4.2 apply, the disclosing party shall disclose the relevant information:

4.5.1 pursuant to any clean team arrangement in place between the parties from time to time;

4.5.2 on an "external counsel only" basis; or

4.5.3 directly to a Regulatory Authority (and in such circumstances, the disclosing party shall provide to the other a non-confidential version of such information).

4.6 The parties agree and acknowledge that in no circumstances shall SAS be required pursuant to the terms of this Agreement to disclose consolidated financial statements in respect of MSC Mediterranean Shipping Company SA and/or MSC Mediterranean Shipping Holding SA, or any of the contents thereof.

## 5 Bid Financing

5.1 The Consortium Members shall co-operate in good faith to ensure that Bidco will have financing in place in relation to the Offer as is required in order to comply with its obligations under the Code and that all cash funding is available as required to satisfy the cash confirmation process.

5.2 Following completion of the Offer:

5.2.1 Bidco will hold the entire issued and to be issued share capital of the Target; and

5.2.2 the Target will cease trading on the Main Market of the London Stock Exchange (as its primary listing), and the main boards of the Johannesburg and Namibian Stock Exchanges (as secondary listings) and be re-registered as a private limited company.

## 6 Appointment of Advisers and Costs

6.1 The Consortium Members agree to the engagement of the following advisers (the "Joint Advisers") to assist with the evaluation, and to progress any steps agreed by the Consortium towards making and implementing the Offer:

6.1.1 Linklaters LLP and Webber Wentzel as legal advisers to the Consortium and Bidco;

6.1.2 Nomura International plc and MM Capital LLC as financial advisers to the Consortium and Bidco;

6.1.3 Pricewaterhouse Coopers and Webber Wentzel as tax advisers to the Consortium and Bidco; and

6.1.4 Pricewaterhouse Coopers as accounting adviser to the Consortium and Bidco.

- 6.2** The Consortium Members agree that the Joint Advisers shall act in relation to the Offer on behalf of the Consortium and Bidco, and that Linklaters LLP and Webber Wentzel may act for Remgro in relation to the Consortium arrangements (subject to compliance with their professional obligations).
- 6.3** The Consortium Members shall cooperate in good faith in order to designate any costs and expenses incurred (or reasonably expected to be incurred) in relation to the Offer by either Remgro, SAS or Bidco as either:
- 6.3.1** “Joint Expenses”, being joint fees and expenses incurred in respect of the Consortium, the funding of which shall be in accordance with Clauses 6.4.1 and 6.4.2 below; or
- 6.3.2** “Individual Consortium Expenses”, being fees and expenses attributable to a specific Consortium Member, the funding of which shall be in accordance with Clause 6.4.3 below.
- 6.4** The costs and expenses incurred in relation to the Offer shall be borne as follows:
- 6.4.1** if the Offer does not successfully complete, the Joint Expenses shall be borne by the Consortium Members in the following percentages:
- (i) Remgro - 50 per cent.;
  - (ii) SAS - 50 per cent.;
- 6.4.2** if the Offer does successfully complete, the Joint Expenses shall (regardless of the sizes of Bidco’s interest in the Target and Remgro’s interest in Bidco) be borne by Bidco and funded by the Consortium Members in the following percentages:
- (i) Remgro - 50 per cent.;
  - (ii) SAS - 50 per cent; and
- 6.4.3** in either case, each Consortium Member shall bear its own Individual Consortium Member Expenses in full.
- 6.5** Following the approval of the first Budget in accordance with Clause 3.2.9, Joint Expenses shall only be incurred in accordance with the Budget or otherwise with the prior agreement of both Consortium Members. Any costs, fees and expenses incurred by a Consortium Member in connection with the Offer without the approval of the other Consortium Member shall be for that Consortium Member’s account in accordance with Clause 6.4.3.
- 6.6** Upon termination of this Agreement, the Consortium Members shall jointly and as soon as practicable finalise a written statement of the Joint Expenses then incurred and each Consortium Member’s share of those Joint Expenses and, within 30 days following receipt of that statement, and subject to receipt of final invoices from the relevant Joint Advisers, each Consortium Member shall pay its agreed share of the Joint Expenses.
- 6.7** In the event that the Target initiates legal proceedings against one (the “**Defendant Party**”), but not the other (the “**Other Party**”), of the Consortium Members pursuant to the Cooperation Agreement in connection with an alleged breach of warranty, representation and/or undertaking of Bidco under the Cooperation Agreement:
- 6.7.1** the Defendant Party shall be entitled to join the Other Party to such proceedings, and the Other Party shall not seek to contest, delay or inhibit such joinder; and

**6.7.2** in the event that the Defendant Party is unable to join the Other Party to such claim or proceedings and is in that context held liable to pay damages for a breach of warranty, representation and/or undertaking of Bidco under the Cooperation Agreement, the Other Party shall pay (on an after-Tax basis) to the Defendant Party an amount equal to its share of such damages, determined in accordance with (i) clause 13.8 of the Cooperation Agreement and (ii) the Civil Liability (Contribution) Act 1978.

## **7 Standstill**

**7.1** Each of the Remgro and SAS hereby:

**7.1.1** represents and warrants to the other that, as far as it is aware, neither it nor any member of its Group nor Bidco is, as at the date of this Agreement, required to make a mandatory offer for the Target pursuant to Rule 9 of the Code; and

**7.1.2** undertakes to the other that following the date of this Agreement (for so long as this Agreement is in force):

(i) neither it nor any member of its Group nor Bidco shall; and

(ii) it shall exercise all voting rights as shareholder and use all powers vested in it or any member of its Group as a holder of securities or through any contractual arrangements to ensure that any party acting in concert with it (as defined in the Code) shall not,

acquire interests in Target Shares which would result in it or any person acting in concert with it to be required to make a mandatory offer for the Target pursuant to Rule 9 of the Code,

provided that this Clause 7.1 shall cease to apply if a third party announces a possible or firm intention to make an offer for all or part of the issued, and to be issued, share capital of the Target.

**7.2** Each Consortium Member undertakes that it shall not, and it shall procure that its Concert Parties shall not:

**7.2.1** tender into, accept or vote in favour of any proposed offer, scheme of arrangement or other analogous competing transaction to the Offer in respect of any securities which it holds from time to time in the Target; or

**7.2.2** sell, transfer, charge, encumber or otherwise dispose of an interest in such securities.

**7.3** Each Consortium Member acknowledges and agrees that the provisions of the Confidentiality Agreement continue to apply, in particular clause 12 (*Restrictions on Share Acquisitions*).

## **8 Warranties**

Each Consortium Member warrants to the other Consortium Member that:

**8.1** it has the requisite power and authority to enter into this Agreement and there is no agreement, commitment or other understanding which would preclude or restrict such Consortium Member from entering into and performing this Agreement;

- 8.2 this Agreement when executed will constitute valid, binding and enforceable obligations of such Consortium Member;
- 8.3 it has obtained the necessary corporate approvals required to enter into this Agreement; and
- 8.4 it is not relying on the other Consortium Member: (i) for its due diligence concerning, evaluation of, or decision to invest in the Target Group; or (ii) with respect to tax or other economic considerations involved in such investment.

## 9 Termination

- 9.1 This Agreement shall terminate on the earliest of the date that is:
  - 9.1.1 the date of Offer Completion; or
  - 9.1.2 the date on which the Offer lapses or is withdrawn (other than where such lapse or withdrawal is for the purposes of switching to a Takeover Offer);
  - 9.1.3 the date on which the Parties mutually agree that the Agreement shall terminate; or
  - 9.1.4 30 June 2023 (or such later date as may be agreed in writing between the Consortium Members).
- 9.2 Following termination of this Agreement in accordance with Clause 9.1:
  - 9.2.1 the obligations of each Party under this Agreement shall terminate, provided that the provisions in Clauses 6.3 to 6.6, this Clause 9.2 and 10 to 15 shall survive any termination of this Agreement; and
  - 9.2.2 each Consortium Member shall inform the Panel promptly of the cessation of the Consortium Members' joint offeror and/or concert party status.

## 10 Confidentiality

The existence and contents of this Agreement, any agreements contemplated herein to be entered into between the Parties, and any documents, materials or other information exchanged (whether orally, in writing or in any other form) between the Parties and/or their representatives will constitute "Confidential Information" for the purposes of the Confidentiality Agreement and the terms of the Confidentiality Agreement shall apply hereto *mutatis mutandis*.

## 11 Miscellaneous

- 11.1 Except as otherwise expressly provided in this Agreement, neither Party may without the prior written consent of the other Party, assign, grant any security interest over, or otherwise transfer the benefit of the whole or any part of this Agreement.
- 11.2 Except as otherwise expressly provided in this Agreement, a Party may, without the consent of the other Party, assign to an Affiliate the benefit of the whole or any part of this Agreement provided that such assignment shall not be absolute but shall be expressed to have effect only for so long as the assignee remains an Affiliate of the Party concerned.
- 11.3 If any provision in this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, the provision shall apply with whatever deletion or modification is necessary so that the provision is legal, valid and enforceable and gives effect to the commercial intention of the Consortium Members. To the extent that it is not possible to delete or modify

the provision, in whole or in part, under this clause, then such provision or part of it shall, to the extent that it is illegal, invalid or unenforceable, be deemed not to form part of this Agreement and the legality, validity and enforceability of the remainder of this Agreement shall, subject to any deletion or modification made under this clause, not be affected.

- 11.4 This Agreement may be entered into in any number of counterparts, each of which taken together shall constitute one and the same Agreement. Either Party may enter into this Agreement by signing any such counterpart.
- 11.5 No variation of this Agreement shall be effective unless in writing and signed by or on behalf of each of the Consortium Members.
- 11.6 Nothing contained in this Agreement (and no action taken by a Party pursuant to its terms) is to be construed as creating a partnership or agency relationship between any of the Parties.
- 11.7 Except where expressly stated otherwise in this Agreement, all obligations, undertakings and statements in this Agreement are several and not joint or joint and several.
- 11.8 Any notice or other document to be given under this Agreement shall be in writing in English and shall be deemed duly given if delivered to the recipient as its address or email address set out below or any other address or email address notified in writing to the Parties for the purposes of this Agreement:

**11.8.1 Remgro**

Address                      Millenia Park  
   16 Stellantia Avenue  
   Stellenbosch, 7600  
   South Africa

Email address              [REDACTED]

For the attention of        [REDACTED]

with a copy by email to [REDACTED] and [REDACTED]  
[REDACTED] (delivery of such copy shall not in itself constitute notice).

**11.8.2 SAS**

Address                      12 14 Chemin Rieu  
   1208 Geneva  
   Switzerland

Email address              [REDACTED]

For the attention of        [REDACTED]

with a copy by email to [REDACTED], [REDACTED]  
[REDACTED] and [REDACTED]  
[REDACTED] (delivery of such copy shall not in itself constitute notice).

- 11.9 Any notice shall be delivered by hand or sent by email or by express or other fast means of postal service. Any notice shall be deemed to have been received:

11.9.1 at time of sending if sent by email, provided that:

- (i) the receipt shall not occur if the sender receives an automated message indicating that the message has not be delivered to the recipient; and
- (ii) if sent after 5.00pm (at the address of the Recipient) on any Business Day, notice shall be deemed to be received at 9.00am (at the address of the Recipient) on the next Business Day; and

11.9.2 72 hours from the time of posting if sent by post.

## **12 Third Party Rights**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of, or enjoy any benefit under, this Agreement.

## **13 Arbitration**

Any dispute arising out of or connected with this Agreement, including a dispute as to the existence, validity or termination of this Agreement or this Clause 13 or any non-contractual obligation arising out of or in connection with this Agreement, shall be resolved by arbitration in London, United Kingdom conducted in English by a single arbitrator pursuant to the rules of the London Court of International Arbitration.

## **14 Governing Law and Jurisdiction**

- 14.1 This Agreement (which is not expressed to be governed by another law) and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by the law of England and Wales.
- 14.2 Each Party irrevocably submits to the exclusive jurisdiction of the courts of England to support and assist the arbitration process pursuant to Clause 13 including, if necessary, the grant of interlocutory relief pending the outcome of that process.

## **15 Appointment of Process Agent**

- 15.1 Remgro hereby irrevocably appoints Hackwood Secretaries Limited of One Silk Street, London, EC2Y 8HQ as its agent to accept service of process in England in any legal action or proceedings arising out of or in connection with this Agreement, service upon whom shall be deemed completed whether or not forwarded to or received by SAS.
- 15.2 SAS hereby irrevocably appoints Mediterranean Shipping Company (UK) Ltd of Medite House of Medite House, 10 The Haves, Ipswich, IP3 9SJ, United Kingdom as its agent to accept service of process in England in any legal action or proceedings arising out of or in connection with this Agreement, service upon whom shall be deemed completed whether or not forwarded to or received by Remgro.
- 15.3 Each Consortium Member shall inform the other Consortium Member in writing of any change of address of their process agent within 14 days of such change.
- 15.4 If their process agent ceases to be able to act as such or to have an address in England, each Consortium Member agrees to appoint a new process agent in England reasonably acceptable to the other Consortium Member and to deliver to the other Consortium Member within 14 days a copy of a written acceptance of appointment by such process agent.



**This Agreement** has been entered into on the date first stated above.

SIGNED by [REDACTED]  
on behalf of **REMGRO**  
**LIMITED:**



SIGNED by  
on behalf of **SAS SHIPPING**  
**AGENCIES SERVICES SÀRL:**

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