

INVOCARE RECEIVES REVISED NON-BINDING INDICATIVE PROPOSAL FROM TPG

- **Revised conditional and non-binding proposal of \$13.00 per share¹ inclusive of a fully franked special dividend of up to approximately \$0.60 per share**
- **For InvoCare shareholders that can utilise franking credits, this represents implied aggregate value of up to approximately \$13.25 per share**
- **InvoCare has agreed to provide TPG the opportunity to undertake due diligence on an exclusive basis to deliver a binding proposal**
- **If the proposal becomes a binding transaction, the InvoCare Board unanimously intends to recommend it**

InvoCare Limited (IVC:ASX) ("InvoCare") advises that it has received a revised, conditional, non-binding and indicative proposal from TPG Capital Global ("TPG") to acquire all the issued capital of InvoCare for \$13.00 per share in cash by way of a scheme of arrangement ("Revised Proposal").

The Revised Proposal follows a period of engagement with TPG after TPG's unsolicited, conditional, non-binding and indicative proposal received on 7 March 2023 ("Initial Proposal") of \$12.65 per InvoCare share and following the announced withdrawal of the Initial Proposal on 24 April 2023. The Revised Proposal equates to an equity value of c.\$1.9bn and an enterprise value of c.\$2.2bn.²

The Revised Proposal of \$13.00 per share represents:

- a 45.3% premium to InvoCare's undisturbed closing share price of \$8.95 per share on 6 March 2023;
- a 39.2% premium to InvoCare's trading VWAP of \$9.34 per share³ following its FY22 results release on 27 February 2023 and prior to receipt of TPG's offer on 7 March 2023; and
- a 32.4% premium to InvoCare's one-month VWAP of \$9.82 per share on 6 March 2023.

Under the Revised Proposal, InvoCare is also permitted to pay a fully franked special dividend of a cash amount, currently expected to be approximately \$0.60 per InvoCare share prior to transaction implementation ("Special Dividend"). To the extent a Special Dividend is paid, the scheme consideration received by shareholders will be reduced by the cash amount of the Special Dividend. Eligible InvoCare shareholders who can fully utilise available franking credits are currently expected to benefit from franking credits of approximately \$0.25 per InvoCare share⁴. Based on current expectations, for InvoCare shareholders who are able to utilise franking credits, the Revised Proposal may be worth up to approximately \$13.25 per share.

¹ See comments below regarding quantum of scheme consideration if a Special Dividend is paid.

² Enterprise value calculated on a post ASSB16 basis including \$182.5m of leases based on the balance sheet dated 31 December 2022.

³ VWAPs based on cumulative IRESS trading data.

⁴ Assuming a Special Dividend of approximately \$0.60 per InvoCare share is paid

The amount of any Special Dividend payable will depend upon confirmation of the quantum of franking credits available at the time of transaction implementation. InvoCare intends to apply to the ATO for a Class Ruling and seek any other administrative guidance from the ATO which it considers appropriate, on the treatment of the scheme consideration and the Special Dividend in the hands of shareholders.

The Revised Proposal is an all-cash offer. However, TPG is also considering the suitability of an unlisted scrip option alternative for shareholders who elect to roll over a portion of their shareholding into unlisted equity in the privatised InvoCare.

The Revised Proposal is subject to a number of conditions including:

- TPG completing satisfactory due diligence;
- final approval from TPG's Investment Review Committee;
- entry into a scheme implementation agreement on acceptable terms; and
- a unanimous recommendation from the InvoCare Board of Directors that shareholders vote in favour of the transaction, in the absence of a superior proposal and subject to an Independent Expert concluding, and continuing to conclude, that the transaction is in the best interests of InvoCare's shareholders.

After carefully assessing the Revised Proposal and following TPG signing a Confidentiality and Process Agreement with customary terms (including a standstill) ("Confidentiality and Process Agreement"), the Board of InvoCare has agreed to grant TPG the opportunity to conduct due diligence for five weeks on an exclusive basis from the date the Process Agreement is signed. TPG also has an option to extend the exclusivity period for a further 2 weeks if, at the end of the initial period, TPG reconfirms the Revised Proposal and is continuing to work cooperatively with InvoCare towards entry into a scheme implementation deed. An extract of the key exclusivity terms within the Confidentiality and Process Agreement is attached at Appendix A.

If TPG provides a binding proposal at no less than \$13.00 per InvoCare share, the InvoCare Board unanimously intends to recommend that InvoCare shareholders vote in favour of the proposed scheme of arrangement in the absence of a superior proposal and subject to an independent expert concluding (and continuing to conclude) that the Revised Proposal is in the best interests of InvoCare shareholders.

InvoCare notes that there is no certainty at this stage that the Revised Proposal will result in a binding scheme implementation deed for consideration by shareholders.

InvoCare will continue to keep the market informed in relation to the Revised Proposal in accordance with its continuous disclosure obligations. In the interim, shareholders do not need to take any action.

InvoCare is being advised by Gresham, Goldman Sachs and Clayton Utz.

-ENDS-

This announcement has been authorised by the Board of InvoCare Limited.

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BACKGROUND

InvoCare, headquartered in Sydney, is a leading provider of funeral services in Australia, New Zealand, and Singapore, and operates private memorial parks and crematoria in Australia and New Zealand. It is also a leading provider of pet cremation services in Australia.

Appendix A - Extract of key exclusivity terms of Confidentiality and Process Agreement

1. Due diligence

1.1 Due diligence materials

During the Exclusivity Period, the Target agrees to use reasonable endeavours to facilitate the Bidder and its Representatives conducting due diligence in relation to the Target in respect of the information outlined in Addendum B to the NBIO and any other information reasonably requested by or on behalf of the Bidder.

1.2 Management presentations

During the Exclusivity Period, the Target will use reasonable endeavours to facilitate presentations by senior management of the Target Group on reasonable notice for the purposes of allowing the Bidder and its Representatives to assess the merits of the Transaction.

2. Negotiation of Transaction

2.1 Negotiation of Transaction

(a) The Bidder and the Target agree that, during the Exclusivity Period, they will negotiate in good faith an Implementation Deed and any other transaction documents required to implement the Transaction.

(b) The Bidder and the Target each acknowledge and agree that:

(i) the Transaction remains indicative and incomplete and subject to due diligence, investment committee and board approvals (as applicable) and negotiations between the parties;

(ii) this agreement is not intended to, and does not, impose any binding obligations on the parties to give effect to the Transaction; and

(iii) the Transaction will not become binding on the parties until such time as the Implementation Deed (and any other transaction document required to implement the Transaction) is duly executed by the parties.

2.2 Fundamental obligations

(a) The parties agree during the Exclusivity Period to commit all reasonably necessary resources (including management, financial, legal and other professional advisory resources) at their own cost to enable:

(i) the Bidder and its Representatives to complete the Bidder's due diligence investigations; and

(ii) the preparation, negotiation and finalisation of the Implementation Deed (and any other transaction documents required to implement the Transaction),

as expeditiously as possible.

(b) The Target must provide a first draft of the Implementation Deed as soon as practicable, and in any event, within 5 Business Days of the date of this agreement.

2.3 Intention to recommend

The Target represents and warrants to the Bidder that as at the date of this agreement, each of its directors has confirmed that he or she intends, upon entry into the Implementation Deed, to:

- (a) unanimously recommend to shareholders of the Target to vote; and
- (b) vote or procure that any ordinary shares in the Target in which they have a Relevant Interest are voted,

in favour of any scheme of arrangement in respect of which the consideration per ordinary share in the Target is equal to or greater than \$13.00 per share, less the value of any special dividend paid of up to approximately \$0.60 per share, in the absence of a Superior Proposal and subject to an independent expert concluding (and continuing to conclude) that the scheme of arrangement is in the best interests of shareholders of the Target.

2.4 Election notice

- (a) On or before the date that is 14 days after the start of the Standstill Period and every 7 days thereafter during the Exclusivity Period (each an **Election Date**), the Bidder must deliver a written notice confirming to the Target either that:
 - (i) the Bidder elects to continue to progress its due diligence in relation to the Target and confirms that its per share valuation of the Target (for the purposes of its proposal to acquire the Target as set out in the NBIO) remains at \$13.00 per share, less the value of any special dividend paid of up to approximately \$0.60 per share, and it is not seeking terms and conditions for its proposal that are less favourable to the Target and/or Target shareholders than those set out in the NBIO; or
 - (ii) the Bidder elects to no longer progress the Transaction.
- (b) If the notice given under clause 2.4(a) of this agreement contains an election in clause 2.4(a)(ii) or the Bidder fails to deliver a notice under clause 2.4(a) by the end of the applicable Election Date or the Bidder otherwise withdraws its proposal as set out in the NBIO, then the obligations of the Target under clauses 1, 2 and 3 will cease to apply with immediate effect (but without prejudice to the rights of the Bidder in respect of any prior breach of those clauses).

3. Exclusivity

3.1 No existing discussions

The Target represents and warrants to the Bidder that, as at the date of this agreement, it and the Target Related Persons are not involved in any negotiations or discussions, and have ceased any negotiations or discussions, in respect of any Competing Proposal with any person (other than, for the avoidance of doubt, the discussions with the Bidder and its Representatives in respect of a Transaction).

3.2 No shop

During the Exclusivity Period, the Target must not, and must ensure that each of the Target Related Persons does not, directly or indirectly:

- (a) solicit, invite, encourage or initiate (including by the provision of Non-public Information to any Third Party) any inquiry, expression of interest, offer, proposal or discussion by any person in relation to, or which could reasonably be expected to encourage or lead to the making of, or with a view to obtaining, a Competing Proposal; or
- (b) communicate to any Third Party an intention to do anything referred to in clause 3.2(a).

3.3 No talk

Subject to clause 3.6, during the Exclusivity Period, the Target must not, and must ensure that each of the Target Related Persons does not, directly or indirectly:

- (a) facilitate, participate in or continue any negotiations or discussions with any person with respect to any inquiry, expression of interest, offer, proposal, discussion, negotiation or other communication by any person in relation to, or which could reasonably be expected to encourage or lead to the making of, any Competing Proposal;
- (b) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding regarding any Competing Proposal; or
- (c) communicate to any person an intention to do anything referred to in clause 3.3(a) or 3.3(b).

3.4 No due diligence

Subject to clause 3.6, during the Exclusivity Period, the Target must not, and must ensure that each of the Target Related Persons does not, directly or indirectly:

- (a) disclose or otherwise provide or make available any Non-public Information to a Third Party in connection with, with a view to obtaining or which could reasonably be expected to encourage or lead to the formulation, development, finalisation, receipt or announcement of any Competing Proposal (including providing such information for the purposes of the conduct of due diligence investigations in respect of the Target Group), whether by that Third Party or another person; or
- (b) communicate to any person an intention to do anything referred to in clause 3.4(a),

provided that nothing in this clause 3.4 prevents or restricts the Target or any of the Target Related Persons from responding to a Third Party in respect of an enquiry, expression of interest, offer or proposal by that Third Party to make, or which may reasonably be expected to encourage or lead to the making of, any actual, proposed or potential Competing Proposal to merely (A) acknowledge receipt and/or (B) advise that Third Party that the Target is bound by the provisions of this clause 3.4 and is only able to engage in negotiations, discussions or other communications if the fiduciary out in clause 3.6 applies.

3.5 Notification of approaches

- (a) During the Exclusivity Period, the Target must as soon as reasonably practicable (and in any event, within 24 hours) notify the Bidder in writing if it, or any of the Target Related Persons, becomes aware of:
 - (i) any negotiations, discussions or other communications, or any other contact, with the Target or any of the Target Related Persons that relates to an actual or potential Competing Proposal, or that may reasonably be expected to lead to a Competing Proposal;
 - (ii) any approach or proposal made to, or received by, the Target or any of the Target Related Persons in connection with an actual or potential Competing Proposal, or that may reasonably be expected to lead to a Competing Proposal;
 - (iii) any request made by a Third Party to the Target or any of the Target Related Persons for any Non-public Information (other than where the Board reasonably believes that such request is in the ordinary course of

business and is not in connection with such Third Party formulating, developing or finalising a Competing Proposal); or

- (iv) provision by the Target or any of the Target Related Persons of any Non-public Information to any Third Party in connection with an actual or potential Competing Proposal, or that may reasonably be expected to lead to a Competing Proposal,

whether direct or indirect, solicited or unsolicited, and in writing or otherwise (each, a **Notifiable Proposal**). Such notice must include all material details of the Notifiable Proposal (including the price and form of consideration, proposed timing, any conditions precedent and the identity of any Third Party that made, and/or any Third Party involved in, the Notifiable Proposal) to the extent known by the Target and the Target Related Persons.

For the avoidance of doubt, nothing in this clause 3.5 obliges the Target to notify the Bidder of a Competing Proposal until after the Board has determined in accordance with clause 3.6 whether clauses 3.3 and 3.4 apply with respect to that Competing Proposal.

- (b) Any information given to the Bidder under this clause 3.5 will be subject to the confidentiality obligations in this agreement.

3.6 **Fiduciary out**

The restrictions in clauses 3.3 and 3.4 do not apply to the extent that they restrict the Target from taking or omitting to take any action with respect to a bona fide, actual Competing Proposal which was not solicited, invited, encouraged or initiated in contravention of clause 3.2, provided that the Board has determined:

- (a) after consultation with its financial advisers, that the Competing Proposal would reasonably be expected to lead to a Superior Proposal; and
- (b) after having received written advice from its financial and legal advisors that compliance with clauses 3.3 and 3.4 (as applicable) would, or would be reasonably likely to, constitute a breach of any of the fiduciary duties or statutory duties of any member of the Board.

3.7 **Extension of Exclusivity Period**

If, on the last day of the Initial Exclusivity Period, the Bidder:

- (a) confirms to the Target that its per share valuation of the Target (for the purposes of its proposal to acquire the Target as set out in the NBIO) remains at \$13.00 per share, less the value of any special dividend paid of up to approximately \$0.60 per share; and
- (b) is continuing to engage with the Target in good faith in relation to the Approved Purpose,

the Bidder may, by written notice to the Target, extend the Exclusivity Period such that it ends at 5.00pm (Sydney time) on the date falling 2 weeks after the last day of the Initial Exclusivity Period.

3.8 **Compliance with law**

If it is finally determined by a court of competent jurisdiction, or the Australian Takeovers Panel, or any other equivalent body, that the agreement by the parties under this clause 3 or any part of it:

- (a) constituted or constitutes, or would constitute, 'unacceptable circumstances' within the meaning of the Corporations Act; or
- (b) was or is, or would be, unlawful for any other reason,

then, to that extent (and only to that extent) the Board will not be obliged to comply with that part of this clause 3, the Target must not make or cause or permit to be made any application to a court, the Australian Takeovers Panel or other equivalent body for or in relation to a determination referred to in this clause 3.7.

3.9 Usual provision of information

Subject to the other provisions of this agreement, nothing in this clause 3 prevents the Target from:

- (a) providing any information to the Target Related Persons;
- (b) providing information to any government agency;
- (c) providing any information required to be provided by any applicable law; or
- (d) making presentations to, or responding to enquiries from, brokers, portfolio investors, analysts and other third parties, in the ordinary course of business.

4. Key Defined Terms

Competing Proposal means any proposal, offer, expression of interest, agreement, arrangement or transaction which, if entered into or completed substantially in accordance with its terms, would result in a Third Party (either alone or together with any Associates):

- (a) directly or indirectly acquiring or having the right to acquire:
 - (i) a Relevant Interest in;
 - (ii) a legal, beneficial or economic interest (including by way an equity swap, contract for difference or other derivative, or similar transaction or arrangement) in; or
 - (iii) control of,
20% or more of the shares in the Target;
- (b) directly or indirectly acquiring Control of the Target;
- (c) directly or indirectly acquiring or becoming the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or control of:
 - (i) all or a material part of the business conducted by the Target Group taken as a whole; or
 - (ii) any material assets of the Target Group taken as a whole;
- (d) otherwise directly or indirectly acquiring or merging with the Target; or
- (e) requiring the Target to abandon, or otherwise fail to proceed with, the Transaction,

whether by way of takeover bid, members' or creditors' scheme of arrangement, reverse takeover, shareholder approved acquisition, capital reduction, buy back, sale or purchase of shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement, recapitalisation, refinancing or other transaction or arrangement.

For the avoidance of doubt, each successive material modification or variation of any proposal, offer, expression of interest, agreement, arrangement or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.

Control (including the terms “Controlling”, “Controlled by” and “under common Control with”) means, with respect to any person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract or otherwise.

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

Data Room means the online electronic data room established and maintained by or on behalf of the Target through which the Bidder and its Representative will have access to information relating to the Target Group.

Exclusivity Period means the Initial Exclusivity Period, subject to any extension pursuant to clause 3.7.

Initial Exclusivity Period means the period:

- (a) starting on the date on this agreement; and
- (b) ending at 5.00pm (Sydney time) on the date that is 5 weeks after the date of this agreement.

NBIO means the revised non-binding indicative offer provided by or on behalf of the Bidder to the Target on or around the date of this agreement.

Representative of a party means:

- (a) any Related Entity of that party;
- (b) any director, officer or employee of that party or of a Related Entity of that party;
- (c) the Advisers retained by that party or a Related Entity of that party in connection with the Approved Purpose;
- (d) an actual or potential source of debt financing for the Transaction, provided that the Bidder must, as soon as practicable following receipt of a written request from the Target, notify the Target of the identity of any such persons (on an organisation rather than individual basis) who have been provided with Confidential Information;
- (e) an actual or potential source of equity financing for the Transaction (including an existing or prospective limited partner or investor in a fund, limited partnership or other collective investment vehicle that is or would be managed or advised by the Bidder or a Bidder Affiliate), other than a person that directly competes with the Target in Australia and/or New Zealand;

(f) any other person who the Target has agreed in writing shall be regarded as a "Representative" for the purposes of this agreement; and

(g) an Adviser of any person referred to in paragraphs (a) to (f) (inclusive),

in each case, who has a specific need to have access to the Confidential Information for the Approved Purpose.

Standstill Period means the period:

(a) starting on the date on which the Bidder and its Representatives are provided with access to the Data Room; and

(b) ending on the date that is 12 months after the date of this agreement.

Superior Proposal means a bona fide, written Competing Proposal in relation to the acquisition of more than 50% of issued securities of the Target which is received by the Target and which the Board determines, acting reasonably and in good faith and in order to satisfy what the Board considers to be its fiduciary or statutory duties (after having obtained written advice from the Target's external legal adviser and financial advisers):

(a) is reasonably capable of being valued and implemented; and

(b) would, if completed in accordance with its terms, be more favourable to the shareholders of the Target than the latest proposal provided by the Bidder or any of its Related Entities,

taking into account all aspects of the Competing Proposal, including the identity, reputation and financial condition of the person making the Competing Proposal, legal, regulatory and financial matters, certainty and any other matters affecting the probability of the relevant proposal being completed in accordance with its terms.

Target Affiliate means any person that directly or indirectly Controls, is Controlled by or is under common Control with the Target.

Target Related Person means:

(a) a member of the Target Group;

(b) a Target Affiliate; or

(c) a Representative of the Target.

Third Party means a person other than the Bidder or any of its Related Entities.

Transaction means a transaction recommended or agreed to by the board of directors of the Target pursuant to which the Bidder or its nominee(s) acquires or offers to acquire all of the shares in the Target.