

**DV01 MECHELLE LIMITED**  
**ACN 061 343 959**

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**BUY BACK FACILITY**

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**This is an important document**

If you have any questions as to its contents or the course of action you should take, you should consult your legal, financial or other professional adviser.

The date of this document is 14th December 2012 This document is current as at that date. This document should be read together with the Information Statement.

## BUY BACK FACILITY

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### TERMS AND CONDITIONS

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#### 1 INTERPRETATION

##### 1.1 Definitions

When used in this Facility the following words have the following meanings:

**Administrator** means TMF FundAdministrators (Australia) Pty Limited.

**After – Tax NAV per Share** means the Net Asset Value divided by the number of Shares on issue, as calculated on the last Business Day of each Buy Back Period and announced by the Company on its website.

**Business Day** means a global business day.

**Buy Back Period** means in respect of the first Buy Back Period, the period ending on 31 December 2012, and thereafter a period of 3 consecutive calendar months, being one of the following periods:

- (a) the period from 1 January to 31 March;
- (b) the period from 1 April to 30 June; and
- (c) the period from 1 July to 30 September;

**Closing Date** means the day that is two weeks prior to the last calendar day of each Buy Back Period.

**Company** means DV01 Mechelle Limited.

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

**Directors** mean the directors of the Company.

**Election** means an election made by a Shareholder to request the Company to buy back some or all of its Shares in accordance with this Facility.

**Election Form** means a written Election signed by a Shareholder (or each Shareholder in the case of joint holdings) in the form accompanying this document.

**Facility** means this Buy Back Facility.

**Information Statement** means the Information Statement accompanying this document.

**Investment Manager** means DV01 Funds Management Pty Ltd, ACN 114 422 758.

**Net Asset Value** means the value of the Company, calculated by the Administrator, in Australian Dollars and in accordance with Australian Accounting Standards, by subtracting the total value of all liabilities of the Company (including but not limited to the aggregate mark-to-market value of all investment positions constituting liabilities, provisions for payables, current tax payables and deferred tax liabilities) from the total

value of assets of the Company (including but not limited to, deferred tax assets, available for sale assets held at fair value, cash, deposit accounts and instruments, securities and the aggregate mark-to-market value of all investment positions constituting assets).

**Share Certificates** means the last original share certificate issued by the Company to a Shareholder to certify their shareholding in the Company, if any.

**Shareholder** means a person holding Shares.

**Shares** means fully paid ordinary shares in the capital of the Company.

## 1.2 Interpretation

In this Facility unless the context otherwise requires:

- (a) headings are for convenience only and do not affect its interpretation;
- (b) an obligation or liability assumed by, or a right conferred on, two or more parties binds or benefits all of them jointly and each of them severally;
- (c) the expression **person** includes an individual, the estate of an individual, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation;
- (e) a reference to any document (including this Facility) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (g) words importing the singular include the plural (and vice versa) and words indicating a gender include every other gender;
- (h) reference to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Facility and a reference to this Facility includes any schedule, exhibit or annexure to this Facility;
- (i) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) a reference to **\$** or **dollar** is to Australian currency; and
- (k) where the Shareholder has, in respect of distinct numbers of Shares held by him, separate shareholder numbers, then for the purpose of these Terms and Conditions, he is deemed to be a separate and distinct Shareholder in relation to each such shareholder number and the Shares from time to time allocated to that holder number.

## **2 ELIGIBILITY**

### **2.1 Eligibility**

Subject to clause 2.2, all Shareholders are eligible to participate in the Facility.

### **2.2 Shareholders resident outside Australia**

- (a) A Shareholder who is subject to the laws of a country or a place other than Australia may not be eligible to participate in the Facility because of legal requirements that apply in that country or place.
- (b) Before electing to participate in the Facility, Shareholders, who are not resident in Australia should seek professional advice to ascertain if any restrictions apply.
- (c) The Directors may on any occasion determine that the right to participate in the Facility is not available to Shareholders:
  - (i) whose registered addresses are in a country or place where the offer of a right of election would or might be unlawful if no registration statement is given or other formality complied with; or
  - (ii) if in the opinion of the Directors either the law of Australia or that of another country or some other matter or thing in the opinion of the Directors makes Shareholders' participation illegal, impossible or impracticable.

## **3 PARTICIPATION IN THE FACILITY**

### **3.1 Participation**

Participation in the Facility is optional and subject to the terms and conditions of this Facility.

### **3.2 Election**

A Shareholder may request the Company to buy back some or all of their Shares by lodging an Election Form with the Investment Manager.

## **4 DEGREE OF PARTICIPATION**

### **4.1 Full or Partial Buy Back**

Subject to the Buy Back Limit in clause 5.5, a Shareholder may elect to request the Company to either:

- (a) buy back all Shares registered in his or her name (**Full Participation**); or
- (b) buy back some of the Shares registered in his or her name (**Partial Participation**).

### **4.2 Full Participation**

Election Forms received by the Investment Manager which indicate a number of Shares in excess of the number of Shares held by the Shareholder making the Election, are deemed to be Elections for Full Participation.

### **4.3 Failure to indicate degree of participation**

Election Forms received by the Investment Manager which do not indicate the degree of participation in the Facility may, without notice to the Shareholder and at the discretion of the Company, either be rejected or deemed by the Company to be Elections for Full Participation. The Company is not liable to any Shareholder for any loss, damage or claim in respect of the exercise or manner of exercise by the Company of such discretion.

## **5 OPERATION OF BUY BACK**

### **5.1 Buy Back Period**

- (a) Faxed executed Election Forms received by the Investment Manager no later than 5:00pm (Australian Western Standard Time, Perth) on the relevant Closing Date for a Buy Back Period, followed by the original executed Election Form to the Investment Manager before the end of the relevant Buy Back Period, will participate in that Buy Back Period. Election Forms received after these times will participate in the following Buy Back Period.
- (b) At the same time as lodging an Election Form, Shareholders must also provide any original Share Certificate to the Investment Manager that they hold in respect of the Shares sought to be bought back. The Investment Manager will hold all Share Certificates in safe keeping pending the completion of the buy back and (if necessary) issue new certificates once any Shares bought back are cancelled.

### **5.2 Price**

The Company will buy back Shares under this Facility at a price equal to the After-Tax NAV per Share as at the last Business Day of the relevant Buy Back Period. All prices will be calculated to four decimal places.

### **5.3 Payment**

Subject to clause 6, the proceeds of any Shares bought back under this Facility will be paid to the participating Shareholder:

- (a) in the form of cash; and
- (b) in the form of either:
  - (i) capital and/or dividends when fulfilled pursuant to clause 5.6(b) of this Facility; or
  - (ii) in the form of capital when fulfilled pursuant to clause 5.6(a) of this Facility; and
- (c) within 12 Business Days of the end of the relevant Buy Back Period.

### **5.4 Minimum number of Shares**

The Company need not give effect to an Election Form under this Facility in respect of a request to buy back less than 1,000 Shares, unless the buy back is in respect of the entire shareholding of a Shareholder

### **5.5 Limit of Facility**

- (a) The maximum number of Shares that can be bought back by the Company in each Buy Back Period is the number of Shares with an aggregate issued capital equal to 12.5% of the issued capital of the Company at the end of the relevant Buy Back Period (**Buy Back Limit**).
- (b) Where the Company receives requests from Shareholders to buy back a greater number of Shares than the Buy Back Limit, the Company will pro-rata each request to ensure that the Company only buys back a number of Shares equal to the Buy Back Limit.
- (c) The remaining balance of any unfulfilled request as a result of a pro-rata scale-back pursuant to clause 5.5(b) will be deemed to have been withdrawn and will not participate in the next buy back unless the Shareholder lodges a new Election Form to the Company in respect of the next Buy Back Period.

#### **5.6 Operation of the Facility**

Upon receipt of an Election Form acceptable by the Directors, the Company may fulfil the request by either:

- (a) having the Investment Manager arrange a transaction with a third party to purchase the Shares from the Shareholder; or
- (b) proceeding with a buy back of Shares under this Facility.

### **6 COSTS TO PARTICIPANTS**

So that existing Shareholders do not continually bear the transaction costs resulting from the buy back of Shares that are made, the Directors may in their discretion apply a transaction costs allowance to be deducted from the proceeds of the Shares bought back under this Facility before payment to participating Shareholders. The transaction costs allowance will be equal to the Director's reasonable estimate fixed from time to time of the pro-rata transaction costs that would be incurred in selling all the Company's assets. Transaction costs are applied because a buy back of Shares may necessitate the sale of the Company's assets, incurring transaction costs such as brokerage, government duties and taxes.

The Directors may alternatively determine a reasonable estimate of the actual amount necessary to avoid an adverse impact on other Shareholders due to the disposal of assets carried out because of a particular buy back of Shares and therefore instead apply this as the transaction cost for that particular buy back of Shares.

### **7 STATEMENTS TO THE PARTICIPANTS**

After each buy back of Shares made pursuant to this Facility, the Company will forward to each participating Shareholder a statement detailing:

- (a) the number of Shares held at the relevant Closing Date;
- (b) the number of Shares bought back under the Facility;
- (c) the proceeds of any Shares bought back under the Facility including a breakdown of the capital and/or dividends and franking credits paid

pursuant to clause 5.6(b) or capital pursuant to clause 5.6(a) of this Facility to the participating Shareholder; and

- (d) the remaining holding of Shares (if any) after the buy back.

## **8            OVERRIDING RESTRICTIONS ON BUY BACK**

Notwithstanding the terms of this Facility, no Share may be bought back under this Facility if to do so:

- (a) would contravene the Corporations Act or any other applicable law; or
- (b) would contravene the local laws or customs of a Shareholder's country of residence or in the opinion of the Directors would require actions to comply with those local laws or customs which are impractical.

## **9            MODIFICATION AND TERMINATION OF THE FACILITY**

- (a) This Facility may be varied, modified, suspended or terminated by the Directors (subject to the Company's constitution and the Corporations Act) at any time by instrument in writing.
- (b) The Directors may settle, in such manner as they think expedient, any difficulties, anomalies or disputes which may arise in connection with, or by reason of, the operation of this Facility and the determination of the Directors is conclusive and binding on all Shareholders and other persons to whom the determination affects.

## **10          TAXATION**

- (a) Neither the Company nor its Directors, officers, employees, representatives or agents take any responsibility or assume any liability for the taxation liabilities of participating Shareholders.
- (b) As individual circumstances and laws vary considerably, specific taxation advice from professional advisers should be obtained by each participating Shareholder.

## **11          GOVERNING LAW**

This Facility shall be governed by and construed in accordance with the law from time to time in the State of Western Australia.

**DV01 MECHELLE LIMITED (ACN 061 343 959)**

**BUY BACK FACILITY – ELECTION FORM**

This is an important document which must be read together with the Information Statement and Facility forwarded to you by the Company. If you are in any doubt as to how to deal with this Election Form, please consult your legal, financial or professional adviser. All capitalised terms in this Election Form have the meaning as defined in the Facility.

To participate in a buy back on the terms of the Facility, complete this Election Form in full and submit it so that the Election Form is received by the Investment Manager in accordance with Section 9 below.

**1. Buy Back**

I/We hereby request the Company to buy back the number of Shares shown in Section 4 in accordance with the terms and conditions of the Facility. The agreement constituted by this Election Form does not take effect until after the Closing Date.

**2. Certificate Number(s)**

&  &  &

**3. Name of Shareholder(s)**


ACN / ARBN / ABN/ TFN \_\_\_\_\_

**4. Number of Shares**

Please indicate the number of Shares you wish to be bought back. The minimum number is 1,000 Shares unless the buy back is in respect of your entire shareholding in the Company

Shares , ,

Please tick this box if you wish for your entire shareholding to be bought back.

**5. Payment Instructions**

Proceeds will be paid to the Bank account details held on file for the Shareholder by the Administrator and that has elected to have dividends paid into.



**6. Shareholder Phone Number**

Area Code/Number

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**7. Email Address**

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**8. Declaration and Signature**

- (1) I/We request that the number of Shares shown in Section 4 above be bought back by the Company in accordance with the terms of the Facility and the proceeds (less applicable fees and costs) be paid in accordance with Section 5. I/We also agree to the terms and conditions of using facsimile instructions in Section 9.
- (2) I/We agree that the Company may in its sole discretion determine whether an Election Form is valid including whether it is completed correctly and in full and whether it permits me/us to participate in the buy back.
- (3) I/We acknowledge that the Company has 12 Business Days from the end of the relevant Buy Back Period to pay me the proceeds of the buy back of my Shares.
- (4) I/We warrant to the Company that at the date of this Election Form and for all times until the end of the relevant Buy Back Period, I/we am/are the holder(s) of the Shares which I/we have agreed to sell and those Shares are and will be free from any mortgage, charge, lien or other encumbrance (whether legal or equitable) or any third party rights.
- (5) I/We acknowledge and agree to be bound by the terms and conditions of the Facility.
- (6) I/We warrant that I/we are a person to whom the buy back may lawfully be made and whose participation in the Facility is permitted under the laws of the jurisdiction in which I/we are resident.
- (7) I/We undertake that if I/we breach any of the covenants, undertakings, agreements or warranties in this Section 8, I /we will indemnify the Company for all its costs and losses arising from the breach.

This request must be signed by the registered Shareholder or such person(s) authorised by the registered Shareholder to do so.

Signature
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Signature
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Name (please print)
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Name (please print)
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For corporate Shareholders please circle appropriate title.

Trustee      Director      Director/Secretary      Sole Director      Trustee      Director      Director/Secretary

**Date**

Day                      Month                      Year

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If you have any questions as to how to complete this Election Form, please call +61 8 9483 5200.

**9. Lodgement**

A faxed or email executed Election Form (together with any original Share Certificate (if any)) must be received by the Investment Manager at the number shown below no later than 5:00pm (Australian Western Standard Time, Perth) on the relevant Closing Date for the Buy Back Period followed by the original executed Election Form to the Investment Manager at the address shown below before the end of the relevant Buy Back Period. Election Forms received after these times will participate in the following Buy Back Period.

DV01 Funds Management Pty Ltd

Suite 3, 29 Ord Street  
West Perth WA 6005

Fax: +61 8 9483 5222  
Tel: +61 8 9483 5200  
Email: investor.relations@dvo1.com

By using facsimile instructions, you agree with the Company and the Investment Manager to the following terms and conditions:

- (a) the Company and the Investment Manager is not responsible to you for any fraudulently completed communications and the Company and the Investment Manager will not compensate you for any losses;
- (b) should such a fraud take place, you release and will indemnify the Company and the Investment Manager against any liabilities whatsoever arising from our acting on any communication received by fax or email in respect of your buy back;
- (c) the Company and the Investment Manager will only act on completed communications. A transmission certificate from your fax machine is not sufficient evidence that your fax was received. The Company and the Investment Manager will not be liable for any loss or delay resulting from the non-receipt of any transmission;
- (d) these terms and conditions are in addition to any other requirements that may form part of your instructions relating to the completion of a particular authority.

Neither the Company nor the Investment Manager shall be responsible for any mis-delivery or non-receipt of any facsimile or email. Facsimiles or emails sent to the Investment Manager shall only be effective when actually received by the Investment Manager. Shareholders are advised to contact the Investment Manager by telephone on +61 8 9483 5200 to confirm that it has received the facsimile or emailed Election Form.