

ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

The commitments in this undertaking are offered to the Australian Securities & Investments Commission ("ASIC") by:

Fendwave Pty Limited
(ACN 003 597 733)
Level 6, 37-49 Pitt Street
SYDNEY NSW 2000

1 BACKGROUND

- 1.1 ASIC is responsible for monitoring and promoting market integrity and consumer protection in the Australian financial system.
- 1.2 In the 1980s, Murray River Developments Limited ("**MRD**") was a company whose shares were listed on the Australian Stock Exchange ("**ASX**").
- 1.3 In 1989, Fendwave Pty Limited ("**Fendwave**") made an off market takeover bid to buy all the shares in MRD for \$2.00 per share. At the close of the offer period for that take over bid, Fendwave held approximately 88% of the ordinary shares in MRD.
- 1.4 MRD was delisted from the ASX on 26 August 1994.
- 1.5 In 1996, Fendwave offered a shareholder of MRD, \$0.30 per ordinary share, to acquire their MRD shares and the shareholder sold at that price.
- 1.6 In 1998, Fendwave sent a letter to all the other shareholders in MRD offering to buy their shares in MRD for \$0.30 per share. The letter stated that \$0.30 was consistent with all purchases over the last few years from shareholders. A number of MRD shareholders accepted that offer and sold their MRD shares to Fendwave for \$0.30 per share.
- 1.7 In 2001, Fendwave sent a further letter to all other shareholders in MRD offering to buy their shares in MRD for \$0.30 per share. The letter stated that \$0.30 was consistent with all purchases over the last few years from shareholders. A number of MRD shareholders accepted that offer and sold their MRD shares to Fendwave for \$0.30 per share.
- 1.8 On 14 January 2004, the *Corporations Act 2001* ("**the Act**") was amended by the insertion of Division 5A of Part 7.9. This Division makes provision, amongst other things, for certain unsolicited offers to purchase financial products to be made only in writing and to contain certain information as specified in section 1019I of the Act.
- 1.9 Between June and September 2005, Fendwave caused a further letter ("**the Offer Document**") to be sent to all the other shareholders in MRD offering to buy their



shares in MRD for \$0.30 per share ("**the Offer**"). The Offer Document stated that \$0.30 was consistent with all purchases over the last few years from shareholders. Approximately 45 MRD shareholders accepted the Offer and sold a total of 28,300 MRD shares to Fendwave for \$0.30 per share.

- 1.10 Fendwave currently owns 97.97% of the ordinary shares in MRD. The remaining 2.03% of MRD shares are owned by 87 shareholders.
- 1.11 On 20 December 2005, ASIC commenced an investigation into suspected contraventions of Division 5A, of Part 7.9, of the Act in relation to the Offer made by Fendwave to the minority shareholders of MRD during the period June 2005 to September 2005.
- 1.12 ASIC has formed the view that the Offer was an offer that was required to comply with Division 5A of Part 7.9 of the Act. Further, ASIC has also formed the view that the contents of the Offer Document did not comply with the following provisions.
 - (a) Section 1019I(2)(c), which requires that the Offer Document must contain a fair estimate of the value of the share as at the date of offer, and an explanation of the basis on which that estimate was made.
 - (b) Section 1019I(2)(d), which requires that the Offer Document must contain the period during which the offer remains open (which must be consistent with subsection 1019G(1)).
 - (c) Section 1019I(2)(e), which requires that the Offer Document must contain a statement to the effect that the offer may be withdrawn by sending a withdrawal document to the offeree, but generally not within 1 month of the date of the offer.
- 1.13 While Fendwave does not agree with all aspects of ASIC's concerns, it acknowledges those concerns and has offered and ASIC has agreed to accept Enforceable Undertakings in terms of paragraphs in 2.1-2.10 below.
- 1.14 ASIC has agreed to accept the Enforceable Undertakings as an alternative to commencing civil proceedings seeking declarations, injunctions and other orders.
- 1.15 Fendwave acknowledges that should ASIC form the view that Fendwave has failed to comply with this undertaking, ASIC may take additional action including (without limitation) seeking court orders under s93AA of the *Australian Securities and Investments Commission Act 2001* ("**the ASIC Act**") requiring Fendwave to comply with the terms of this undertaking.

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2 UNDERTAKINGS

- 2.1 Under s93AA(2) of the ASIC Act, Fendwave has offered, and ASIC has agreed to accept, the undertakings contained in paragraphs 2.2-2.10.
- 2.2 Within one month of ASIC accepting this Enforceable Undertaking, Fendwave will appoint an independent valuer ("**the Valuer**") to obtain a written valuation of the shares in MRD during the period June 2005 to September 2005.
- 2.3 The Valuer, and Fendwave's instructions to the valuer, must be approved by ASIC before the Valuer is engaged to conduct the valuation. The written valuation must be obtained within one month of ASIC's approval of the Valuer and the instructions to the valuer.
- 2.4 All costs associated with the Valuer and valuation shall be borne by Fendwave.
- 2.5 If the written valuation of the shares in MRD ("**Valuer's Estimate**") is greater than \$0.30 per MRD share Fendwave will:
- (a) within 30 days of the date of receiving the written valuation, use its best endeavors to identify all of the former MRD shareholders who transferred any MRD shares to Fendwave as a result of the Offer ("**the Accepting Offerees**") and their addresses from its records; and
 - (b) send to each of the Accepting Offerees a letter in the form of Annexure A ("**the Annexure A Letter**") to this undertaking. In the event that an Accepting Offeree's address cannot be obtained from MRD's records, or if a letter sent to an Accepting Offeree is returned, Fendwave will follow the procedure set out in **Annexure B** to the Enforceable Undertaking; and
 - (c) pay each Accepting Offeree who signs and returns to Fendwave an acceptance form enclosed in the Annexure A Letter sent by Fendwave to that Accepting Offeree, the difference between \$0.30 and the Valuer's Estimate for each MRD share that the Accepting Offeree transferred to Fendwave; and
 - (d) within 30 days of the date of the valuation, use its best endeavors to identify all the remaining shareholders of MRD who did not transfer their MRD shares to Fendwave as a result of the Offer ("**the Remaining Shareholders**") and their addresses from its records; and
 - (e) send to each of the Remaining Shareholders a letter in the form of Annexure C ("**the Annexure C Letter**") to this undertaking. In the event that a Remaining Shareholder's address cannot be obtained from MRD's records, or if a letter sent to a Remaining Shareholder is returned, Fendwave will follow the procedure set out in **Annexure B**; and
 - (f) make an offer to each Remaining Shareholder, in a form which complies with the provision of Division 5A of Part 7.9 of the Act, to buy all the shares in



MRD held by them, at the Valuer's Estimate. This offer will be enclosed with the Annexure C Letter.

- 2.6 Before making any further unsolicited offers to purchase securities off market for a period of 3 years from the date of ASIC accepting this Enforceable Undertaking, Fendwave will:
- (a) submit the offer document for that offering to an independent compliance expert who is either:
 - (i) a qualified lawyer who has been practicing for at least 5 years in the area of financial services law; or
 - (ii) a member of the Australian Compliance Institute (or with the approval of ASIC another appropriate professional association) who has not less than 5 years experience in the securities industry in a supervisory of compliance role;
- to provide Fendwave with a written opinion (“**the Independent Compliance Opinion**”) that the offer document for that unsolicited off-market securities offer, and any material accompanying or attached to it, complies with applicable provisions of the Act, *Corporations Regulations 2001* and the ASIC Act or the relevant law applicable at that time;
- (b) not make any unsolicited offers to purchase financial products unless it has obtained the Independent Compliance Opinion on the offer document to be used for that offering;
 - (c) provide ASIC with a copy of any Independent Compliance Opinion which ASIC may reasonably request in writing, from time to time.
- 2.7 Fendwave undertakes to provide ASIC with a report detailing the progress in relation to the provisions of the Annexure A and Annexure C Letters, every 3 months, commencing 3 months after this Enforceable Undertaking is accepted by ASIC. This reporting will continue until such time when Fendwave's obligations under paragraph 2.5 are complete.
- 2.8 Without limiting the contents of the report referred to in paragraph 2.7, the report must contain the following information:
- (a) names of all Accepting Shareholders who receive the Annexure A Letter and names of all those shareholders who accept the offer referred to in the Annexure A Letter;
 - (b) details of the number of shares and payment made to each of those Accepting Shareholders who accepted the offer referred to in the Annexure A Letter;
 - (c) names of all Remaining Shareholders who receive the Annexure C Letter and names of all those shareholders who accept the offer referred to in the Annexure C Letter; and

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- (d) details of the number of shares and payment made to each of those Remaining Shareholders who accepted the offer referred to in the Annexure C Letter.
- 2.9 Fendwave agrees to provide ASIC with a statutory declaration for each report, signed by a director of Fendwave who has personal knowledge of the Fendwave's compliance with paragraph 2.5 and stating that the report referred to in paragraph 2.8 is true and accurate.
- 2.10 Fendwave shall provide the report referred to in paragraph 2.8 and the statutory declaration referred to in paragraph 2.9 to ASIC at the following address:

Director
Capital Markets
Compliance Directorate
Australian Securities & Investments Commission
GPO Box 9827
MELBOURNE VIC 3000

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3 ACKNOWLEDGEMENTS

3.1 Fendwave acknowledges that ASIC:

- (a) may issue a media release on execution of this Enforceable Undertaking referring to its terms and to the concerns of ASIC which led to its execution;
- (b) may from time to time publicly refer to this Enforceable Undertaking;
- (c) will make this Enforceable Undertaking available for public inspection.

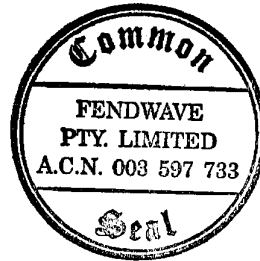
3.2 Fendwave acknowledges that this Enforceable Undertaking in no way derogates from the rights and remedies available to ASIC or any other person or entity arising from any conduct described in this Enforceable Undertaking.

3.3 Fendwave acknowledges that ASIC's acceptance of this Enforceable Undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation to any or all of the conduct described in this Enforceable Undertaking or any contravention arising from future conduct of Fendwave, MRD or any corporation of which Mr. Trevor Haworth, a director of Fendwave, is an officer or related party (as defined by the Act).

3.4 Fendwave acknowledges that this undertaking has no operative force until accepted by ASIC.

EXECUTED

The Common Seal of the Company was affixed in)
accordance with the *Corporations Act 2001* in the)
presence of:



Trevor Haworth
.....

Director

Charril
.....

Director/Company Secretary

ACCEPTED by the Australian Securities)
& Investments Commission, pursuant)
to Section 93AA of the ASIC Act, by its)
duly authorised delegate:)

Allen Turton
.....

Allen Turton
Deputy Executive Director, Enforcement

Date: 1.9.06

ANNEXURE A

Fendwave Pty Limited
Level 6, 37-49 Pitt Street
SYDNEY NSW 2000

Day Month 2006

Name of Accepting Shareholder
Street Name
Suburb State Postcode

Dear Mr/Ms [insert name]

Shares in Murray River Developments Limited

We refer to the letter sent to you by Geoffrey B Cramp, dated [insert date]. The letter contained an offer from Fendwave Pty Ltd ("Fendwave") to buy your shares in Murray River Developments Limited ("MRD") at 30¢ per share. We note that you accepted this offer and subsequently transferred all your shares in MRD to Fendwave.

We have been contacted by the Australian Securities & Investments Commission ("ASIC") who has brought to our attention that our offer may have breached section 1019I of the *Corporations Act 2001* which requires these kinds of offers to include certain information, including a fair estimate of the value of the shares.

As a result of our discussions with ASIC, we have given ASIC an Enforceable Undertaking, which requires us to obtain an independent written valuation of the shares in MRD from an appropriately qualified professional. We have obtained this valuation from X and according to it the value of each MRD share at the time we made the offer to you was XX¢ per share.

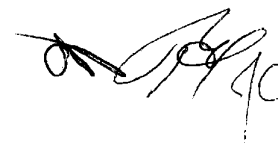
Accordingly, we now offer to pay you the difference between 30¢ and the independent valuation of XX¢. If you would like to accept this offer, please complete the acceptance form enclosed with this letter, sign and return it in the pre-paid envelope provided within the time period specified on the acceptance form.

Please do not hesitate to contact us if you have any questions.

Yours sincerely

.....

Encl.



ANNEXURE B

1. In accordance with clause 2.5 of this undertaking, Fendwave must send the Annexure A and C Letters, accompanied by any offer documents, by ordinary pre-paid post to the most recent address Fendwave has recorded for each relevant person.
2. In the case of those persons whose letter is returned, Fendwave must attempt to ascertain a current address for those persons by using the "Change of Address" database provided by Australia Post. If Australia Post's "Change of Address" database reveals a different address for any such persons, Fendwave will send the letter by ordinary pre-paid post to that different address.
3. Where Australia Post notifies Fendwave that a person has changed address but has not given their consent to Australia Post to release their new details, Fendwave will use the "Re-Connect" service provided by Australia Post to seek to obtain that new address. Prior to doing so, Fendwave will consult with ASIC and Australia Post on the content of any correspondence to be sent to persons using the "Re-Connect" service. Australia Post's "Re-Connect" service is a service whereby Australia Post writes to relevant persons advising them that Fendwave is trying to contact them, and asking for their consent to the release of their new address. When using the "Re-Connect" service, Fendwave must request that Australia Post notify the person that the proposed communication relates to "a further offer in respect of your shareholding in Murray River Developments Limited, arising from an Enforceable Undertaking made to the Australian Securities & Investments Commission". In the event that:
 - (a) the person consents to the release of their new address to Fendwave - Fendwave will send the offer documents by ordinary pre-paid post to that different address; or
 - (b) the person does not consent to the release of their new address to Fendwave - Fendwave is required to follow the procedure set out in clause 4 of this Annexure.
4. If Australia Post's "Change of Address" database and Australia Post's "Re-Connect" service reveal no different addresses for those persons whose letter is returned, or if a letter has been sent to an address revealed by the "Change of Address" or "Re-connect" service and has again been returned, Fendwave will carry out an Internet search of the Sensis White Pages On-Line at the domain name www.whitepages.com.au. In the event that:
 - (a) an entry which includes an address is found and that entry appears on reasonable grounds to correspond with the person sought - Fendwave must send the offer documents by ordinary pre-paid post to that address; or
 - (b) no entry which includes an address is found which appears on reasonable grounds to correspond with the person sought - subject to clause 5, Fendwave is not required to send the offer document to that person.
5. If at any time within 18 months from the date of ASIC's acceptance of the undertaking, a person for whom no address has been found contacts Fendwave or Fendwave otherwise becomes aware of an address which it has reasonable grounds to suspect is the current address of the person, Fendwave must send the letter by ordinary pre-paid post to that address.

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ANNEXURE C

Fendwave Pty Limited
Level 6, 37-49 Pitt Street
SYDNEY NSW 2000

Day Month 2006

Name of Remaining Shareholder

Street Name

Suburb State Postcode

Dear Mr/Ms [*insert name*]

Shares in Murray River Developments Limited

We refer to the letter sent to you by Geoffrey B Cramp, dated [*insert date*]. The letter contained an offer from Fendwave Pty Ltd ("Fendwave") to buy your shares in Murray River Developments Limited ("MRD") at 30¢ per share. We note that you did not accept this offer and consequently still hold your shares in MRD.

We have been contacted by the Australian Securities & Investments Commission ("ASIC") who has brought to our attention that our previous offer may have breached section 1019I of the *Corporations Act 2001* which requires these kinds of offers to include certain information, including a fair estimate of the value of the shares.

As a result of our discussions with ASIC, we have given ASIC an Enforceable Undertaking, which requires us to obtain an independent written valuation of the shares in MRD from an appropriately qualified professional. We have obtained this valuation from X and according to it the value of each MRD share at the time we made an offer to you was XX¢ per share.

Accordingly, we now make a new offer to pay you XX¢ per share. For more information, please refer to the offer documents enclosed.

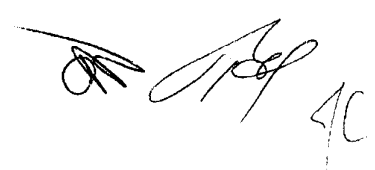
To accept this offer, you must sign and return the offer documents to us within the time period specified in the offer documents.

Please do not hesitate to contact us if you have any questions.

Yours sincerely

.....

Encl.

Handwritten signatures and initials, including a large signature and the initials 'AC'.