



22 November 2011

The Manager  
Company Announcements Platform  
Australian Securities Exchange Limited

Dear Sir/Madam,

**Re: MSF Sugar Limited (MSF) – Takeover Implementation Agreement with  
Mitr Phol Sugar Corp., Ltd. and Mitr Phol Siam International PTE. LTD**

Please find attached a copy of this agreement dated 9 November 2011.

Yours faithfully,

A handwritten signature in dark ink, appearing to be "Chris Lobb", written over a light blue horizontal line.

**Chris Lobb**  
Company Secretary

# Takeover Implementation Agreement

Dated 9 November 2011

Mitr Siam International PTE. LTD, an entity controlled by Mitr Phol Sugar Corp., Ltd (together, "**Mitr Phol**")  
MSF Sugar Limited ("**MSF**")

**Mallesons Stephen Jaques**

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# Takeover Implementation Agreement

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# Takeover Implementation Agreement

## Details

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| <b>Parties</b>                 | <b>Mitr Phol Sugar, Mitr Siam International and MSF</b> |  |
|--------------------------------|---|--|
| <b>Mitr Phol Sugar</b>         | Name  | <b>Mitr Phol Sugar Corp., Ltd</b>  |
|                                | Incorporated in   | Thailand   |
|                                | Address   | 3rd Floor<br>Ploenchit Centre Building 2<br>Sukhumvit Road, Klongtoey<br>BANGKOK 10110<br>THAILAND |
|                                | Fax   | +66 (0) 2656 8494  |
|                                | Email   | peterm@mitrphol.com  |
|                                | Attention   | Mr Peter Michener  |
| <b>Mitr Siam International</b> | Name  | <b>Mitr Siam International PTE. LTD</b>  |
|                                | Incorporated in   | Singapore  |
|                                | Address   | 1 Raffles Place<br>#28-02<br>One Raffles Place<br>Singapore 048616                                 |
|                                | Fax   | +66 (0) 2656 8494  |
|                                | Email   | peterm@mitrphol.com  |
|                                | Attention   | Mr Peter Michener  |
| <b>MSF</b>                     | Name  | <b>MSF Sugar Limited</b>   |
|                                | ACN   | 009 658 708  |
|                                | Address   | 47 Gordon Street<br>GORDONVALE QLD 4865<br>AUSTRALIA   |
|                                | Fax   | +61 7 4043 3300  |
|                                | Email   | chrislobb@msfsugar.com.au  |
|                                | Attention   | Chris Lobb - Company Secretary   |

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|                 |          |   |
|-----------------|----------|---|
| <b>Recitals</b> | <b>A</b> | Mitr Siam International PTE. LTD is proposing to acquire all of the MSF Shares by way of a Takeover Bid.                    |
|                 | <b>B</b> | MSF and Mitr Phol have agreed to co-operate with each other in relation to the Takeover Bid on the terms of this agreement. |

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|                      |                       |
|----------------------|-----------------------|
| <b>Governing law</b> | Queensland, Australia |
|----------------------|-----------------------|

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|                          |                  |
|--------------------------|------------------|
| <b>Date of agreement</b> | See Signing page |
|--------------------------|------------------|

# Takeover Implementation Agreement

## General terms

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### 1 Definitions and interpretation

The following words have these meanings in this agreement unless the contrary intention appears.

**Advisers** means, in relation to an entity, its legal, financial and other expert advisers.

**AIFRS** means the International Financial Reporting Standards as adopted in Australia.

**Amount of the Consideration** means:

- (a) the amount of any payment in connection with a supply; and
- (b) in relation to non-monetary consideration in connection with a supply, the GST exclusive market value of that consideration as reasonably determined by the supplier.

**Announcement** means the announcement substantially in the form set out in Annexure A.

**Announcement Date** means the date the Takeover Bid is announced in accordance with clause 2.1.

**ASIC** means the Australian Securities and Investments Commission.

**ASX** means ASX Limited or Australian Securities Exchange, as appropriate.

**Authorised Officer** means, in respect of a party, a director or secretary of the party or any other person appointed by a party to act as an Authorised Officer under this agreement.

**Bid Announcement Date** means the date on which Mitr Phol announces that it is proceeding with the Offer (provided the Bid Condition is either satisfied or waived in accordance with this agreement).

**Bid Condition** means Mitr Phol, acting reasonably, being satisfied with the outcome of the Due Diligence Enquiries.

**Bid Consideration** has the meaning given in clause 2.3 or such higher amount as may be offered by Mitr Phol under the Offer.

**Bidder's Statement** means the bidder's statement to be issued by Mitr Phol in respect of the Takeover Bid.

**Break Fee** means A\$3,100,000.

**Business Day** means a business day as defined in the Listing Rules.

**Business Hours** means from 9.00am to 5.00pm on a Business Day.



**Competing Transaction** means a transaction which, if completed, would mean a person (other than Mitr Phol or its Related Bodies Corporate or Representatives) would:

- (a) directly or indirectly, acquire an interest or Relevant Interest in or become the holder of:
  - (i) 50.1% or more of the MSF Shares; or
  - (ii) all or a substantial part or a material part of the business conducted by MSF,  
  
including by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale of shares or joint venture, but not as a custodian, nominee or bare trustee;
- (b) acquire control of MSF, within the meaning of section 50AA of the Corporations Act; or
- (c) otherwise acquire or merge (including by a reverse takeover bid or dual listed company structure) with MSF.

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

**Details** means the section of this agreement headed "Details".

**Due Diligence Enquiries** means the due diligence enquiries undertaken by Mitr Phol and its Representatives in relation to the due diligence areas identified in the Proposal Letter or otherwise disclosed to Mitr Phol or its Representatives under this agreement, and other areas reasonably incidental to those areas.

**Effective Control**, when used in relation to the Takeover Bid, means Mitr Phol and its Related Bodies Corporate having a Relevant Interest in 50.1% or more of the MSF Shares and the Takeover Bid is unconditional.

**End Date** means the earliest of:

- (a) the date of termination of this agreement in accordance with its terms;  
and
- (b) 30 April 2012.

**Exclusivity Period** means the period commencing on the date of this agreement and ending on the End Date.

**GST** means a goods and services or similar tax imposed in Australia.

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cwlth).

**Independent Expert** means the independent expert appointed by MSF to prepare an expert's report to be included in the Target's Statement.

**Input Tax Credit** has the meaning it has in the GST Act.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

**Listing Rules** means the Listing Rules of ASX Limited.

**Lodgement Date** means the date Mitr Phol lodges the Bidder's Statement with ASIC.

**Material Adverse Change** means one or more occurrences or any fact, matter or circumstance (whenever occurring) that is announced or becomes known to Mitr Phol that individually, or when aggregated with all such occurrences, facts, matters or circumstances, has had or is reasonably likely to have one of the following effects:

- (a) to materially adversely affect the status or terms of any material regulatory consent that is applicable to the MSF Group;
- (b) to prevent or would be likely to prevent MSF from discharging in a material respect its obligations under this agreement;
- (c) to diminish the total consolidated net assets of the MSF Group (calculated on the basis of AIFRS) by A\$11 million or more;
- (d) to otherwise materially adversely affect the business, financial condition, operations, reputation or prospects of the MSF Group including:
  - (i) any material default by the MSF Group or any member of the MSF Group under their existing financing facilities; or
  - (ii) the termination of any Material Contract of the MSF Group,

unless that occurrence, fact, matter or circumstance:

- (a) is required to be done or procured by MSF pursuant to this agreement;
- (b) relate to changes in business conditions affecting the industry in which MSF operates, provided that the changes or disruptions do not have a materially disproportionate effect on MSF compared to other participants in the industries in which the MSF business operate; or
- (c) is fairly disclosed, or that is reasonably apparent on its face as potentially to flow from the event, occurrence, matter or information that is fairly disclosed, in information provided by MSF to Mitr Phol or its Representatives, or is otherwise known to Mitr Phol or its Representatives on or prior to the date of this agreement or otherwise disclosed in public filings by MSF with ASIC or provided to ASX or any of its Related Bodies Corporate on or prior to the date of this agreement.

**Material Contract** means a contract or commitment:

- (a) requiring total payments in excess of an amount equal to 5% of the relevant party's net annual earnings for financial year ended 31 December 2010; or
- (b) under which a person does not have an unconditional right to terminate within 12 months.

**Mitr Phol** means Mitr Siam International PTE. LTD and Mitr Phol Sugar Corp., Ltd.

**MSF** means MSF Sugar Limited ACN 009 658 708.

**MSF Board** means the board of directors of MSF.

**MSF Employee or Executive Share Plan** means any plan adopted by MSF to enable participation by its employees and executives in equity ownership of MSF.

**MSF Group** means MSF and its Subsidiaries.

**MSF Performance Share Rights** means rights issued in accordance with a MSF Employee or Executive Share Plan that are, subject to the terms of issue and other conditions, able to be converted into MSF Shares and any other rights issued by MSF to subscribe for or otherwise acquire MSF Shares.

**MSF Share** means a fully paid ordinary share in MSF.

**MSF Share Options** means options issued in accordance with a MSF Employee or Executive Share Plan that are, subject to the terms of issue and other conditions, able to be converted into MSF Shares and any other options issued by MSF to subscribe for or otherwise acquire MSF Shares.

**MSF Shareholder** means a holder of one or more MSF Shares.

**Mutual Confidentiality Agreement** means the mutual confidentiality agreement between Mitr Phol and MSF dated 7 November 2011.

**Offer** means each offer to acquire MSF Shares to be made by Mitr Phol to each MSF Shareholder under the Takeover Bid on terms consistent with this agreement.

**Offer Conditions** means the conditions to the Offer which are set out in Schedule 2.

**Offer Date** means:

- (a) the date as set out in the Timetable (being the date the Bidder's Statement is despatched to MSF Shareholders); or
- (b) such other date agreed on in writing by the parties, subject to the Corporations Act.

**Offer Period** means the period during which the Offer is open for acceptance.

**Officers** means, in relation to an entity, its directors, officers, partners and employees.

**Prescribed Occurrence** means any of the events listed in Schedule 3.

**Proposal Letter** means the proposal letter from Mitr Phol to MSF dated 4 November 2011.

**Register** means the share register of MSF and **Registry** has a corresponding meaning.

**Register Date** means the date set by Mitr Phol pursuant to section 633(2) of the Corporations Act.

**Regulatory Approval** means:

- (a) any consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, approval, direction, declaration, authority, ruling or exemption from, by or with a Regulatory Authority; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Regulatory Authority intervened or acted in any way within a specified period after lodgment, filing, registration or notification, the expiry of that period without intervention or action,

as may be necessary to enable a party to fulfill its obligations under this agreement.

**Regulatory Authority** includes:

- (a) ASX, ACCC, ASIC, Bank of Thailand or the Australian Taxation Office;
- (b) a government or governmental, semi-governmental or judicial entity or authority;
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (d) any regulatory organisation established under statute,

in each case whether foreign, federal, state, territorial or local in any part of the world.

**Related Bodies Corporate** has the meaning given in the Corporations Act.

**Relevant Interest** has the same meaning as given by sections 608 and 609 of the Corporations Act.

**Representatives** of a party includes:

- (a) a Related Bodies Corporate of the party; and
- (b) each of the Officers and Advisers of the party or any of its Related Bodies Corporate.

**Rights** means all accretions, rights or benefits of whatever kind attaching to or arising from MSF Shares directly or indirectly after the Announcement Date, including, but not limited to, all dividends or other distributions and all rights to receive any dividends or other distributions, or to receive or subscribe for shares, stock units, notes, bonds, options or other securities, declared, paid or made by MSF or any of its Subsidiaries.

**Subsidiaries** has the meaning it has in the Corporations Act.

**Superior Proposal** means a publicly announced Competing Transaction which the MSF Board, acting in good faith, and after taking advice from its legal and financial advisers, determines is:

- (a) reasonably capable of being completed taking into account all aspects of the Competing Transaction; and
- (b) more favourable to MSF Shareholders than the Takeover Bid, taking into account all terms and conditions of the Competing Transaction.

**Takeover Bid** means the off-market takeover bid by Mitr Phol for all MSF Shares to be implemented in accordance with Chapter 6 of the Corporations Act.

**Target's Statement** means the target's statement to be issued by MSF in respect of the Takeover Bid.

**Tax Invoice** has the meaning it has in the GST Act.

**Timetable** means the timetable set out in Schedule 1.

## 1.2 References to certain general terms

Unless the contrary intention appears, a reference in this agreement to:

- (a) **(variations or replacement)** a document (including this agreement) includes any variation or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

- (d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Regulatory Authority;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (h) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (i) **(dollars)** Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (j) **(calculation of time)** a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (k) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) **(accounting terms)** an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (m) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (n) **(time of day)** time is a reference to Brisbane, Australia time.

### 1.3 Next day

If an act under this agreement to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day.

### 1.4 Next Business Day

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.

### 1.5 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.

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## **2 Announcement of the Bid and the Offer**

### **2.1 Public announcement of Bid**

Immediately after signing this agreement, MSF will issue the Announcement.

### **2.2 Offer by Mitr Phol**

Subject to satisfaction or waiver by Mitr Phol of the Bid Condition, Mitr Phol must, by no later than the Offer Date, and in any event as soon as reasonably practicable, make Offers to all MSF Shareholders (other than Mitr Phol) in respect of all of their MSF Shares:

- (a) for the Bid Consideration; and
- (b) subject to the Offer Conditions,

on the terms of this agreement and otherwise in accordance with all applicable provisions of the Corporations Act.

### **2.3 Consideration**

The consideration offered by Mitr Phol to a MSF Shareholder will be A\$4.45 cash for every one (1) MSF Share held as at the Register Date (“**Bid Consideration**”). Nothing in this agreement in any way limits Mitr Phol's ability to vary the Bid Consideration and other terms of the Offer in a way permitted by law.

Mitr Phol reserves the right, but not the obligation, to deduct from the Bid Consideration otherwise payable to each MSF Shareholder under the Offer the amount of all Rights attaching to or arising from MSF Shares directly or indirectly at or after the date of the Announcement Date (including all dividends, and all rights to receive them, declared or paid by MSF or any subsidiary of MSF).

### **2.4 Offer Conditions**

- (a) The Offer and any contract which results from its acceptance will be subject to the Offer Conditions.
- (b) Each party must use all reasonable endeavours to satisfy the Offer Conditions as soon as practicable after the date of this agreement as though the Offer Period began on the date of this agreement or otherwise use all reasonable endeavours to ensure the relevant Offer Condition continues to be satisfied at all times until the last time it is to be satisfied (as the case may require).
- (c) MSF must use all reasonable endeavours to ensure that the Offer Conditions in paragraphs (d) (No Prescribed Occurrence), (e) (No Material Adverse Change) or (h) (No untrue statements) of Schedule 3 are not breached prior to the end of the Offer Period.

### **2.5 Offer Period**

The parties intend that the Offer Period will be as set out in the Timetable, but acknowledge and agree that the Offer Period may be extended by Mitr Phol at its

discretion by a period of up to one month or automatically in accordance with the Corporations Act.

## **2.6 Benefit of Bid Condition**

The Bid Condition is for the sole benefit of Mitr Phol and Mitr Phol may waive the Bid Condition in its discretion.

## **2.7 Reasonable endeavours to complete Due Diligence Enquiries**

Mitr Phol must use its reasonable endeavours to complete the Due Diligence Enquiries as soon as practicable after the date of this agreement and in any event before 12.00pm on 21 November 2011.

## **2.8 Notice of satisfaction or waiver of Bid Condition**

If Mitr Phol, acting reasonably, is not satisfied with the outcome of the Due Diligence Enquiries, it may (but is not obligated to) provide notice of non-satisfaction of the Bid Condition to MSF on or before 12.00pm on 21 November 2011. If such notice is not provided to MSF by that time, the Bid Condition will be deemed to have been satisfied. Mitr Phol may waive the Bid Condition by giving MSF written notice of such waiver any time prior to 12.00pm on 21 November 2011.

---

# **3 Recommendation**

## **3.1 Directors' recommendations**

Prior to entering into this agreement, MSF has been advised by each of its directors that they intend:

- (a) to recommend the Offer to MSF Shareholders; and
- (b) to accept the Offer in respect of all MSF Shares held by that director or any associate of that director,

subject to:

- (c) there being no Superior Proposal; and
- (d) the Independent Expert determining that the Offer is fair and reasonable.

## **3.2 Reflecting recommendation in documentation**

On the basis of statements made to MSF by each of its directors, MSF must make a statement in:

- (a) the Target's Statement; and
- (b) the Announcement,

that each director of the MSF Board:

- (c) recommends acceptance of the Offer to MSF Shareholders in the absence of a Superior Proposal and provided the Independent Expert determines that the Offer is fair and reasonable; and



- (d) intends to accept the Offer in respect of all MSF Shares held by that director or any associate of that director, subject to there being no Superior Proposal and provided the Independent Expert determines that the Offer is fair and reasonable.

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## **4 Cooperation**

MSF and Mitr Phol must each:

- (a) use all reasonable endeavours and commit necessary resources (including management and corporate relations resources and the resources of external advisers); and
- (b) procure that its Advisers work in good faith and in a timely and co-operative fashion with the other party (including by attending meetings and by providing such records and information as the other party reasonably requires),

to implement the Takeover Bid.

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## **5 Documentation**

### **5.1 Mitr Phol's obligations to prepare documentation**

- (a) Mitr Phol must prepare for the Offer:
  - (i) the Bidder's Statement; and
  - (ii) an acceptance form for the Offer,

in each case consistent with clauses 2.2 to 2.5 and reflecting the matters set out in clause 3.1 and in accordance with the Corporations Act.

- (b) Mitr Phol agrees to do and to procure its Officers to do such things as are reasonably necessary to prepare the Bidder's Statement, its lodgement with ASIC and despatch to MSF Shareholders in accordance with the Timetable, subject to MSF granting any necessary consents and the ASIC granting any necessary waivers.

### **5.2 MSF's obligations to prepare documentation**

- (a) MSF must prepare the Target's Statement in response to the Offer consistent with clauses 2.2 to 2.5 and 3.2 and in accordance with the Corporations Act.
- (b) MSF agrees to do and to procure its Officers to do such things as are reasonably necessary to prepare the Target Statement, its lodgement with ASIC and despatch to MSF Shareholders in accordance with Timetable.

### **5.3 Sharing statements**

Mitr Phol agrees that it will provide a draft of its Bidder's Statement to MSF and MSF agrees that it will provide a draft of its Target's Statement to Mitr Phol on the dates set out in the Timetable and in any event not less than 3 Business Days before that statement is due to be despatched for printing and each party agrees

that it will take prompt steps to make such changes to its statement as are reasonably required by the other.

#### **5.4 Independent Expert's report**

Mitr Phol acknowledges that MSF will be obtaining an Independent Expert's report which will be sent to MSF Shareholders together with its Target's Statement.

#### **5.5 Timetable**

Each party agrees to use its reasonable endeavours to comply with the Timetable.

#### **5.6 Consent to early dispatch of Bidder's Statement**

MSF agrees (by authority of its directors) that the offers and accompanying documents to be sent by Mitr Phol under the Takeover Bid under item 6 of section 633(1) of the Corporations Act may be sent 7 days earlier than the earliest date for sending under item 6 of section 633(1) of the Corporations Act.

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## **6 Implementation**

### **6.1 MSF's obligations**

MSF must:

- (a) **(Registry details)** provide the prescribed information about the Register to Mitr Phol which Mitr Phol requires in order to implement the Bid and solicit acceptances under the Bid;
- (b) **(Registry assistance)** provide all necessary directions to the Registry promptly to provide any prescribed information that Mitr Phol reasonably requires in relation to the Register, including any sub-register; and
- (c) **(MSF Options and Performance Rights Plan)** use reasonable endeavours to ensure that:
  - (i) executives and employees of MSF who have MSF Share Options or MSF Performance Share Rights are able to exercise those MSF Share Options or MSF Performance Share Rights before the end of the Offer Period, including by it declaring a period under clause 13.2 of the MSF Options and Performance Rights Plan ("**Plan**");
  - (ii) it notifies participants under the Plan of any period declared under clause 13.2 of the Plan;
  - (iii) it applies for quotation of any MSF Shares issued upon the exercise of such MSF Share Options and MSF Performance Share Rights,

in each case in a timely manner so as to enable any MSF Shares issued under the Plan during the Offer Period to be and accepted into the Offer.

## 6.2 Mutual obligations

Each of MSF and Mitr Phol must use reasonable endeavours to facilitate Mitr Phol to make private treaty offers to acquire or cancel MSF Share Options and MSF Performance Share Rights for a cash amount equal to Offer Price less the exercise price of the MSF Share Option or MSF Performance Share Rights at the date of the Offer, should Mitr Phol elect to make such offers.

## 6.3 Appointment/retirement of MSF directors

As soon as practicable after Mitr Phol acquires Effective Control, MSF must use its best endeavours to:

- (a) cause the appointment to the MSF Board of any persons nominated by Mitr Phol; and
- (b) procure that such of the current directors as may be nominated by Mitr Phol retire from the MSF Board and provide written notice to the effect that they have no claim outstanding for loss of office, remuneration or otherwise against MSF,

provided that Mitr Phol will procure that its Representatives (excluding any independent directors appointed by Mitr Phol pursuant to 6.3(a) above) do not participate in decisions of MSF in relation to the Takeover Bid until after the end of the Offer Period and that the MSF Board maintains an appropriate number of independent directors until after the end of the Offer Period.

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# 7 Conduct of business

## 7.1 Overview

From the date of this agreement up to the end of the Offer Period, the MSF Group must conduct its business in the ordinary and proper course and in substantially the same manner as previously conducted and must consult with Mitr Phol on the manner of conduct of the business.

## 7.2 Specific obligations

Without limiting clause 7.1 and other than with the prior approval of Mitr Phol (which approval must not be unreasonably withheld or delayed) or as required by this agreement, and except to the extent previously disclosed by MSF to the ASX or fairly disclosed to Mitr Phol or its Representatives by the earliest of Mitr Phol notifying MSF that: (i) it waives the Bid Condition; or (ii) is satisfied with the outcome of the Due Diligence Enquiries; or (iii) 12.00pm on 18 November 2011, MSF must, during the period contemplated by clause 7.1, use its reasonable endeavours to:

- (a) **(business)** operate the MSF Group business consistent with its current business plans and budgets;
- (b) **(assets)** maintain the condition of the MSF Group business and assets as is reasonably necessary to operate all material aspects of its business;
- (c) **(insurance)** have in place, and maintain until the Offer is completed, insurance over the MSF Group's assets and business to at least the same extent as that in place at the date of this agreement;

- (i) **(consultation)** consult with Mitr Phol in relation to any occurrence or matter which MSF considers is reasonably likely to constitute a Material Adverse Change;
- (ii) **(claims)** promptly notify Mitr Phol of any material claim which may be threatened, brought, asserted or commenced against any member of the MSF Group, or their officers, or senior employees and consult with Mitr Phol in relation to such matter to the extent Mitr Phol reasonably requires;
- (d) **(officers and employees)** subject to clause 7.3, keep available the services of its officers and employees and use all reasonable endeavours to retain all directors and senior officers of the MSF Group holding such positions as at the date of this agreement;
- (e) **(relationships)** preserve MSF Group's relationships with customers, suppliers, licensors, licensees, joint venturers and others with whom MSF Group has business dealings;
- (f) **(change of control provisions)** identify and notify Mitr Phol of any change of control or similar provisions in any the Material Contracts and use all reasonable endeavours to obtain the consents of relevant persons who have rights in respect of those persons to the transactions contemplated by the Takeover Bid; and
- (g) **(cash)** ensure there is no material decrease in the amount of cash in the MSF Group other than as:
  - (i) used in the ordinary course of business and consistent with forecast cash utilisation; or
  - (ii) a result of reasonable costs incurred directly in relation to the transactions contemplated by the Takeover Bid (including, without limitation, to advisers).

### 7.3 Prohibited actions

Other than with the prior approval of Mitr Phol (which approval must not be unreasonably withheld or delayed) or as required by this agreement, and except to the extent previously disclosed by MSF to the ASX or fairly disclosed to Mitr Phol or its Representatives by the earliest of Mitr Phol notifying MSF that: (i) it waives the Bid Condition; or (ii) is satisfied with the outcome of the Due Diligence Enquiries; or (iii) 12.00pm on 18 November 2011, MSF must not, and must procure that no other MSF Group member, during the period referred to in clause 7.1:

- (a) **(Material Contracts)** enters into, terminates or amends in any material respect a Material Contract other than a Material Contract which has been fairly disclosed to, and agreed by, Mitr Phol;
- (b) **(exercise of options)** exercise any convertible securities held by any MSF Group member, including options to acquire shares in Sugar Terminals Limited;
- (c) **(employment agreements)** increases the remuneration of or pay any bonus (other than in accordance with existing arrangements and in the ordinary course) or issue any securities or options to (other than as

permitted under clause 6.1(c)), or otherwise vary the employment agreements with, any of its directors or employees;

- (d) **(accelerate rights)** other than as permitted under clause 6.1(c), accelerates the rights of any of its directors or employees to benefits of any kind;
- (e) **(termination payments)** pays a director, executive or employee a termination payment, other than as provided for in an existing employment contract in place as at the date of this agreement;
- (f) **(financial arrangements)** amend in any material respect any arrangement with its financial advisers in respect of the transactions contemplated by this agreement;
- (g) **(capital expenditure)** undertakes or agrees to undertake capital expenditure in excess of \$6 million in aggregate in respect of the MSF Group and in excess of \$3 million in relation to any individual capital expenditure, except to the extent committed prior to the date of this agreement and fairly disclosed to Mitr Phol or its Representatives by the earliest of Mitr Phol notifying MSF that: (i) it waives the Bid Condition; or (ii) is satisfied with the outcome of the Due Diligence Enquiries; or (iii) 12.00pm on 18 November 2011;
- (h) **(commitments)** enters into any contract or commitment involving annual expenditure by MSF Group in excess of \$6 million, other than in the ordinary course of conducting the businesses of the MSF Group;
- (i) **(acquisitions and disposals)** excluding ordinary course business trading, acquires or disposes of any business, asset, entity or undertaking, the value of which exceeds \$1 million, individually, or \$4 million when aggregated with all such acquisitions or disposals of businesses, entities or undertakings;
- (j) **(grant of option)** grants any option, exclusive licence or right of first refusal over any material part of the property or assets of MSF or its Subsidiaries (including any interest in such property or assets);
- (k) **(increase borrowings)** in relation to money borrowed or raised by the MSF Group from, and debit balances of the MSF Group with, any bank or other financial institution, increases the levels of those borrowings or debit balances from their levels as at the date of this agreement (except for drawdowns on existing working capital or overdraft facilities for ordinary course business activities);
- (l) **(give security)** guarantees, indemnifies or provides security for the obligations of any person other than an MSF Group member in the ordinary course of business trading (except as may be required under this agreement);
- (m) **(exceed current limits)** exceeds current bank borrowing or cash reserve limits;
- (n) **(partnerships and joint ventures)** enter into, or agree to enter into, any joint venture, partnership or similar arrangement;

- (o) **(dividends)** declares, pays, determines or distributes any dividend, distribution, bonus or other share of profits or assets or returns or agrees to return any capital to MSF Shareholders (or announces or recommends any of the foregoing); or
- (p) **(agreement)** agree to do any of the matters set out above.

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## **8 Exclusivity**

### **8.1 No existing discussions**

MSF represents and warrants that, other than the discussions with Mitr Phol in respect of the Takeover Bid, it is not currently in negotiations or discussions in respect of any Competing Transaction with any person (or has, as at the date of this agreement, ceased such discussions).

### **8.2 No-shop**

During the Exclusivity Period, MSF must ensure that neither it nor any of its Related Bodies Corporate or Representatives directly or indirectly:

- (a) solicits, invites, encourages or initiates any enquiries, negotiations or discussions; or
- (b) communicates any intention to do any of these things,

with a view to obtaining any offer, proposal or expression of interest from any person in relation to a Competing Transaction.

Nothing in this clause 8.2 prevents MSF from continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to the Takeover Bid or its business generally.

### **8.3 No-talk**

Subject to clause 8.7, during the Exclusivity Period, MSF must ensure that neither it nor any of its Related Bodies Corporate or Representatives:

- (a) negotiates or enters into; or
- (b) participates in negotiations or discussions with any other person regarding,

a Competing Transaction, even if that person's Competing Transaction was not directly or indirectly solicited, invited, facilitated, encouraged or initiated by MSF or any of its Related Bodies Corporate or Representatives or the person has publicly announced the Competing Transaction.

### **8.4 No due diligence**

Without limiting the general nature of clause 8.3, but subject to clause 8.7, during the Exclusivity Period, MSF must not without Mitr Phol's prior written consent:

- (a) solicit, invite, facilitate or encourage any party (other than Mitr Phol or its Representatives) to undertake due diligence investigations on MSF or

any of its Related Bodies Corporate when to do so would involve a breach of clause 8.2; or

- (b) make available to any person (other than to Mitr Phol or its Representatives) or permit any such person to receive any non-public information relating to MSF or any of its Related Bodies Corporate with a view to obtaining any offer, proposal or expression of interest from any person in relation to any Competing Transaction.

## **8.5 Notice of unsolicited approach**

During the Exclusivity Period, MSF must promptly inform Mitr Phol if it or any of its Related Bodies Corporate or Representatives:

- (a) receives any unsolicited approach with respect to any Competing Transaction which is or which is reasonably likely to develop into a Superior Proposal and must disclose to Mitr Phol the material details of the Competing Transaction, including details of the proposed bidder or acquirer;
- (b) receives any request for information relating to MSF or any of its Related Bodies Corporate or any of their businesses or operations or any request for access to the books or records of MSF or any of its Related Bodies Corporate, which MSF has reasonable grounds to suspect may relate to a current or future Competing Transaction; and
- (c) provides any information relating to MSF or any of its Related Bodies Corporate or any of their businesses or operations to any person in connection with or for the purposes of a current or future Competing Transaction.

## **8.6 Right to match Competing Transaction**

- (a) Even if MSF is permitted under clause 8.7 to respond to a bona fide Competing Transaction, MSF must not enter into any agreement, arrangement or understanding in relation to a Competing Transaction or announce a Competing Transaction publicly and must contractually prohibit the person or persons who are proposing the Competing Transaction from announcing or pursuing publicly the Competing Transaction in advance of the procedure under this clause 8.6 having been exhausted in accordance with its terms, unless:
  - (i) MSF gives Mitr Phol the notice referred to in clause 8.5 ("**Competing Transaction Notice**") in relation to the Competing Transaction;
  - (ii) MSF gives Mitr Phol at the same time as it gives Mitr Phol the Competing Transaction Notice any material confidential information concerning MSF's operations not previously provided to Mitr Phol and which was made available by any MSF Group member (or its Representatives) to the person or persons (including to its representatives) who are proposing the Competing Transaction the subject of the Competing Transaction Notice; and

- (iii) a period of three Business Days has elapsed from the date on which Mitr Phol receives the relevant Competing Transaction Notice.
- (b) If MSF gives a Competing Transaction Notice, Mitr Phol will have the right, but not the obligation, at any time until 5.00pm on the date which is three Business Days following receipt of the Competing Transaction Notice (being the same as the date referred to in clause 8.6(a)(iii)) to:
- (i) offer to vary the terms of the Offer; or
  - (ii) to propose any other transaction,
- which offer or proposal must be submitted to MSF in writing (each a "**Bidder Counterproposal**"), and if Mitr Phol does so, the MSF Board must review the Bidder Counterproposal in good faith to determine whether the Bidder Counterproposal is at least as favourable to MSF Shareholders than the relevant Competing Transaction taking into account all terms and conditions of both proposals.
- (c) If the MSF Board determines, in good faith and after having obtained written advice from its legal and financial advisers, that the Bidder Counterproposal is more favourable to MSF Shareholders than the relevant Competing Transaction, then:
- (a) MSF must make an announcement as soon as reasonably practicable recommending the Bidder Counterproposal, in the absence of a Superior Proposal, and the parties must pursue implementation of the Bidder Counterproposal in good faith; and
  - (b) MSF must not enter into any agreement, arrangement or understanding in relation to the relevant Competing Transaction or announce the relevant Competing Transaction publicly,
- despite anything else in this clause 8.6.
- (d) Nothing in this clause prevents MSF from doing the things contemplated by clauses 8.4(a) and 8.4(b) in connection with the bona fide facilitation of a Competing Transaction the subject of a Competing Transaction Notice.

## **8.7 Exceptions to no-talk**

Clauses 8.3, 8.4 and 8.5 do not apply to the extent that they restrict MSF or the MSF Board from taking or refusing to take any action with respect to a bona fide Competing Transaction (which was not solicited, invited, facilitated, encouraged or initiated by MSF in contravention of clause 8.2) provided that the MSF Board has determined, in good faith that:

- (a) after consultation with its legal and financial advisors, such a bona fide Competing Transaction could reasonably be considered to become a Superior Proposal; and
- (b) after receiving advice from its legal advisers and, if appropriate, from its financial advisers, that failing to respond to such a bona fide Competing Transaction, or notification of such bona fide Competing Transaction (as



applicable), would be reasonably likely to constitute a breach of the MSF Board's fiduciary or statutory obligations.

## **8.8 Legal advice**

Each of MSF and Mitr Phol acknowledges that it has received legal advice on this agreement and the operation of this clause 8.

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## **9 Break Fee**

### **9.1 Rationale**

MSF acknowledges and agrees, for the purposes of this clause 9 as follows.

- (a) Mitr Phol has required the inclusion of this clause 9, in the absence of which it would not have entered into this agreement or otherwise agreed to implement the Takeover Bid;
- (b) MSF and the MSF Board believe that the Takeover Bid will provide significant benefits to it and its members and that it is reasonable and appropriate that it agrees to the inclusion of this clause 9, in order to secure Mitr Phol's execution of this agreement and its agreement to implement the Takeover Bid;
- (c) the amount payable by MSF pursuant to clause 9.2 is an amount to compensate Mitr Phol for the following:
  - (i) reasonable advisory costs (including costs of Advisers other than success fees) relating to the Takeover Bid; and
  - (ii) reasonable out-of-pocket expenses relating to the Takeover Bid; and
- (d) MSF has received legal advice on the operation of this clause 9.

### **9.2 Payment of Break Fee**

MSF agrees to pay Mitr Phol the Break Fee if, at any time after making of the announcement referred to in clause 12, any of the following circumstances occur:

- (a) a Competing Transaction is announced during the Exclusivity Period and at any time during the Exclusivity Period or on or prior to the date six months after end of the Exclusivity Period the maker of the Competing Transaction or its associates acquires a Relevant Interest in more than 15% of MSF Shares;
- (b) any director of MSF does not recommend the Offer to MSF Shareholders or, having recommended it, withdraws his or her recommendation of the Takeover Bid unless:
  - (i) this agreement has already been terminated by MSF under clause 11.1(a) or 11.1(c) (for a breach by Mitr Phol); or
  - (ii) the Independent Expert determines that the Offer is not fair and is not reasonable; or

- (c) Mitr Phol terminates this agreement in accordance with clause 11.1(a) or clause 11.1(c).

### **9.3 No amount payable if Mitr Phol acquires Effective Control or terminates because of non-satisfaction of Bid Condition**

Notwithstanding the occurrence of any event under clause 9.2, no amount is payable under clause 9.2 if Mitr Phol:

- (a) acquires Effective Control; or
- (b) terminates this agreement because of the non-satisfaction of the Bid Condition.

### **9.4 Timing of payment**

The payment of the Break Fee to Mitr Phol as provided for in clause 9.2, must be made within five Business Days of receipt of a written demand from Mitr Phol. The demand may only be made after the occurrence of an event referred to in clause 9.2.

### **9.5 Survival**

Any accrued obligations under this clause survive termination of this agreement.

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## **10 Representations and warranties**

### **10.1 Mitr Phol representations and warranties**

Mitr Phol represents and warrants to MSF that as at the date of this agreement:

- (a) **(incorporation)** it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) **(execution)** the execution and delivery of this agreement by Mitr Phol has been properly authorised by all necessary corporate action of Mitr Phol;
- (c) **(corporate power)** it has full corporate power and lawful authority to execute and deliver this agreement and to perform or cause to be performed its obligations under this agreement;
- (d) **(no breach)** the execution, delivery and performance by Mitr Phol of this agreement will not:
  - (i) result in a breach of any provision of the constitution of Mitr Phol;
  - (ii) result in a breach of, or constitute a default under, any instrument to which Mitr Phol is a party or by which Mitr Phol is bound and which is material in the context of the transactions contemplated by this agreement; or
  - (iii) result in a breach of any order, judgment or decree of any court or governmental agency to which Mitr Phol is a party or by

which Mitr Phol is bound and which is material in the context of the transactions contemplated by this agreement;

- (e) **(not Insolvent)** Mitr Phol is solvent and no resolutions have been passed and no other step has been taken or legal proceedings commenced or threatened against it for its winding-up or dissolution or the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets; and
- (f) **(binding obligations)** (subject to the laws generally affecting creditors' rights and the principles of equity) this agreement constitutes legal valid and binding obligations on it.

## 10.2 Mitr Phol indemnity

Mitr Phol agrees with MSF to indemnify MSF and keep MSF indemnified against all claims liabilities and losses which it may suffer or incur by reason of any breach of any of the warranties in clause 10.1.

## 10.3 MSF representations and warranties

MSF represents and warrants to Mitr Phol that as at the date of this agreement and at all times until the end of the Offer Period:

- (a) **(incorporation)** it and its Subsidiaries are valid existing corporations registered under the laws of their place of incorporation;
- (b) **(execution)** the execution and delivery of this agreement by MSF has been properly authorised by all necessary corporate action of MSF;
- (c) **(corporate power)** it has full corporate power and lawful authority to execute and deliver this agreement and to consummate and perform or cause to be performed its obligations under this agreement in accordance with its terms;
- (d) **(no breach)** the execution, delivery and performance by MSF of this agreement will not:
  - (i) result in a breach of any provision of the constitution of MSF;
  - (ii) result in a breach of, or constitute a default under, any instrument to which MSF is a party or by which MSF is bound and which is material in the context of the transactions contemplated by this agreement; or
  - (iii) result in a breach of any order, judgment or decree of any court or governmental agency to which MSF is a party or by which MSF is bound and which is material in the context of the transactions contemplated by this agreement;
- (e) **(not bound by other contracts)** it is not bound by any contract which may restrict its right or ability to enter into or perform this agreement;
- (f) **(not Insolvent)** each member of the MSF Group is solvent and no resolutions have been passed and no other step has been taken or legal proceedings commenced or threatened against it for its winding-up or

- dissolution or the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets;
- (g) **(no regulatory action)** no regulatory action has been taken which would prevent, inhibit or otherwise have a Material Adverse Effect;
  - (h) **(compliance with law)** MSF has complied with the law in all material respects;
  - (i) **(continuous disclosure)** MSF is not in breach of its continuous disclosure obligations under the Corporations Act or the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure other than disclosed to Mitr Phol or its Representatives on or before the date of this agreement;
  - (j) **(no omission)** MSF is not aware of any act, omission, event or fact within its control that would result in one or more of the Offer Conditions not being satisfied or otherwise fulfilled;
  - (k) **(share capital)** there are 69,248,422 MSF Shares, 872,500 MSF Share Options and 222,649 MSF Performance Share Rights on issue as of the date of this agreement and the MSF Group has not issued, or agreed to issue, any other securities or instruments which may convert into MSF Shares or any other securities in MSF (other than under an MSF Employee or Executive Share Plan); and
  - (l) **(binding obligations)** (subject to laws generally affecting creditors' rights and the principles of equity) this agreement constitutes legal, valid and binding obligations on it.

#### **10.4 MSF indemnity**

MSF agrees with Mitr Phol to indemnify and keep Mitr Phol indemnified against all claims liabilities and losses which it may suffer or incur by reason of any breach of any of the warranties in clause 10.3.

#### **10.5 Survival of representations**

Each representation and warranty in clauses 10.1 and 10.3:

- (a) is severable;
- (b) will survive the termination of this agreement; and
- (c) is given with the intent that liability thereunder will not be confined to breaches which are discovered prior to the date of termination of this agreement.

#### **10.6 Survival of indemnities**

- (a) Each indemnity in this agreement:
  - (i) is severable;
  - (ii) is a continuing obligation;

- (iii) constitutes a separate and independent obligation of the party giving the indemnity from other obligations of that party under this agreement; and
  - (iv) survives termination of this agreement.
- (b) It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this agreement.

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## **11 Termination**

### **11.1 Termination rights**

This agreement may be terminated by either party by notice to the other party:

- (a) if the other party is in material breach of this agreement;
- (b) if Mitr Phol withdraws the Takeover Bid for any reason including non-satisfaction of an Offer Condition, excluding a withdrawal to facilitate a Bidder Counterproposal contemplated in clause 8.6, or allows the Takeover Bid to lapse;
- (c) if there is a breach of a representation or warranty contained in clause 10.1 or 10.3 (as the case may be) by the other party;
- (d) the Bid Condition has not been satisfied; or
- (e) if agreed to in writing by MSF and Mitr Phol.

### **11.2 Termination by Mitr Phol**

This agreement may be terminated by Mitr Phol by notice in writing to MSF if:

- (a) a Superior Proposal is made or publicly announced for MSF by a third party; or
- (b) any member of the board of directors of MSF does not recommend the Takeover Bid be accepted by MSF Shareholders or having recommended the Takeover Bid changes his or her recommendation in relation to the Takeover Bid.

### **11.3 Effect of termination**

If this agreement is terminated by another party under this clause 11:

- (a) each party will be released from its obligations under this agreement except its obligations under clauses 9, 13, 15 and 16.12;
- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this agreement; and
- (c) in all other respects, all future obligations of the parties under this agreement will immediately terminate and be of no further force or effect, including, without limitation, any further obligations in respect of the Takeover Bid.

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## **12 Public announcements**

### **12.1 Required disclosure**

Where a party is required by law, the Listing Rules or other regulatory requirement to make any announcement or make any disclosure relating to a matter the subject of the Takeover Bid, it may do so only after it has given the other party as much notice as reasonably practicable having regard to the relevant obligations of the disclosing party and has consulted to the extent reasonably practicable in the circumstances with the other party and its legal advisers.

### **12.2 Other announcements**

Subject to clauses 2.1 and 12.1, no party may make any public announcement or disclosure in connection with the Takeover Bid (including disclosure to a Regulatory Authority) other than in a form approved by the other party (acting reasonably). Each party will use all reasonable endeavours to provide such approval as soon as practicable.

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## **13 Confidential Information**

Each party acknowledges and agrees that it continues to be bound by the Mutual Confidentiality Agreement in respect of all information received by it from the other party on, before or after the date of this agreement.

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## **14 Notices and other communications**

### **14.1 Form - all communications**

Unless expressly stated otherwise in this agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this agreement must be:

- (a) in writing;
- (b) signed by the sender (if an individual) or an Authorised Officer of the sender; and
- (c) marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

### **14.2 Form - communications sent by email**

Communications sent by email need not be marked for attention in the way stated in clause 14.1. However, the email must state the first and last name of the sender.

Communications sent by email are taken to be signed by the named sender.

### **14.3 Delivery**

Communications must be:

- (a) left at the address set out or referred to in the Details;

- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details;
- (c) sent by fax to the fax number set out or referred to in the Details;
- (d) sent by email to the address set out or referred to in the Details; or
- (e) given in any other way permitted by law.

However, if the intended recipient has notified a changed address, fax number or email address, then communications must be to that address, fax number or email address.

#### **14.4 When effective**

Communications take effect from the time they are received or taken to be received under clause 14.5 (whichever happens first) unless a later time is specified.

#### **14.5 When taken to be received**

Communications are taken to be received:

- (a) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
- (c) if sent by email;
  - (i) when the sender receives an automated message confirming delivery; or
  - (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

#### **14.6 Receipt outside business hours**

Despite clauses 14.4 and 14.5, if communications are received or taken to be received under clause 14.5 after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

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## **15 Goods and services tax (GST)**

### **15.1 Consideration does not include GST**

The consideration specified in this agreement does not include any amount for GST.

## **15.2 Recovery of GST**

If a supply under this agreement is subject to GST, the recipient must pay to the supplier an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate.

## **15.3 Time of payment**

The additional amount is payable at the same time as the consideration for the supply is payable or is to be provided. However, the additional amount need not be paid until the supplier gives the recipient a Tax Invoice.

## **15.4 Adjustment of additional amount**

If the additional amount differs from the amount of GST payable by the supplier, the parties must adjust the additional amount.

## **15.5 Reimbursement**

If a party is entitled to be reimbursed or indemnified under this agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

## **15.6 Survival**

This clause will survive termination of this agreement.

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# **16 Miscellaneous**

## **16.1 Discretion in exercising rights**

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this agreement expressly states otherwise.

## **16.2 Partial exercising of rights**

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

## **16.3 No liability for loss**

A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this agreement.

## **16.4 Approvals and consents**

By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

## **16.5 Conflict of interest**

The parties' rights and remedies under this agreement may be exercised even if it involves a conflict of duty or a party has a personal interest in their exercise.



## **16.6 Remedies cumulative**

The rights and remedies in this agreement are in addition to other rights and remedies given by law independently of this agreement.

## **16.7 Variation and waiver**

A provision of this agreement or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

## **16.8 No merger**

The warranties, undertakings and indemnities in this agreement do not merge on completion of any transaction contemplated by this agreement.

## **16.9 Indemnities**

The indemnities in this agreement are continuing obligations, independent from the other obligations of the parties under this agreement and continue after this agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this agreement.

## **16.10 Further steps**

Each party agrees, at its own expense, to do anything the other party asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to bind the party and any other person intended to be bound under this agreement; or
- (b) to show whether the party is complying with this agreement.

## **16.11 Construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this agreement or any part of it.

## **16.12 Costs**

The parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this agreement and other related documentation except for stamp duty.

## **16.13 Stamp duty**

Mitr Phol agrees to pay all stamp duty (including fines and penalties) payable and assessed on this agreement or in respect of a transaction evidenced by this agreement.

## **16.14 Entire agreement**

This agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

### **16.15 Assignment**

A party may not assign or otherwise deal with its rights under this agreement or allow any interest in them to arise or be varied in each case, without the prior written consent of the other party.

### **16.16 No representation or reliance**

Each party acknowledges that:

- (a) 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) 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; and
- (c) clauses 16.16(a) and 16.16(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX.

### **16.17 Governing law**

This agreement is governed by the law in force in the place specified in the Details. Each party submits to the non-exclusive jurisdiction of the courts of that place.

### **16.18 Counterparts**

This agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

**EXECUTED** as an agreement.

# Takeover Implementation Agreement

## Schedule 1 - Timetable

| Date/Timing     | Event   |
|-----------------|---|
| 9 November 2011 | Announcement Date.  |
| T               | Bid Announcement Date   |
| T+14            | Mitr Phol provides an advanced draft Bidder's Statement to MSF.   |
| T+21            | Lodgement Date.<br>Date Mitr Phol lodges Bidder's Statement with ASIC and serves it on MSF and ASX.             |
| T+23            | Register Date.<br>Date set by Mitr Phol pursuant to section 633(3) of the Corporations Act.                     |
| T+28            | Offer Date.<br>Mitr Phol despatches the Bidder's Statement to MSF Shareholders.                                 |
| T+36            | MSF provides an advanced draft Target's Statement to Mitr Phol.   |
| T+43            | MSF lodges its Target's Statement with ASIC and ASX, serves it on Mitr Phol and despatches to MSF Shareholders. |
| T+70            | Offer Period ends<br>Unless extended in accordance with the Corporations Act.                                   |

# Takeover Implementation Agreement

## Schedule 2 - Offer Conditions

The Offer, and any contract resulting from the acceptance of the Offer, are subject to the following conditions:

- (a) **(50.1% minimum acceptance condition)** during, or at the end of, the Offer Period, the number of MSF Shares in which Mitr Phol and its associates together have Relevant Interests (disregarding any relevant interest that Mitr Phol has merely because of the operation of section 608(3) of the Corporations Act) is at least 50.1% (by number) of all the MSF Shares;
- (b) **(FIRB approval)** prior to the end of the Offer Period, either:
  - (i) Mitr Phol receives written advice from the Treasurer (or his delegate) that there are no objections under Australia's foreign investment policy to the Offer and such advice is either unconditional or, if conditional, on the basis of conditions that impose only non-material requirements; or
  - (ii) following notice of the Offer having been given by Mitr Phol to the Treasurer under the Foreign Acquisitions and Takeovers Act 1975 (Cwlth), the Treasurer has ceased to be empowered to make any order under Part II of that Act because of lapse of time;
- (c) **(Other Regulatory Approvals)** before the end of the Offer Period, all Regulatory Approvals (including the approval of the Bank Thailand in respect of the Offer and its financing) that are required by law or by any Regulatory Authority as are necessary to permit:
  - (i) the Offer to be lawfully made to, and accepted by, MSF Shareholders; and
  - (ii) any transaction contemplated by the Offer to be completed; and
  - (iii) the continued operation of the business of MSF and its Subsidiaries or of Mitr Phol and its Subsidiaries,

are granted, given, made or obtained on an unconditional basis, remain in full force and effect in all material respects, and do not become subject to any notice, intimation or indication of intention to revoke, suspend, restrict, modify or not renew the same. In each case on an unconditional basis or on the basis of conditions that impose only non-material requirements incidental to the approvals set out in this Offer Condition and, at the end of the Offer Period, all of those Regulatory Approvals remain in full force and effect in all material respects and are not subject to any notice or indication of intention to remove, suspend, restrict, modify or not renew those Regulatory Approvals;

- (d) **(No termination)** between the Announcement Date and the end of the Offer Period, there is no material breach by MSF of clause 7.3 of the Takeover Implementation Agreement;
- (e) **(no Prescribed Occurrence)** there not occurring a Prescribed Occurrence from the Announcement Date to the end of the Offer Period;
- (f) **(no Material Adverse Change)** there not occurring a Material Adverse Change in the period between the Announcement Date and the end of the Offer Period (each inclusive);
- (g) **(No actions of Regulatory Authorities)** between the Announcement Date and the end of the Offer Period:
  - (i) there is not in effect any preliminary or final decision, order or decree issued by a Regulatory Authority;
  - (ii) no action or investigation is announced, commenced or threatened by any Regulatory Authority; and
  - (iii) no application is made to any Regulatory Authority (other than by Mitr Phol or any of its Associates) or commenced by a Regulatory Authority, in consequence of or in connection with the Offer (other than application, decision or order made under, or relating to a breach of, Chapters 6, 6A, 6B or 6C of the Corporations Act or unacceptable circumstances for the purposes of the Corporations Act), which:
    - (iv) restrains or prohibits or impedes, or threatens to restrain, prohibit or impede, or otherwise materially adversely impacts on, the making of the Offer, the acquisition of MSF Shares by Mitr Phol under the Offer, the rights of Mitr Phol in respect of its capacity as a shareholder of MSF or the completion of any transaction contemplated by the Offer; or
    - (v) seeks to require the divestiture by Mitr Phol of any MSF Shares or any material assets of MSF or its Subsidiaries;
- (h) **(No untrue statements)** between the Announcement Date and the end of the Offer Period, Mitr Phol does not become aware that any document filed by or on behalf of MSF, with ASX or ASIC contains a statement which is incorrect or misleading in any material particular or from which there is a material omission; and
- (i) **(No change of control rights)** except as fairly disclosed in information provided by MSF to Mitr Phol or its Representatives, or is otherwise known to Mitr Phol or its Representatives prior to the Bid Announcement Date or otherwise disclosed in public filings by MSF with ASIC or provided to ASX prior to the Bid Announcement Date, between the Bid Announcement Date and the end of the Offer Period (each inclusive), as a result (directly or indirectly) of the acquisition or proposed acquisition of any MSF Shares by Mitr Phol, no person becomes entitled to exercise, exercises, purports to exercise or states an intention to exercise (whether or not that intention is stated to be a final or determined decision of that person), any rights under any provision of any agreement or other instrument to which MSF or any of its Subsidiaries is a party or by or to which MSF or any of its Subsidiaries or any of their assets is bound, which results, or could reasonably be expected to result in:

- (i) the termination or amendment of any material contractual relationship between any person and MSF or any of its Subsidiaries (for this purpose, amendment includes an amendment, alteration or change as a result of the operation of an agreement or instrument, whether or not that altered operation is provided for under the existing terms of the contract or agreement);
- (ii) a requirement to terminate, modify or dispose of, or agree to terminate, modify or dispose of, any material interest or asset of MSF or any of its Subsidiaries (or any arrangements relating to such an interest or asset);  
or
- (iii) the acceleration of the performance of, or adverse modification of, any obligation of MSF or any of its Subsidiaries under any material agreement, lease, instrument or other legal arrangement,

and, in each case, have a material adverse affect on the business, assets, financial condition, operations, reputation or prospects of the MSF Group.

Excluding the condition in clause (b) above, the above conditions are conditions subsequent and do not prevent a contract resulting from acceptance of the Offer from coming into effect but any breach or non-fulfilment of them entitles Mitr Phol to rescind any contracts resulting from acceptance of the Offer. The condition in clause (b) above is a condition precedent and any contract resulting from acceptance of an Offer will not become binding unless and until that condition is fulfilled.

# Takeover Implementation Agreement

## Schedule 3 - Prescribed Occurrences

- 1       **(Conversion)** MSF converts all or any of its shares into a larger or smaller number of shares.
- 2       **(Reduction of share capital)** MSF or any of its Subsidiaries resolves to reduce its share capital in any way or reclassifies, combines, splits or redeems or repurchases directly or indirectly any of its shares.
- 3       **(Buy-back)** MSF or any of its Subsidiaries:
  - (a)       enters into a buy-back agreement; or
  - (b)       resolves to approve the terms of a buy-back agreement under the Corporations Act.
- 4       **(Distribution)** MSF makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie).
- 5       **(Issuing or granting shares or options)** MSF or any of its Subsidiaries:
  - (a)       issues shares;
  - (b)       grants an option over its shares; or
  - (c)       agrees to make such an issue or grant such an option,

in each case to a person outside the MSF Group, unless in connection with an MSF Employee or Executive Share Plan in accordance with this agreement.
- 6       **(Securities or other instruments)** MSF or any of its Subsidiaries:
  - (a)       issues securities or other instruments convertible into shares or debt securities; or
  - (b)       agrees to issue securities or other instruments convertible into shares or debt securities,

in each case to a person outside the MSF Group, unless in connection with an MSF Employee or Executive Share Plan in accordance with this agreement.
- 7       **(Constitution)** MSF adopts a new constitution or modifies or repeals its constitution or a provision of it.
- 8       **(Disposals)** MSF or any of its Subsidiaries disposes, or agrees to dispose of the whole or a substantial part of the MSF Group's business or property.
- 9       **(Encumbrances)** other than in the ordinary course of business and consistent with past practice MSF or any of its Subsidiaries creates, or agrees to create, any Encumbrance over the whole or a substantial part of its business or property.

10      **(Insolvency)** MSF or any of its Related Bodies Corporate becomes Insolvent.



# Takeover Implementation Agreement

## Signing page

**DATED:** 9 November 2011

**SIGNED** by )

as authorised representative for **MITR** )  
**SIAM INTERNATIONAL PTE.** )  
**LTD**, in the presence of: )

..... )  
Signature of witness )

..... )  
Name of witness (block letters) )

..... )  
By executing this agreement the )  
signatory warrants that the signatory is )  
duly authorised to execute this )  
agreement on behalf of MITR SIAM )  
INTERNATIONAL PTE. LTD )

**SIGNED** by )

as authorised representative for **MITR** )  
**PHOL SUGAR CORP., LTD** in the )  
presence of: )

..... )  
Signature of witness )

..... )  
Name of witness (block letters) )

..... )  
By executing this agreement the )  
signatory warrants that the signatory is )  
duly authorised to execute this )  
agreement on behalf of MITR PHOL )  
SUGAR CORP., LTD )

**EXECUTED** by **MSF SUGAR** )  
**LIMITED** in accordance with section )  
127(1) of the Corporations Act 2001 )  
(Cwlth) by authority of its directors: )

..... )  
Signature of director )

..... )  
Name of director (block letters) )

..... )  
Signature of director/company )  
secretary\* )  
\*delete whichever is not applicable )  
..... )  
Name of director/company secretary\* )  
(block letters) )  
\*delete whichever is not applicable )

# Takeover Implementation Agreement

## Annexure A - Announcement

(separately attached)