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**BIDENERGY LIMITED**  
**ACN 131 445 335**

**NOTICE OF GENERAL MEETING**

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**A general meeting of the Company will be held at the offices of RSM Australia Partners located at 21/55 Collins Street, Melbourne, Victoria 3000, on 17 July 2017 at 10:00am (AEST).**

*This Notice should be read in its entirety. If Shareholders are in doubt as to how they should vote, they should seek advice from their accountant, solicitor or other professional adviser prior to voting.*

*Should you wish to discuss any matter please do not hesitate to contact the Company Secretary by telephone on +61 8 9389 3110 or email at [info@bidenergy.com](mailto:info@bidenergy.com)*

**Shareholders are encouraged to attend the meeting in person or vote by lodging the proxy form attached to this Notice.**

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**BIDENERGY LIMITED**  
**ACN 131 445 335**

## **NOTICE OF GENERAL MEETING**

Notice is hereby given that a general meeting of shareholders of BidEnergy Limited (**Company**) will be held at **10:00am (AEST) on 17 July 2017 at the offices of RSM Australia Partners located at 21/55 Collins Street, Melbourne, Victoria 3000 (Meeting)**.

The Explanatory Memorandum provides additional information on matters to be considered at the Meeting. The Explanatory Memorandum and the Proxy Form form part of this Notice.

Terms and abbreviations used in this Notice (including the Explanatory Memorandum) are defined in Schedule 1.

### **VOTING INFORMATION**

All Shareholders are invited and encouraged to participate in the Meeting.

#### **Voting eligibility**

The Directors have determined pursuant to regulation 7.11.37 of the *Corporations Regulations 2001* (Cth) that the persons eligible to vote at the Meeting are those who are registered as Shareholders on 15 July 2017 at 7:00pm (AEST).

#### **Voting in person**

To vote in person, attend the Meeting at the time, date and place set out above.

#### **Voting by proxy**

A Proxy Form is attached to the Notice. This is to be used by Shareholders if they wish to appoint a representative (a 'proxy') to vote in their place.

To vote by proxy, please complete and return the enclosed Proxy Form. Proxy Forms must be received by the Company no later than 7:00pm (AEST) on 14 July 2017, being at least 48 hours before the Meeting. Returning the Proxy Form will not preclude a Shareholder from attending and voting at the Meeting in person.

Please note that:

- (a) a member of the Company entitled to attend and vote at the Meeting is entitled to appoint a proxy;
- (b) a proxy need not be a member of the Company; and
- (c) a member of the Company entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise. Where the proportion or number is not specified, each proxy may exercise half of the votes.

The Proxy Form provides further details on appointing proxies and lodging Proxy Forms.

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## AGENDA

### 1. RESOLUTION 1 - ISSUE OF SHARES TO MR PHILIP ADAMS

To consider and, if thought fit, to pass with or without amendment, as an ordinary resolution the following:

*"That, pursuant to and in accordance with Listing Rule 10.11 and for all other purposes, Shareholders approve the issue of up to 19,000,000 Shares to Mr Philip Adams (or his nominee) on the terms and conditions set out in the Explanatory Memorandum."*

#### **Voting Exclusion**

The Company will disregard any votes cast on this Resolution by Philip Adams (or his nominee) and any of their associates. However, the Company will not disregard a vote if it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the Proxy Form or it is cast by the Chairman as proxy for a person who is entitled to vote, in accordance with a direction on the Proxy Form to vote as the proxy decides.

In accordance with section 250BD of the Corporations Act, a vote on this Resolution must not be cast by a person appointed as a proxy, where that person is either a member of the Key Management Personnel or a Closely Related Party of such member. However, a vote may be cast by such person if the vote is not cast on behalf of a person who is otherwise excluded from voting, and

- (a) the person is appointed as a proxy and the appointment specifies how the proxy is to vote; or
- (a) the person appointed as proxy is the Chairman and the appointment does not specify how the Chairman is to vote but expressly authorises the Chairman to exercise the proxy even if the Resolution is connected with the remuneration of a member of the Key Management Personnel.

### 2. RESOLUTION 2 - APPROVAL OF POTENTIAL TERMINATION BENEFITS FOR MR PHILIP ADAMS

To consider and, if thought fit, to pass the following as an ordinary resolution:

*'That, for the purposes of section 200B and section 200E of the Corporations Act 2001 (Cth) and Listing Rule 10.19, and for all other purposes, Shareholders approve the provision of the termination benefits to the Managing Director, Mr Philip Adams, in connection with Mr Adams ceasing to hold office as Managing Director, further details of which are set out in the Explanatory Memorandum.'*

#### **Voting Exclusion**

The Company will disregard any votes cast on this Resolution by Philip Adams and any of his associates. However, the Company will not disregard a vote if it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the Proxy Form or it is cast by the Chairman as proxy for a person who is entitled to vote, in accordance with a direction on the Proxy Form to vote as the proxy decides.

In accordance with section 250BD of the Corporations Act, a vote on this Resolution must not be cast by a person appointed as a proxy, where that person is either a member of the Key Management Personnel or a Closely Related Party of such member. However, a vote may be cast by such person if the vote is not cast on behalf of a person who is otherwise excluded from voting, and

- (a) the person is appointed as a proxy and the appointment specifies how the proxy is to vote; or
- (b) the person appointed as proxy is the Chairman and the appointment does not specify how the Chairman is to vote but expressly authorises the Chairman to exercise the proxy even if the Resolution is connected with the remuneration of a member of the Key Management Personnel.

**3. RESOLUTION 3 - RATIFICATION OF REALWINWIN CONSIDERATION SHARES AND OPTIONS**

To consider and, if thought fit, to pass with or without amendment, as an ordinary resolution the following:

*"That, pursuant to and in accordance with Listing Rule 7.4 and for all other purposes, Shareholders ratify the prior issue of 8,682,331 Shares and 3,858,814 Options to RealWinWin, Inc (and its nominees) issued in connection with the acquisition of the business of RealWinWin on the terms and conditions set out in the Explanatory Memorandum."*

**Voting Exclusion**

The Company will disregard any votes cast on this Resolution by RealWinWin, Inc (and any of its nominees that participated in the issue) and any of their associates. However, the Company will not disregard a vote if it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the Proxy Form or it is cast by the Chairman as proxy for a person who is entitled to vote, in accordance with a direction on the Proxy Form to vote as the proxy decides.

**4. RESOLUTION 4 - APPROVAL OF REALWINWIN EARN-OUT CONSIDERATION SHARES**

To consider and, if thought fit, to pass with or without amendment, as an ordinary resolution the following:

*"That, pursuant to and in accordance with Listing Rule 7.1 and for all other purposes, Shareholders approve the issue of up to 35,458,855 Shares to RealWinWin, Inc (and its nominees) on the terms and conditions in the Explanatory Memorandum."*

**Voting Exclusion**

The Company will disregard any votes cast on this Resolution by RealWinWin, Inc (and its nominees) and a person who might obtain a benefit if this Resolution is passed, except a benefit solely in the capacity of a holder of Shares, and any associate of those persons. However, the Company will not disregard a vote if it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the Proxy Form or it is cast by the Chairman as proxy for a person who is entitled to vote, in accordance with a direction on the Proxy Form to vote as the proxy decides.

Dated: 14 June 2017

By order of the Board



**Ms Erlyn Dale**  
Company Secretary

**EXPLANATORY MEMORANDUM**

**1. RESOLUTION 1 - ISSUE OF SHARES TO PHILIP ADAMS**

**1.1 General**

In accordance with Listing Rule 10.11, Shareholder approval is required for the issue of Shares to a related party. Mr Philip Adams is a related party of the Company by virtue of his position as Managing Director of the Company.

The Company seeks to issue up to 19,000,000 Shares to Mr Philip Adams as part of Mr Adams' total remuneration package to appropriately incentivise and motivate him in his role as Managing Director.

As Shareholder approval is sought under Listing Rule 10.11, approval under Listing Rule 7.1 is not required, in accordance with exception 14 of Listing Rule 7.2.

Resolution 1 is an ordinary resolution.

The Chairman intends to exercise all available proxies in favour of Resolution 1.

If the Chairman is appointed as your proxy and you have not specified the way the Chairman is to vote on Resolution 1, by signing and returning the Proxy Form, you are giving your express authorisation to allow the Chairman to vote the proxy in accordance with the Chairman's intention, even though the Resolution is connected directly or indirectly with the remuneration of a member of the Key Management Personnel.

**1.2 Section 208 of Corporations Act**

In accordance with section 208 of the Corporations Act, to give a financial benefit to a related party, the Company must obtain Shareholder approval unless the giving of the financial benefit falls within an exception in sections 210 to 216 of the Corporations Act.

Mr Philip Adams is a related party of the Company by virtue of his position as a director of the Company.

The Board has formed the view that Shareholder approval under section 208 of the Corporations Act is not required for the proposed issue of Shares under this Resolution on the basis that it is considered by the Board to be reasonable remuneration following consultation with an independent remuneration consultant. Accordingly, the exception set out in section 211 of the Corporations Act applies.

**1.3 Listing Rule 10.11**

In accordance with Listing Rule 10.11, the Company must not issue securities to a related party of the Company unless it obtains Shareholder approval.

Pursuant to Listing Rule 7.2, exception 14, the effect of passing Resolution 1 will be to allow the Company to issue up to 19,000,000 Shares to Mr Philip Adams (or his nominee) without using up the Company's 15% placement capacity under Listing Rule 7.1.

## 1.4 Specific information required by Listing Rule 10.13

Information must be provided to Shareholders for the purposes of obtaining Shareholder approval as follows:

- (a) The Shares will be issued to Mr Philip Adams (or his nominee).
- (b) The maximum number of Shares to be issued to Mr Philip Adams (or his nominee) under this Resolution is 19,000,000.
- (c) The Shares will be issued no later than one month after the date of the Meeting (or such longer period of time as ASX may in its discretion allow).
- (d) The Shares will be issued for nil cash consideration.
- (e) The Shares will rank equally in all respects with the Company's existing Shares on issue, except that they will be subject to voluntary escrow restrictions for a period of two years from the date of issue.
- (f) A voting exclusion statement is included in the Notice for Resolution 1.
- (g) No funds will be raised by the issue of the Shares as they are being issued for nil cash consideration to provide an equity-based component to the remuneration package offered to Mr Philip Adams to appropriately incentivise and motivate him in his role as Managing Director of the Company.

## 1.5 Directors' recommendation

The Directors (other than Mr Philip Adams) recommend that Shareholders vote in favour of Resolution 1.

## 2. RESOLUTION 2 - APPROVAL OF POTENTIAL TERMINATION BENEFITS FOR MR PHILIP ADAMS

Resolution 2 seeks Shareholder approval to provide certain benefits to Mr Philip Adams, Managing Director of the Company, which he may be eligible to receive on cessation of his employment in accordance with the terms of his engagement as Managing Director of the Company (**Executive Service Agreement**) (the terms of which were announced to ASX on 1 May 2017). Specifically, the Company is seeking approval to provide Mr Adams with payment of the equivalent of 12 months' pay, partially or totally in lieu of notice of termination of the Executive Service Agreement, should this occur in the future. Resolution 2 does not propose or allow any variation to the terms of the existing Executive Employment Contract.

Under sections 200B and 200E of the Corporations Act, a company may only give a person a benefit in connection with their ceasing to hold a managerial or executive office in the company or a related body corporate if it is approved by shareholders or an exemption applies (for example, where the benefit does not exceed the payment limits set out in the Corporations Act, including where a benefit does not exceed one year's average base salary).

The term 'benefit' in sections 200B and 200E of the Corporations Act is open to a wide interpretation and would include the requirement under the Executive Service Agreement that the Company may elect to provide Mr Adams with payment of the equivalent of 12 months' pay, partially or totally in lieu of notice of termination.

A payment will be exempt from the requirement to obtain Shareholder approval in circumstances where, for example, the amount of the payment and the value of any other benefits is less than the payment limit set by sections 200F and 200G of the Corporations Act. The payment limit is

however calculated by reference to the person's annual 'base salary' and the period of time that the person holds the relevant office, which cannot at this point be determined. Mr Adams' appointment as Managing Director became effective on 1 May 2017.

Although there is no current intention by the Company to terminate Mr Adams' employment within the first 12 months, nor does Mr Adams have any current intention to cease his employment within the first 12 months, the Board considers it prudent to obtain Shareholder approval under section 200B of the Corporations Act for any termination benefits provided to Mr Adams under the Executive Employment Contract in case those benefits are not exempt under the Corporations Act.

Listing Rule 10.19 provides that without the approval of shareholders, an entity must ensure that no officer of the entity or any of its child entities will be, or may be, entitled to termination benefits if the value of those benefits and the termination benefits that may become payable to all officers together exceed 5% of the equity interests of the entity as set out in the latest accounts given to ASX under the Listing Rules.

Using the last accounts given to ASX under the Listing Rules, the equity interests of the Company calculated in accordance with the Listing Rules are approximately \$7,158,164. 5% of this amount is approximately \$357,908. As noted above, Mr Adams may be eligible to receive up to the equivalent of 12 months' pay (being US\$270,000 which is approximately A\$360,000 using an exchange rate of 0.75) on cessation of his employment in lieu of notice of termination. As the value of the termination benefit payable to Mr Adams may exceed 5% of the Company's current equity interests, the Company seeks shareholder approval pursuant to Resolution 2 to ensure that Mr Adams will be entitled to such termination benefits in accordance with the terms of his Executive Service Agreement for the purpose of Listing Rule 10.19.

The Directors (other than Mr Philip Adams) recommend that Shareholders vote in favour of Resolution 2.

Resolution 2 is an ordinary resolution.

If the Chairman is appointed as your proxy and you have not specified the way the Chairman is to vote on Resolution 2, by signing and returning the Proxy Form, you are considered to have provided the Chairman with an express authorisation for the Chairman to vote the proxy in accordance with the Chairman's intention, even though the Resolution is connected directly or indirectly with the remuneration of a member of the Key Management Personnel.

### **3. RESOLUTION 3 - RATIFICATION OF REALWINWIN CONSIDERATION SHARES AND OPTIONS**

#### **3.1 Background relevant to Resolutions 3 and 4**

On 24 November 2016, the Company announced that it, together with its wholly owned subsidiary, BidEnergy, Inc. (**BID USA**) had entered into an Asset Purchase Agreement (**Agreement**) with RealWinWin, Inc. (**Vendor**) to acquire the rebate capture business, RealWinWin (**RWW**), which included customer goodwill, intellectual property, software systems, bank accounts and accounts receivable as well as certain accounts payable and other mutually agreed liabilities (**Acquisition**).

RWW is an established US-based business that provides rebate capture services to large, multi-site businesses in the US including national retail and retail service chains as well as Fortune 500 organisations. In the US, utilities incentivise companies to invest in energy efficiency measures by providing a rebate after the measure is implemented and inspected. Each utility has its own rules, process and paperwork, so for a company investing in efficiency measures across a large portfolio of sites in different geographies, the scope and complexity of understanding each applicable utility's rules and processes can be daunting. RWW offers a service to process the

rebate on behalf of the customer and generates revenue from its customers by taking a portion of the rebates it recovers.

In line with the Company's US expansion strategy, the Acquisition has provided the Company with a significant opportunity to accelerate growth in the US market by leveraging RWW's complementary customer base and established infrastructure to market and upsell the Company's platform subscription services.

The consideration payable to the Vendor and its nominees under the terms of the Acquisition is as follows:

a) **Upfront Consideration** comprised of:

- (i) US\$220,000 cash paid upon settlement of the Acquisition on 24 November 2016 (**Settlement**);
- (ii) 8,682,331 Shares (**Upfront Shares**) (6,752,924 of which were issued upon Settlement and 1,929,407 of which were issued on 13 January 2017). The Upfront Shares had a deemed issue price of A\$0.07 per Share, being equal to the volume weighted average price (**VWAP**) of Shares traded on the ASX during the 5-day period immediately prior to Settlement and representing a total value of US\$450,000 on the date of issue; and
- (iii) 3,858,814 unlisted options exercisable at A\$0.07 from 24 November 2017 until the expiry date of 24 November 2021 (**Upfront Options**) issued upon Settlement. The full terms and conditions of the Upfront Options are set out in Schedule 2.

The Upfront Shares and Upfront Options are subject to voluntary escrow restrictions for a period of 12 months from the date of issue.

b) **Earn-Out Consideration** which is subject to the achievement of rebate revenue targets to be met by RWW and is to be calculated with reference to the Annual Contract Value of the Company's platform subscription services sold by RWW employees to existing and future customers of the RWW business.

The Earn-Out Consideration is to be calculated over two consecutive terms, being:

- (i) From 24 November 2016 to 31 December 2017 (**Earn-Out Period 1**), with Earn-Out Consideration payable no later than 31 March 2018; and
- (ii) From 1 January 2018 to 31 December 2018 (**Earn-Out Period 2**), with Earn-Out Consideration payable no later than 31 March 2019,

(each an **Earn-Out Period**).

The Vendor and its nominees will become entitled to the payment of Earn-Out Consideration if the rebate capture revenue generated by RWW exceeds US\$1.3 million in any Earn-Out Period. Earn-Out Consideration is to be satisfied firstly by the issue of Shares (**Earn-Out Shares**) The number of Earn-Out Shares payable for any one Earn-Out Period will be calculated as:

*Annual Contract Value of BidEnergy products sold by RWW employees (in US\$)*

divided by:

*The higher of A\$0.07 and the VWAP of Shares traded on the ASX during the 5-day period immediately prior to the public release of the Company's 31 December*

*2017 and 31 December 2018 financial results for Earn-Out Period 1 and Earn-Out Period 2 respectively.*

If the total number of Upfront Shares, Upfront Options and Earn-Out Shares exceeds 48,000,000, the balance of any Earn-Out Shares may be issued by the Company either in full or part in its absolute discretion (subject to prior shareholder approval).

Given the prior issue of 8,682,331 Upfront Shares and 3,858,814 Upfront Options, the maximum number of Earn-Out Shares that the Company is obliged to issue under the Agreement is 35,458,855 and any further Earn-Out Shares will be at the Company's discretion and will either be issued under the Company's 15% capacity or the Company will seek shareholder approval for the issue of those Shares.

If a shortfall in the Earn-Out Consideration remains after issuing the Earn-Out Shares, the Company may satisfy the shortfall by the payment of an equivalent cash amount. If the amount to be paid in cash exceeds US\$100,000 in any Earn-Out Period, the Company may issue a promissory note for the Earn-Out Consideration amount in excess of US\$100,000, which will be repayable two years after the date of issue and will accrue interest at the US Prime Rate.

An example of the practical application of the Earn-Out Consideration is set out in Schedule 3.

Earn-Out Shares are subject to voluntary escrow restrictions for a period of 12 months from the date of issue.

Neither the Vendor nor any of its nominees are related parties or an associate of a related party of the Company.

Since completion of the Acquisition, the business of RWW has been successfully integrated into the BidEnergy group and continues to demonstrate its commercial and strategic value through growth in its underlying rebate revenue capture business and the generation of leads and cross-selling opportunities for the Company's platform subscription services.

### **3.2 ASX Listing Rule 7.1 & 7.4**

In accordance with Listing Rule 7.1, the Company must not, subject to specified exceptions, issue or agree to issue more securities during any 12 month period than that amount which represents 15% of the number of fully paid ordinary securities on issue at the commencement of that 12 month period.

Listing Rule 7.4 provides that where a company in general meeting ratifies the previous issue of securities made pursuant to Listing Rule 7.1 (and provided that the previous issue did not breach Listing Rule 7.1) those securities will be deemed to have been made with Shareholder approval for the purpose of Listing Rule 7.1.

Where a company obtains Shareholder approval under Listing Rule 7.1 and 7.4, the effect of that approval is to allow the company to issue the securities the subject of that approval during the period of 3 months after the Meeting (or such longer period of time as ASX may in its discretion allow) without using the company's 15% annual placement capacity.

The Company confirms that the issue of the Upfront Shares and the Upfront Options did not breach Listing Rule 7.1.

### **3.3 Information regarding Resolution 3**

Resolution 3 seeks Shareholder ratification pursuant to Listing Rule 7.4 for the issue of 8,682,331 Upfront Shares and 3,858,814 Upfront Options to the Vendor (and its nominees) as Upfront Consideration for the Acquisition.

The effect of passing Resolution 3 will be to allow the Company to issue securities in the future up to the 15% annual placement capacity set out in Listing Rule 7.1, without obtaining prior Shareholder approval.

Resolution 3 is an ordinary resolution.

The Chairman intends to exercise all available proxies in favour of Resolution 3.

### **3.4 Specific information required by Listing Rule 7.5**

In accordance with Listing Rule 7.5, information is provided in relation to the prior issue as follows:

- (a) A total of 8,682,331 Upfront Shares and 3,858,814 Upfront Options were issued to the Vendor (RealWinWin, Inc.) and its nominees, of which 6,752,924 Upfront Shares and 3,858,814 Upfront Options were issued on 24 November 2016 and the remaining 1,929,407 Upfront Shares were issued on 13 January 2017.
- (b) The Upfront Shares and Upfront Options were issued as part consideration for the Acquisition as noted in Section 3.1.
- (c) The Upfront Shares are subject to voluntary escrow restrictions for a period of 12 months from the date of issue and were otherwise issued on the same terms and conditions as the Company's existing Shares. The Upfront Options were issued on the terms and conditions set out in Schedule 2 of this Notice and are subject to voluntary escrow restrictions for a period of 12 months from the date of issue.
- (d) No funds were raised from this issue as the Upfront Shares and Upfront Options were issued as part consideration for the Acquisition.
- (e) A voting exclusion statement is included in the Notice for Resolution 3.

### **3.5 Directors' Recommendation**

The Directors recommend that Shareholders vote in favour of Resolution 3.

## **4. RESOLUTION 4 - APPROVAL OF REALWINWIN EARN-OUT SHARES**

### **4.1 Information regarding Resolution 4**

Resolution 4 seeks Shareholder approval under Listing Rule 7.1 for the issue of up to 35,458,855 Earn-Out Shares to the Vendor and its nominees in satisfaction of the Earn-Out Consideration component to the Acquisition.

The maximum number of Earn-Out Shares to be issued in accordance with Resolution 4 is 35,458,855. If, pursuant to the Agreement, the number of Earn-Out Shares payable exceeds 35,458,855, the Company will, in its discretion, either:

- (a) issue Shares (with further prior shareholder approval); or

- (b) satisfy the remaining Earn-Out Consideration with a combination of cash and promissory notes (as applicable pursuant to the Agreement) to the Vendor and its nominees.

Refer to Section 3.1 for further details in respect to the Acquisition, and specifically the Earn-Out Shares to be issued under the Agreement.

Refer to Section 3.2 for a summary of Listing Rule 7.1.

The effect of Resolution 4 will be to allow the Directors to issue the Earn-Out Shares without using the Company's 15% annual placement capacity.

The Company has obtained a waiver of Listing Rule 7.3.2 from ASX to allow the Company to permit Resolution 4 for the issue up to 35,458,855 Earn-Out Shares not to state that the Earn-Out Shares will be issued no later than 3 months after the date of the Meeting on the following conditions:

- (a) the Earn-Out Shares must be issued no later than 31 March 2019, subject to shareholder approval having been obtained;
- (b) for any annual reporting period during which any of the Earn-Out Shares have been issued or any of them remain to be issued, the Company's annual report sets out in detail the basis on which the Earn-Out Shares may be issued;
- (c) in any half year or quarterly report for a period during which any of the Earn-Out Shares have been issued or remain to be issued, the Company must include a summary statement of the number of Earn-Out Shares issued during the reporting period, and the number of Earn-Out Shares that remain to be issued; and
- (d) the terms of the waiver are immediately disclosed to the market and in the notice of meeting pursuant to which approval of the Earn-Out Shares is being obtained.

Resolution 4 is an ordinary resolution.

The Chairman intends to exercise all available proxies in favour of Resolution 4.

#### 4.2 Specific information required by Listing Rule 7.3

In accordance with Listing Rule 7.3, information is provided in relation to Resolution 4 as follows:

- (a) The maximum number of Earn-Out Shares to be issued is 35,458,855.
- (b) The Company has obtained a waiver of Listing Rule 7.3.2 from ASX in respect of the Earn-Out Shares to be issued under Listing Rule 7.1 to allow the Company to issue those Shares upon the satisfaction of the relevant rebate revenue targets by RWW which will occur later than three months from the date of Shareholder approval. The issue of the Earn-Out Shares will occur progressively as follows:
  - (i) where any Earn-Out Shares are payable in respect of rebate revenue targets met during the period from 24 November 2016 to 31 December 2017, the Earn-Out Shares will be issued no later than 31 March 2018 (**Earn-Out Period 1**); and
  - (ii) where any Earn-Out Shares are payable in respect of rebate revenue targets met during the period from 1 January 2018 to 31 December 2018,

the Earn-Out Shares will be issued no later than 31 March 2019 (**Earn-Out Period 2**).

- (c) No cash consideration will be payable for the Earn-Out Shares. However, for the purposes of determining the number of Earn-Out Shares to be issued, the deemed issue price of any Earn-Out Shares will be the higher of A\$0.07 and the VWAP of Shares traded on the ASX during the 5-day period immediately prior to the public release of the Company's 31 December 2017 and 31 December 2018 financial results for Earn-Out Period 1 and Earn-Out Period 2 respectively. Therefore, the minimum deemed issue price is A\$0.07.
- (d) The Earn-Out Shares will be issued to the Vendor (RealWinWin, Inc) and its nominees, none of which will be a related party or an associate of a related party of the Company.
- (e) The Earn-Out Shares will be fully paid ordinary shares in the capital of the Company. The Earn-Out Shares will be subject to voluntary escrow restrictions for a period of 12 months from the date of issue and will otherwise be issued on the same terms and conditions as the Company's existing Shares and will rank equally in all respects with the Company's existing Shares on issue.
- (f) No funds will be raised from this issue as the Earn-Out Shares will be issued in satisfaction of the Earn-Out Consideration component of the Acquisition.
- (g) A voting exclusion statement is included in the Notice for Resolution 4.

#### **4.3 Directors' Recommendation**

The Directors recommend that Shareholders vote in favour of Resolution 4.

## SCHEDULE 1: DEFINITIONS

In the Notice, unless the context otherwise requires:

**A\$** means Australian Dollars.

**AEST** means Australian Eastern Standard Time.

**ASX** means ASX Limited (ACN 008 624 691) and, where the context permits, the Australian Securities Exchange operated by ASX.

**Board** means the board of Directors.

**Chairman** means the person appointed to chair the Meeting, or any part of the Meeting, convened by the Notice.

**Closely Related Party** means:

- (a) a spouse or child of the member; or
- (b) has the meaning given in section 9 of the Corporations Act.

**Company** or **BidEnergy** means BidEnergy Limited (ACN 131 445 335).

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

**Director** means a director of the Company.

**Earn-Out Shares** has the meaning given in Section 3.1.

**Explanatory Memorandum** means the explanatory memorandum which forms part of the Notice.

**Group Company** means any one of the Company or a Related Body Corporate.

**Key Management Personnel** means persons having authority and responsibility for planning, directing and controlling the activities of the Company, directly or indirectly, including any Director (whether executive or otherwise) of the Company.

**Listing Rules** means the listing rules of ASX.

**Meeting** has the meaning in the introductory paragraph of the Notice.

**Notice** means the notice of meeting which comprises of the notice, agenda, Explanatory Memorandum and Proxy Form.

**Option** means an option which entitles the holder to subscribe for one Share.

**Proxy Form** means the proxy form attached to the Notice.

**Related Body Corporate** has the meaning given to that term in the Corporations Act.

**Resolution** means a resolution contained in the Notice.

**Schedule** means a schedule to this Explanatory Memorandum.

**Section** means a section of this Explanatory Memorandum.

**Share** means a fully paid ordinary share in the capital of the Company.

**Takeover Bid** has the meaning given to that term in section 9 of the Corporations Act.

**Shareholder** means a shareholder of the Company.

**Upfront Options** has the meaning given in Section 3.1.

**Upfront Shares** has the meaning given in Section 3.1.

**US\$** means United States dollars.

In the Notice words importing the singular include the plural and vice versa.

For personal use only

## SCHEDULE 2: TERMS AND CONDITIONS OF UPFRONT OPTIONS

### EXPIRING 24 NOVEMBER 2021 AND EXERCISABLE AT A\$0.07 PER SHARE

1. Each Option entitles the holder to subscribe for one fully paid ordinary share in the Company (**Share**).
2. The Options are exercisable at any time after to 12.01am, Melbourne Time on 24 November 2017 and prior to 11.59pm, Melbourne Time on 24 November 2021 (**Expiry Date**) by completing the Option Exercise Form and delivering it together with the payment for the number of Shares in respect of which the Options are exercised to the registered office of the Company. Any Option Exercise Form and associated payment will be deemed to be a notice of the exercise of those Options as the date of receipt by the Company. Any Option that has not been exercised prior to the Expiry Date automatically lapses.
3. The exercise price of the Option is A\$0.07 (seven Australian cents) per Share (**Exercise Price**) payable in full on exercise.
4. Within 5 business days (as defined in the listing rules of the Australian Securities Exchange (**ASX Listing Rules**)) (**business day**) after the later of the following:
  - (i) receipt of an Option Exercise Form given in accordance with these terms and conditions and payment of the Exercise Price for each Option being exercised; and
  - (ii) the earlier to occur of:
    - (A) when excluded information in respect to the Company (as defined in section 708A(7) of the *Corporations Act 2001* (Cth) (**Corporations Act**)) (if any) ceases to be excluded information; or
    - (B) the holder elects that the Shares to be issued pursuant to the exercise of the Options will be subject to a holding lock for a period of 12 months,the Company will:
  - (iii) allot and issue the Shares pursuant to the exercise of the Options;
  - (iv) in the circumstances where clause 4(ii)(A) applies, give ASX a notice that complies with section 708A(5)(e) of the *Corporations Act* or lodge a prospectus with ASIC that qualifies the Shares issued upon exercise of the Options for resale under section 708A(11) of the *Corporations Act*;
  - (v) in the circumstances where clause 4(ii)(B) applies, apply a holding lock in accordance with clause 5 in respect of the Shares issued upon exercise of the Options; and
  - (vi) apply for official quotation on ASX of Shares issued pursuant to the exercise of the Options.
5. The Holder may make an election pursuant to clause 4(ii)(B) at any time following delivery of an Option Exercise Form and payment of the Exercise Price for each Option being exercised. If the Holder makes an election pursuant to clause 4(ii)(B), then:
  - (i) the Company will apply a holding lock on the Shares to be issued;
  - (ii) the Company shall release the holding lock on the Shares on the earlier to occur of:
    - (A) the date that is 12 months from the date of issue of the Shares; or
    - (B) the date the Company issues a disclosure document that qualifies the Shares for trading in accordance with section 708A(11) of the *Corporations Act*; or
    - (C) the date a transfer of the Shares occurs pursuant to clause 5(iii); and
  - (iii) the Shares shall be transferable by the holder and the holding lock will be lifted provided that the transfer of the Shares complies with section 707(3) of the *Corporations Act* and

the transferee of the Shares agrees to the holding lock applying to the Shares following their transfer for the balance of the period in clause 5(iii).

6. Subject to compliance with the Corporations Act (including but not limited to section 707(3)), the holder may, in relation to Shares which are the subject of a holding lock imposed under clause 5(i):

- (i) accept a takeover bid made under Chapter 6 of the Corporations Act if the takeover bid has become free of any defeating conditions (other than a condition in respect of the events listed in section 652C of the Corporations Act);
- (ii) have their Shares transferred or cancelled as part of the transfer or cancellation of all of the Company's Shares as part of a scheme of arrangement under Part 5.1 of the Corporations Act; or
- (iii) otherwise deal with their Shares as may be required by applicable law or order of a court of competent jurisdiction,

and the Company must ask its share registry to remove the holding lock to allow the holder to deal with its Shares under this clause 6.

7. Subject to Chapter 6D of the Corporations Act which prevents onsale within 12 months to Australian retail investors where further disclosure would be required, the Options and any Shares issued upon the exercise of the Options may be offered for sale, sold, transferred, pledged or assigned without the consent of the Company.

8. All Shares issued upon exercise of Options will rank pari passu in all respects with, and will have the same terms as, the Company's then issued Shares.

9. Notwithstanding anything to the contrary contained herein, if the Shares, either directly or through an American depositary receipt program sponsored by the Company, become registered pursuant to Section 12 of the United States Securities Exchange Act of 1934, as amended (the **Exchange Act**), then thereafter the Company shall not effect the exercise of an Option, and a holder shall not have the right to exercise any portion of an Option, to the extent that after giving effect to such issuance after exercise, such holder (together with the holder's affiliates), would beneficially own (calculated in accordance with Section 13(d) of the Exchange Act, and the rules and regulations promulgated thereunder) in excess of 4.99% of the number of ordinary shares of the Company outstanding immediately after giving effect to the issuance of ordinary shares issuable upon exercise of such Option.

10. The Options will not give any right to participate in dividends until Shares are issued pursuant to the exercise of the relevant Options.

11. There are no participation rights or entitlements inherent in the Options and holders will not be entitled to participate in new issues of capital offered to shareholders during the currency of the Options. Where required by the ASX Listing Rules, the Company will ensure that Option holders will be allowed at least three business days' notice to allow for the conversion of Options prior to the record date in relation to any offer of securities made to shareholders.

12. If the Company makes a bonus issue of Shares or other securities to existing Shareholders (other than an issue in lieu or in satisfaction, of dividends or by way of dividend reinvestment):

- (i) the number of Shares which must be issued on the exercise of an Option will be increased by the number of Shares which the holder would have received if the holder had exercised the Option before the record date for the bonus issue; and
- (ii) no change will be made to the Exercise Price.

13. In the event of any reconstruction (including consolidation, sub-division, reduction or return) of the issued capital of the Company prior to the Expiry Date, the number of Options or the exercise price of the Options or both shall be reconstructed in accordance with the ASX Listing Rules applying to a reorganisation of capital at the time of the reconstruction.

14. No application for quotation of the Options will be made by the Company.

### SCHEDULE 3: EARN-OUT CONSIDERATION EXAMPLE

#### 1. Earn-Out Periods

The Earn-Out Consideration is to be calculated over two consecutive terms, being:

- (a) From 24 November 2016 to 31 December 2017, with Earn-Out Consideration payable no later than 31 March 2018 (**Earn-Out Period 1**); and
- (b) From 1 January 2018 to 31 December 2018, with Earn-Out Consideration payable no later than 31 March 2019 (**Earn-Out Period 2**),

(each an **Earn-Out Period**)

#### 2. Earn-Out Shares

The total Earn-Out Shares to be issued for each Earn-Out Period will be calculated in the following manner:

- (a) The Company will determine the annual contract value of the Company's products and subscription services sold by RWW to existing and future customers of RWW, with the annual contract value being equal to the first 12 months of fees contracted by those customers (**ACV**).
- (b) The Company will also determine the Rebate Capture Revenue generated by the RWW business during the Earn-Out Period.
- (c) Where the Revenue Capture Revenue exceeds US\$1.3 million during an Earn-Out Period, the number of Earn-Out Shares be calculated as follows:

Rebate Capture Revenue	Earn-Out Shares to be issued
US\$1.3 million or more	$\frac{\text{ACV (US\$)}}{\text{Issue Price (US\$)}}$

- (d) The Rebate Capture Revenue for 2017 will be used in conjunction with the ACV from the first Earn-Out Period and the Rebate Capture Revenue for 2018 will be used in conjunction with the ACV from the second Earn-Out Period.
- (e) The **Issue Price** of the Earn-Out Shares will be the higher of A\$0.07 and the VWAP based on the last five (5) trading days of the Shares immediately prior to the public release of the Company's 31 December 2017 and 31 December 2018 financial results for Earn-Out Period 1 and Earn-Out Period 2 respectively (**Results Date**) converted from A\$ to US\$ based on the currency exchange rate from the last five (5) days immediately prior to Results Date.

#### 3. Example

By way of example:

- (a) If ACV is US\$500,000, Rebate Capture Revenue is US\$1.2m and the Issue Price is US\$0.10, then no Earn-Out Shares will be issued; and
- (b) If ACV is US\$500,000, Rebate Capture Revenue is US\$1.4m and the Issue Price is US\$0.10, then 5,000,000 Earn-Out Shares will be issued.

**BIDENERGY LIMITED**  
**ACN 131 445 335**  
**PROXY FORM**

**By delivery:**

Suite 5 CPC, 145 Stirling Hwy  
 Nedlands, WA 6009

**By post:**

PO Box 3144  
 Nedlands, WA 6009

**By email:**

info@bidenergy.com

**Name of Shareholder:**

**Address of Shareholder:**

**Number of Shares entitled to vote:**

Please mark  to indicate your directions. Further instructions are provided overleaf.

Proxy appointments will only be valid and accepted by the Company if they are made and received no later than 7:00pm (AEST) on 14 July 2017.

**Step 1 - Appoint a Proxy to Vote on Your Behalf**

**The Chairman of the Meeting (mark box)**  **OR** if you are **NOT** appointing the Chairman as your proxy, please write the name of the person or body corporate (excluding the registered shareholder) you are appointing as your proxy

or failing the person/body corporate named, or if no person/body corporate is named, the Chairman of the Meeting, as my/our proxy to act generally at the meeting on my/our behalf, including to vote in accordance with the following directions (or, if no directions have been given, and to the extent permitted by law, as the proxy sees fit), at the Meeting of the Company to be held at **10:00am (AEST) on 17 July 2017 at the offices of RSM Australia Partners located at 21/55 Collins Street, Melbourne, Victoria 3000** and at any adjournment or postponement of that Meeting.

**Important – If the Chairman is your proxy or is appointed as your proxy by default**

The Chairman intends to vote all available and undirected proxies in favour of all the Resolutions. If the Chairman is your proxy or is appointed your proxy by default, unless you indicate otherwise by ticking either the 'for', 'against' or 'abstain' box in relation to all the Resolutions, you will be expressly authorising the Chairman to vote in accordance with the Chairman's voting intentions on all the Resolutions even if the Resolutions are connected directly or indirectly with the remuneration of a member of Key Management Personnel or a Closely Related Party of Key Management Personnel.

If 2 proxies are appointed, the proportion or number of votes that this proxy is authorised to exercise is [\_\_\_%] of the Shareholder's votes. (An additional Proxy Form will be supplied by the Company, on request).

**Step 2 - Instructions as to Voting on Resolutions**

The proxy is to vote for or against the Resolutions referred to in the Notice as follows:

		For	Against	Abstain
Resolution 1	Issue of Shares to Mr Philip Adams			
Resolution 2	Approval of potential termination benefits for Mr Philip Adams			
Resolution 3	Ratification of RealWinWin Consideration Shares and Options			
Resolution 4	Approval of RealWinWin Earn-Out Consideration Shares			

**The Chairman intends to vote all available and undirected proxies in favour of each Resolution.**

In exceptional circumstances, the Chairman may change his voting intent on any Resolution, in which case an ASX announcement will be made.

For personal use only

**Authorised signature/s**

This section *must* be signed in accordance with the instructions overleaf to enable your voting instructions to be implemented.

Individual or Shareholder 1

Sole Director and Sole  
Company Secretary

Shareholder 2

Director

Shareholder 3

Director/Company Secretary

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Contact Name

Contact Daytime Telephone

Date

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**Proxy Notes:**

A Shareholder entitled to attend and vote at the Meeting may appoint a natural person as the Shareholder's proxy to attend and vote for the Shareholder at that Meeting. If the Shareholder is entitled to cast 2 or more votes at the Meeting the Shareholder may appoint not more than 2 proxies. Where the Shareholder appoints more than one proxy the Shareholder may specify the proportion or number of votes each proxy is appointed to exercise. If such proportion or number of votes is not specified each proxy may exercise half of the Shareholder's votes. A proxy may, but need not be, a Shareholder of the Company.

If a Shareholder appoints a body corporate as the Shareholder's proxy to attend and vote for the Shareholder at that Meeting, the representative of the body corporate to attend the Meeting must produce the Certificate of Appointment of Representative prior to admission. A form of the certificate may be obtained from the Company's share registry.

You must sign this form as follows in the spaces provided:

Joint Holding:                where the holding is in more than one name all of the holders must sign.

Power of Attorney:        if signed under a Power of Attorney, you must have already lodged it with the registry, or alternatively, attach a certified photocopy of the Power of Attorney to this Proxy Form when you return it.

Companies:                a Director can sign jointly with another Director or a Company Secretary. A sole Director who is also a sole Company Secretary can also sign. Please indicate the office held by signing in the appropriate space.

If a representative of the corporation is to attend the Meeting the appropriate "Certificate of Appointment of Representative" should be produced prior to admission. A form of the certificate may be obtained from the Company's Share Registry.

Proxy Forms (and the power of attorney or other authority, if any, under which the Proxy Form is signed) or a copy or facsimile which appears on its face to be an authentic copy of the Proxy Form (and the power of attorney or other authority) must be deposited at or received at the Perth office of the Company at **Suite 5 CPC, 145 Stirling Hwy, Nedlands, WA 6009** or by email at **info@bidenergy.com** by 7:00pm (AEST) on 14 July 2017.