

## ASX Announcement

5 December 2024

### BIGTINCAN BOARD RECOMMENDS VECTOR PROPOSAL

Bigtincan Holdings Limited (**Bigtincan**) (ASX: BTH) refers to its announcement on 3 December 2024 stating that Investcorp AI Acquisition Corp. (**IAAC**) had not provided a counter proposal to the revised proposal from Vector Capital Management, L.P. (**Vector**) announced on 25 November 2024 (**Vector Proposal**) before the expiry of the matching period.

#### Change in Bigtincan Board recommendation

As the Bigtincan Board has determined the Vector Proposal to be a superior proposal to the IAAC transaction, the Bigtincan Board has now withdrawn its recommendation of the IAAC transaction.

Bigtincan has terminated the IAAC scheme implementation deed announced on 21 October 2024 (**IAAC SID**) and has entered into a scheme implementation deed with Big Wombat Pty Ltd, an entity associated with Vector (**Vector BidCo**) in relation to the Vector Proposal (**Vector SID**).

The directors of Bigtincan unanimously recommend that Bigtincan shareholders and Bigtincan option holders vote in favour of the Vector Proposal, in the absence of a superior proposal and subject to the independent expert concluding in the independent expert's report (and continuing to conclude) that the Vector Proposal is in the best interests of Bigtincan shareholders and Bigtincan option holders. Subject to the same qualifications, each Bigtincan director intends to vote all Bigtincan shares and all Bigtincan options held or controlled by them in favour of the Vector Proposal.

Neither the change in the Bigtincan Board's recommendation nor termination of the IAAC SID will give rise to an obligation on BTH to pay a break fee to IAAC.

#### Summary of Vector Proposal

Under the Vector SID, Vector Bidco has agreed to acquire 100% of the ordinary shares of Bigtincan by way of scheme of arrangement (**Share Scheme**) for cash consideration of 22 cents per share, which will be reduced on a per share basis to the extent that Bigtincan's transaction costs in connection with the IAAC transaction, the Vector Proposal and the director nominations at the 2024 AGM exceed \$4 million.

The SID also provides for a separate and concurrent scheme of arrangement between Bigtincan and its option holders under which each holder will receive cash for each instrument held in accordance with an agreed valuation methodology (**Option Scheme**). The Share Scheme and Option Scheme are inter-conditional.

The SID provides that implementation of the Share Scheme is subject to a number of matters, including Bigtincan shareholders approving the Share Scheme by the requisite majorities at the scheme meeting, the court approving the Share Scheme, the independent expert concluding that the Share Scheme is in the best interests of Bigtincan shareholders and no material adverse change, prescribed occurrence or breach of warranty in relation to Bigtincan.

The Option Scheme is subject to the Share Scheme becoming effective, as well as other conditions, including Bigtincan option holders approving the Option Scheme by the requisite majority at the option

scheme meeting, the court approving the Option Scheme and the independent expert concluding that the Option Scheme is in the best interests of Bigtincan option holders

Neither the Share Scheme nor Option Scheme is subject to any financing condition.

The SID includes terms and conditions customary for a transaction of this nature, including exclusivity arrangements and provisions for payment of a break fee and reverse break fee of \$1,826,000 to be payable to either Bigtincan or Vector Bidco in certain circumstances.

A copy of the SID is attached to this announcement.

### **About Vector**

Vector Capital is a leading, San Francisco-based investment firm focused on transformational investments in middle-market technology and technology-enabled businesses. Founded in 1997, Vector manages over \$4 billion of capital across its credit and private equity strategies on behalf of a high-quality group of global limited partners. For nearly 28 years, Vector have invested in technology businesses concurrent with implementing an operational transformation to deliver breakthrough operational and financial results. For more information, please visit [www.vectorcapital.com](http://www.vectorcapital.com).

### **Timetable**

Bigtincan shareholders and Bigtincan option holders do not need to take any action at the present time. Bigtincan shareholders and Bigtincan option holders will receive a scheme booklet in relation to the Vector Proposal in due course. This will include a more detailed explanation of the Vector Proposal, including the reasons for the Bigtincan Board's recommendation, along with a copy of the independent expert's report.

Meetings of Bigtincan shareholders and Bigtincan option holders are expected to be held in early to mid March 2025 to consider the Vector Proposal, with implementation scheduled to occur later that month (subject to all conditions being satisfied or waived in accordance with the SID).

Authorised by: **Board of Directors of Bigtincan Holdings Limited**

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## **Scheme implementation deed**

**Big Wombat Pty Ltd**

**Bigtincan Holdings Limited**

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Date: 5 December 2024

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## Parties

- 1 **Bigtincan Holdings Limited** (ACN 154 944 797) of Level 9, 64 York Street, Sydney NSW 2000 (BTH)
- 2 **Big Wombat Pty Ltd** (ACN 682 671 852) of 5 Attadale Court, Elanora QLD 4221 (**Bidder**)

The parties agree:

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## Background

- A The parties have agreed that Bidder will acquire:
- (i) all of the BTH Shares by way of a members' scheme of arrangement under Part 5.1 of the Corporations Act between BTH and BTH Shareholders.; and
  - (ii) all of the BTH Options by way of a creditors' scheme of arrangement under Part 5.1 of the Corporations Act between BTH and BTH Optionholders.
- B The parties have agreed to propose and, if approved, to implement the Scheme and the Option Scheme on the terms and conditions set out in this deed.
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## 1 Defined terms and interpretation

### 1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1, has the meaning given to it in the Dictionary;
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act; and
- (c) which is defined in the GST Law, but is not defined in the Dictionary or the Corporations Act, has the meaning given to it in the GST Law.

### 1.2 Interpretation

The interpretation clause in Schedule 1 sets out rules of interpretation for this deed.

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## 2 Agreement to propose Scheme and Option Scheme

### 2.1 Proposal of Scheme and Option Scheme

- (a) BTH will propose and implement the Scheme and the Option Scheme on and subject to the terms and conditions of this deed.
- (b) Bidder will assist BTH in proposing and implementing the Scheme and the Option Scheme on and subject to the terms and conditions of this deed.

## 2.2 Timetable

- (a) Subject to clause 2.2(b), the parties must each use reasonable endeavours to:
  - (i) comply with their respective obligations under clause 5; and
  - (ii) take all necessary steps and exercise all rights necessary to implement the Transaction,in accordance with the Timetable.
- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 2.2(a) to the extent that such failure is due to circumstances and matters outside the party's control.
- (c) Each party must keep the other informed about their progress against the Timetable and notify each other if it believes that any of the dates in the Timetable are not achievable.
- (d) To the extent that any of the dates or timeframes set out in the Timetable become not achievable due to matters outside of a party's control, the parties will consult in good faith to agree to any necessary extension to ensure such matters are completed within the shortest possible timeframe.

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## 3 Conditions precedent and pre-implementation steps

### 3.1 Conditions to Scheme

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the parties in relation to the implementation of the Scheme will not be binding, unless and until each of the following conditions precedent is satisfied or waived (to the extent and in the manner set out in this clause 3):

- (a) **(Restraints)** no:
  - (i) law, statute, ordinance, regulation, rule, temporary restraining order, preliminary or permanent injunction or other judgment, order or decree or other legal restraint or prohibition issued by any Court of competent jurisdiction or Government Agency; or
  - (ii) action or investigation commenced by any Government Agency of its own volition that remains pending,in each case, which prevents or restricts the Scheme or completion of the Transaction, is in effect at 8:00am on the Second Court Date;
- (b) **(BTH Shareholder approval)** the Scheme is approved by BTH Shareholders at the Scheme Meeting by the majorities required under section 411(4)(a)(ii) of the Corporations Act;
- (c) **(Court approval)** the Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act (either unconditionally and without modification or with modifications or conditions consented to in accordance with clause 4.7);

- For personal use only
- (d) **(No BTH Prescribed Occurrence)** no BTH Prescribed Occurrence occurs between (and including) the date of this deed and 8:00am on the Second Court Date;
  - (e) **(No BTH Material Adverse Change)** no BTH Material Adverse Change has occurred between (and including) the date of this deed and 8:00am on the Second Court Date that is continuing as of 8:00am on the Second Court Date;
  - (f) **(Independent Expert's Report)** the Independent Expert provides an Independent Expert's Report to BTH stating that, in its opinion, the Scheme is in the best interests of BTH Shareholders, on or before the date on which the Scheme Booklet is registered with ASIC under the Corporations Act, and the Independent Expert does not change or withdraw this conclusion prior to 8:00am on the Second Court Date;
  - (g) **(BTH Equity Incentives and Convertible Securities)** BTH has taken all necessary steps by 8:00am on the Second Court date to ensure that, no later than the Scheme Record Date, the BTH Equity Incentives and Convertible Securities are dealt with in accordance with clause 4.6;
  - (h) **(BTH compliance with covenants)** each of the covenants and obligations of BTH set forth in this deed to be performed or complied with as of or prior to 8:00am on the Second Court Date shall have performed and complied with in all material respects;
  - (i) **(Bidder compliance with covenants)** each of the covenants and obligations of Bidder set forth in this deed to be performed or complied with as of or prior to 8:00am on the Second Court Date shall have performed and complied with in all material respects;
  - (j) **(BTH Warranties):**
    - (i) the BTH Warranties contained in paragraphs (a) (*Status*), (b) (*Power and corporate authorisations*), (c) (*Documents binding*), (j) (*Capital structure*), (n) (*Brokers*) and (ff) (*Costs and expenses*) of Schedule 4 shall be true and correct (without giving effect to any limitation as to "materiality" or "BTH Material Adverse Change" set forth therein) in all material respects as at the date of this deed and as at 8:00am on the Second Court Date (or if a representation or warranty is expressed to be operative as at any other date, as at that date); and
    - (ii) all other BTH Warranties contained in Schedule 4 shall be true and correct (without giving effect to any limitation as to "materiality" or "BTH Material Adverse Change" set forth therein) as at the date of this deed and as at 8:00am on the Second Court Date (or if a representation or warranty is expressed to be operative as at any other date, as at that date), except where the failure of such representations and warranties to be true and correct has not had and would not be reasonably be expected to have a BTH Material Adverse Change;
  - (k) **(Bidder Warranties):**
    - (i) the Bidder Warranties contained in paragraphs (a) (*Status*), (b) (*Power and corporate authorisation*), (c) (*Documents binding*) and (q) (*Brokers*) of Schedule 3 shall be true and correct (without giving effect to any limitation as to "materiality" set forth therein) in all material respects as at the date of this deed and as at 8:00am on the Second Court Date (or if a representation or

warranty is expressed to be operative as at any other date, as at that date);  
and

- (ii) all other Bidder Warranties contained in Schedule 3 shall be true and correct (without giving effect to any limitation as to “materiality” set forth therein) as at the date of this deed and as at 8:00am on the Second Court Date (or if a representation or warranty is expressed to be operative as at any other date, as at that date);
- (l) **(Bidder Funding)** the Bidder Warranties contained in clauses (v), (w) and (x) of Schedule 3 are true and correct as if given at all times between the date of this deed and 8:00am on the Second Court Date; and
- (m) **(Option Scheme)**
  - (i) the Option Scheme is approved by BTH Optionholders at the Option Scheme Meeting by the majority required under section 411(4)(a)(i) of the Corporations Act; and
  - (ii) the Option Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act (either unconditionally and without modification or with modifications or conditions consented to in accordance with clause 4.7).

### 3.2 Conditions to Option Scheme

Subject to this clause 3, the Option Scheme will not become Effective, and the respective obligations of the parties in relation to the implementation of the Option Scheme will not be binding, unless and until each of the following conditions precedent is satisfied or waived (to the extent and in the manner set out in this clause 3):

- (a) **(Restraints)** no:
  - (i) law, statute, ordinance, regulation, rule, temporary restraining order, preliminary or permanent injunction or other judgment, order or decree or other legal restraint or prohibition issued by any Court of competent jurisdiction or Government Agency; or
  - (ii) action or investigation commenced by any Government Agency of its own volition that remains pending,

in each case, which prevents or restricts the Option Scheme or completion of the Transaction, is in effect at 8:00am on the Second Court Date;

- (b) **(Scheme)** the Scheme becomes Effective;
- (c) **(BTH Optionholder approval)** the Option Scheme is approved by BTH Optionholders at the Option Scheme Meeting by the majority required under section 411(4)(a)(i) of the Corporations Act;
- (d) **(Court approval)** the Option Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act (either unconditionally and without modification or with modifications or conditions consented to in accordance with clause 4.7);
- (e) **(ASIC and ASX)** before 8:00am on the Second Court Date, ASIC and ASX issue or provide any consents or approvals, or have done any other acts, which the



parties agree are reasonably necessary or desirable to implement the Option Scheme, and those consents, approvals or other acts have not been withdrawn or revoked at that time; and

- (f) **(Independent Expert's Report)** the Independent Expert provides an Independent Expert's Report to BTH stating that, in its opinion, the Option Scheme is in the best interests of BTH Shareholders, on or before the date on which the Scheme Booklet is registered with ASIC under the Corporations Act, and the Independent Expert does not change or withdraw this conclusion prior to 8:00am on the Second Court Date.

### 3.3 Benefit and waiver of Conditions

- (a) The Conditions in clauses 3.1(b) (*BTH Shareholder approval*) and 3.1(c) (*Court approval*), 3.2(b) (*Scheme*) cannot be waived and, unless the condition in cl 3.1(m) (*Option Scheme*) is waived by Bidder in accordance with cl 3.3(c), 3.2(c) (*BTH Optionholder approval*) and 3.2(d) (*Court approval*) cannot be waived.
- (b) The Condition in clauses 3.1(a) (*Restraints*), 3.2(a) (*Restraints*) and 3.2(e) (*ASIC and ASX*) are for the benefit of both parties and any breach or non-satisfaction of any of them may only be waived in accordance with applicable law and with the written agreement of both parties.
- (c) The Conditions in clauses 3.1(d) (*No BTH Prescribed Occurrence*), 3.1(e) (*No BTH Material Adverse Change*), 3.1(j) (*BTH Warranties*), 3.1(h) (*BTH Compliance with Covenants*), 3.1(g) (*BTH Equity Incentives and Convertible Securities*) and 3.1(m) (*Option Scheme*) are for the sole benefit of Bidder and any breach or non-satisfaction may only be waived by Bidder (in its absolute discretion) in writing.
- (a) The Conditions in clauses 3.1(f) (*Independent Expert's Report*), 3.1(i) (*Bidder Compliance with Covenants*), 3.1(k) (*Bidder Warranties*), 3.1(l) (*Bidder Funding*) and 3.2(f) (*Independent Expert's Report*) are for the sole benefit of BTH and any breach or non-satisfaction may only be waived by BTH (in its absolute discretion) in writing.
- (d) A party entitled to waive the breach or non-satisfaction of a Condition pursuant to this clause 3.3 (either individually or jointly) may do so in its absolute discretion.
- (e) Any waiver of the breach or non-satisfaction of a Condition by a party who is entitled to do so pursuant to this clause 3.3 is only effective if such waiver is given on or prior to 8:00am on the Second Court Date.
- (f) Waiver of a breach or non-fulfilment in respect of one Condition does not constitute:
  - (i) a waiver of breach or non-fulfilment of any other Condition resulting from the same event; or
  - (ii) a waiver of breach or non-fulfilment of that Condition arising from any other event.

### 3.4 Best endeavours

- (a) BTH must, to the extent it is within its power to do so, use its best endeavours to satisfy, or procure the satisfaction of, the Conditions in clauses 3.1(b) (*BTH Shareholder approval*), 3.1(d) (*No BTH Prescribed Occurrence*), 3.1(e) (*No BTH Material Adverse Change*), 3.1(h) (*BTH Compliance with Covenants*), 3.1(j) (*BTH*

Warranties), 3.1(m) (*Option Scheme*) , 3.2(c) (*BTH Optionholder approval*), 3.2(d) (*Court approval*) and 3.2(e) (*ASIC and ASX*) as soon as reasonably practicable after the date of this deed and that they remain satisfied.

- (b) Bidder must, to the extent it is within its power to do so, use its best endeavours to satisfy, or procure the satisfaction of, the Conditions in clauses 3.1(i) (*Bidder Compliance with Covenants*), 3.1(k) (*Bidder Warranties*) and 3.1(l) (*Bidder Funding*) as soon as reasonably practicable after the date of this deed and that they remain satisfied.
- (c) Each party must, to the extent it is within its power to do so, use their respective best endeavours to ensure or procure that:
- (i) the Conditions in clauses 3.1(c) (*Court approval*), 3.2(b) (*Scheme*), 3.2(d) (*Court approval*), 3.1(f) (*Independent Expert's Report*) and 3.1(g) (*BTH Equity Incentives and Convertible Securities*), 3.1(i) are satisfied as soon as reasonably practicable after the date of this deed and remain satisfied and, in respect of the Conditions in clauses 3.1(a) (*Restraints*) and 3.2(a) (*Restraints*), not triggered; and
  - (ii) there is no occurrence within their control that prevents, or would be reasonably likely to prevent, the satisfaction of any Condition (except to the extent such action is required to be taken or procured pursuant to, or is otherwise permitted by, this deed, the Scheme or the Option Scheme, or is required by law).
- (d) No party will take any action that will or is likely to hinder or prevent the satisfaction of a Condition, except to the extent that such action is required to be done or procured pursuant to, or is otherwise permitted by, this deed, the Scheme or the Option Scheme, or is required by law.
- (e) BTH will not be in breach of its obligations under clause 3.4(a) or clause 3.4(c) to the extent that it takes an action or omits to take an action:
- (i) as required or expressly permitted to be done or expressly permitted not to be done, by this deed; or
  - (ii) which has been consented to in writing by Bidder (such consent not to be unreasonably withheld, conditioned or delayed).
- (f) Bidder will not be in breach of its obligations under clauses 3.4(b) or 3.4(c) to the extent that it takes an action or omits to take an action:
- (i) as required or expressly permitted to be done or expressly permitted not to be done, by this deed; or
  - (ii) which has been consented to in writing by BTH (such consent not to be unreasonably withheld, conditioned or delayed).
- (g) In respect of the Conditions in clauses 3.1(a) (*Restraints*) and 3.2(a) (*Restraints*):
- (i) Bidder and BTH must each use their best endeavours to challenge or otherwise seek to release or overturn the applicable law, rule, regulation, restraining order, preliminary or permanent injunction or other preliminary or final decision, order or decree prior to 8:00am on the Second Court Date; and

- (ii) if any restraint contemplated in the Conditions in clauses 3.1(a) (*Restraints*) or 3.2(a) (*Restraints*) is in effect at 5:00pm on the Business Day prior to the Second Court Date, Bidder and BTH shall consult with each other (each acting reasonably and in good faith) to consider delaying the Second Court Date and, if applicable, extend the End Date in order to facilitate the satisfaction of the Condition in clause 3.1(a) (*Restraints*) or clause 3.2(a) (*Restraints*).
- (h) In respect of the Conditions in clauses 3.1(d) (*No BTH Prescribed Occurrence*) and 3.1(e) (*No BTH Material Adverse Change*), if:
  - (i) a BTH Prescribed Occurrence occurs between (and including) the date of this deed and 8:00am on the Second Court Date, the Condition in clause 3.1(d) (*No BTH Prescribed Occurrence*) will not be taken to have been breached or not satisfied; or
  - (ii) a BTH Material Adverse Change occurs between (and including) the date of this deed and 8:00am on the Second Court Date, the Condition in 3.1(e) (*No BTH Material Adverse Change*) will not be taken to have been breached or not satisfied,unless:
  - (iii) to the extent Bidder is actually aware of the occurrence of a BTH Prescribed Occurrence or a BTH Material Adverse Change (as applicable), Bidder has given written notice to BTH in accordance with clause 3.5, and such notice also sets out all relevant circumstances of the breach to the extent Bidder is actually aware of such circumstances; and
  - (iv) BTH has failed to remedy the breach within 10 Business Days (or any shorter period ending at 5:00pm on the Business Day before the Second Court Date) after the date on which such notice is given.

For the avoidance of doubt, if a BTH Prescribed Occurrence or a BTH Material Adverse Change is in existence and has not been remedied as at 5:00pm on the Business Day before the Second Court Date, clauses 3.4(h)(iii) and 3.4(h)(iv) will not apply and Bidder may exercise any rights it has in relation to such events under this deed.

### 3.5 Notifications

Each of Bidder and BTH must:

- (a) keep the other promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) promptly notify the other in writing if it becomes aware that any Condition has been satisfied;
- (c) promptly notify the other in writing if it becomes aware that any Condition is, is reasonably likely to become, or has become, incapable of being satisfied (having regard to the respective obligations of each party under clause 3.4); and
- (d) promptly notify the other in writing if it becomes aware of material breach of this deed by the relevant party.

### 3.6 Certificate

- (a) At the hearing on the Second Court Date, each party will provide a certificate (or such other evidence as the Court may request) to the Court confirming (in respect of matters within its knowledge) whether or not, as at 8:00am on the Second Court Date:
- (i) in respect of the Scheme, the Conditions in clause 3.1 (other than the Condition set out in clause 3.1(c) (*Court approval*)), have been satisfied or waived in accordance with the terms of this deed; and
  - (ii) in respect of the Option Scheme, the Conditions in clause 3.2 (other than the Conditions set out in clauses 3.2(d) (*Court approval*) and 3.2(b) (*Scheme*)), have been satisfied or waived in accordance with the terms of this deed.
- (b) Each party must provide to the other a draft of the certificate to be provided by it pursuant to clause 3.6(a) by 5:00pm on the day that is two Business Days prior to the Second Court Date, and must provide to the other on the Second Court Date a copy of the final certificate or other evidence provided to the Court.

### 3.7 Scheme voted down because of Headcount Test

If:

- (a) the Scheme is not approved by BTH Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test; and
- (b) BTH, on the one hand or Bidder, on the other hand, considers, acting reasonably, that Share Splitting or some abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied and provides written notice to this effect to the other within 5 Business Days after the date of the conclusion of the Scheme Meeting,

then BTH must, in respect of the Scheme:

- (c) apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
- (d) make such submissions to the Court and file such evidence as counsel engaged by BTH to represent it in Court proceedings related to the Scheme, in consultation with Bidder, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act by making an order to disregard the Headcount Test.

### 3.8 Conditions not capable of being satisfied

- (a) If a Condition is not satisfied, or becomes incapable of being satisfied, before the time and date specified for its satisfaction (or being satisfied by the End Date, if no such time and date is specified), then unless the relevant Condition (where capable of waiver) is waived:
- (i) subject to clause 3.8(b), each party may give the other written notice (**Consultation Notice**) within 5 Business Days after the relevant notice of that fact being given under clause 3.5(c);

- (ii) upon delivery of the Consultation Notice, the parties must consult in good faith with a view to determining whether they can reach agreement with respect to:
    - (A) the terms (if any) on which the party with the benefit of the relevant Condition will waive that Condition;
    - (B) an extension of the time for satisfaction of the relevant Condition or an extension of the End Date (as the case may be);
    - (C) a change to the date of the application to be made to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme and the Option Scheme or adjourning that application (as applicable) to another date agreed by the parties; or
    - (D) the Transaction proceeding by way of alternative means or methods; and
  - (iii) if the parties are unable to reach such agreement within 5 Business Days after a Consultation Notice is given, or if a Consultation Notice is not given within the timeframe specified in clause 3.8(a)(i) then, subject to clause 3.8(b), either Bidder or BTH may terminate this deed by notice to the other without any liability to any party by reason of that termination alone.
- (b) A party will not be entitled to give a Consultation Notice or terminate this deed pursuant to clause 3.8(a)(iii) if the relevant Condition has not been satisfied as a result of:
- (i) a breach of this deed by that party; or
  - (ii) a deliberate act or omission of that party which directly and materially contributed to that Condition not being satisfied.

### 3.9 Interpretation

For the purposes of this clause 3, a Condition will be incapable of satisfaction, or incapable of being satisfied if there is an act, failure to act or occurrence that will prevent the Condition being satisfied by the End Date (and the breach or non-satisfaction that would otherwise have occurred has not already been waived in accordance with this deed).

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## 4 Scheme and Option Scheme

### 4.1 Scheme

- (a) BTH must propose the Scheme to BTH Shareholders on and subject to the terms of this deed.
- (b) The parties acknowledge and agree that, subject to the Scheme becoming Effective, on the Implementation Date the general effect of the Scheme will be that:
  - (i) all of the Scheme Shares will be transferred to Bidder; and
  - (ii) the Scheme Shareholders will be entitled to receive, for each Scheme Share held at the Scheme Record Date, the Scheme Consideration.

## 4.2 Scheme Consideration

Subject to the terms and conditions of this deed and the Scheme, Bidder undertakes and warrants to BTH that, in consideration of the transfer to Bidder of each Scheme Share held by a Scheme Shareholder under the terms of the Scheme, on the Implementation Date, Bidder will:

- (a) accept that transfer; and
- (b) pay, or procure payment, to each Scheme Shareholder of the Scheme Consideration for the Scheme Shares held by that Scheme Shareholder on the Scheme Record Date, in accordance with the terms of this deed and the Scheme.

## 4.3 Option Scheme

- (a) BTH must propose the Option Scheme to BTH Optionholders on and subject to the terms of this deed.
- (b) The parties acknowledge and agree that, subject to the Option Scheme becoming Effective, on the Implementation Date the general effect of the Option Scheme will be that:
  - (i) all of the Scheme Options will be either cancelled and extinguished or transferred to Bidder; and
  - (ii) the Scheme Optionholders will be entitled to receive, for each Scheme Option held at the Scheme Record Date, the Option Scheme Consideration.

## 4.4 Option Scheme Consideration

Subject to the terms and conditions of this deed and the Option Scheme, Bidder undertakes and warrants to BTH that, in consideration of the cancellation and extinguishment, or the transfer to Bidder, of each Scheme Option held by a Scheme Optionholder under the terms of the Option Scheme, on the Scheme Implementation Date, Bidder will:

- (a) (if applicable) accept that transfer; and
- (b) pay, or procure payment, to each Scheme Optionholder of the Option Scheme Consideration for the Scheme Options held by that Scheme Optionholder on the Scheme Record Date, in accordance with the terms of this deed and the Option Scheme.

## 4.5 Dealings in BTH Shares and BTH Options and provision of BTH Share Register and BTH Option Register

- (a) In order to facilitate the provision of the Scheme Consideration and the Option Scheme Consideration, BTH must provide, or procure the provision of, to Bidder a complete copy of:
  - (i) the BTH Share Register as at the Scheme Record Date (which must include the name, Registered Address and registered holding of each Scheme Shareholder as at the Scheme Record Date), within 1 Business Day after the Scheme Record Date; and
  - (ii) the BTH Option Register as at the Scheme Record Date (which must include the name, Registered Address and registered holding of each Scheme

Optionholder as at the Scheme Record Date), within one Business Day after the Scheme Record Date.

- (b) The details and information to be provided under clause 4.5(a) must be provided in such form as Bidder may reasonably require.
- (c) BTH will not accept for registration or recognise for any purpose any transmission application or transfer in respect of BTH Shares or BTH Options received after the Scheme Record Date, other than to Bidder in accordance with the Scheme or the Option Scheme (as applicable).
- (d) If:
  - (i) the Scheme becomes Effective, a Scheme Shareholder (and any person claiming through that holder) must not dispose of or otherwise deal with, or propose or agree to dispose of or otherwise deal with, any Scheme Shares or any interest in them on or after the Scheme Record Date otherwise than pursuant to the Scheme, and any attempt to do so will have no effect and BTH shall be entitled to disregard any such disposal, purported disposal, agreement or other dealing; and
  - (ii) the Option Scheme becomes Effective, a Scheme Optionholder (and any person claiming through that holder) must not dispose of or otherwise deal with, or propose or agree to dispose of or otherwise deal with, any Scheme Options or any interest in them on or after the Scheme Record Date otherwise than pursuant to the Option Scheme, and any attempt to do so will have no effect and BTH shall be entitled to disregard any such disposal, purported disposal, agreement or other dealing.
- (e) Each entry which is current on:
  - (i) the BTH Share Register as at the Scheme Record Date is the sole evidence of entitlement to the Scheme Consideration in respect of the Scheme Shares relating to that entry; and
  - (ii) the BTH Option Register as at the Scheme Record Date is the sole evidence of entitlement to the Option Scheme Consideration in respect of the Scheme Options relating to that entry.
- (f) All certificates and statements of holding for Scheme Shares (other than statements of holding in favour of Bidder and its successors in title) will cease to have effect after the Scheme Record Date as documents of title (or evidence thereof) in respect of those shares and, as from that date, each entry current at the date of the BTH Share Register (other than entries in respect of Bidder) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Scheme Shares relating to that entry.

#### **4.6 BTH Equity Incentives and Convertible Securities**

- (a) As at 8:00am on the Second Court Date, BTH and Bidder must (to the extent applicable) have put in place arrangements so that:
  - (i) all BTH Equity Incentives (and any other BTH executive equity incentives (including future grants or incentives)) and the Regal Options will have been dealt with in accordance with terms acceptable to each of BTH and Bidder; and

- (ii) without limiting clause 4.6(a)(i), no BTH Equity Incentives (or any other Convertible Securities) are in existence on the Business Day prior to the Scheme Record Date,

which may, to the extent required to put in place those arrangements, involve:

- (iii) the BTH Board exercising its discretion in relation to the vesting period or conditions of BTH Equity Incentives and having any applicable restrictions removed in respect of BTH Equity Incentives;
- (iv) BTH making all necessary applications to the ASX for waivers under the Listing Rules (if required);
- (v) BTH issuing or procuring the issue or transfer of such number of BTH Shares as required by the terms of the BTH Equity Incentives before the Scheme Record Date so that the holders of BTH Equity Incentives can participate as Scheme Shareholders in the Scheme and receive the Scheme Consideration; and
- (vi) BTH amending the terms of any incentive plans as necessary to implement those arrangements.
- (b) For the avoidance of doubt, the parties agree that any action taken by BTH which is in accordance with this clause 4.6 will not be a BTH Material Adverse Change or a BTH Prescribed Occurrence or a breach of any provision of this deed, or give rise to any right to terminate this deed, and will be disregarded when assessing the operation of any other part of this deed.
- (c) Provided that BTH and Bidder have complied with clause 3.4(c) in respect of clause 3.1(g) (*BTH Equity Incentives and Convertible Securities*) (and therefore this clause 4.6), a failure to satisfy clause 3.1(g) or this clause 4.6, will not itself constitute a breach of this deed by BTH or Bidder (as applicable) and will be disregarded when assessing the operation of clause 10 and 11 of this deed.

#### **4.7 No amendment to Scheme or Option Scheme without consent**

BTH may not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme or the Option Scheme without the prior written consent of Bidder, such consent not to be unreasonably withheld, conditioned or delayed.

#### **4.8 Withholding**

Notwithstanding any other provision of this deed, if Bidder determines, having regard to legal or other professional advice, that Bidder is:

- (a) liable to pay an amount to the Commissioner of Taxation under section 14-200 of Schedule 1 to *Taxation Administration Act 1953* (Cth) in respect of the acquisition of Scheme Shares from a Scheme Shareholder or Option Scheme from a Scheme Optionholder; or
- (b) required by law (other than a law of the jurisdiction of Bidder) to withhold any amount from a payment to a Scheme Shareholder or Scheme Optionholder,

Bidder is entitled to withhold the relevant amount, including where such amount is in respect of clause 4.8(a), before making the payment to the Scheme Shareholder or Scheme Optionholder, and payment of the reduced amount shall be taken to be full



payment of the relevant amount for the purposes of the Scheme or the Option Scheme (as applicable) (including (but not limited to) clause 4.2).

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## 5 Implementation

### 5.1 BTH's obligations

BTH must take all steps reasonably necessary to implement the Scheme and the Option Scheme as soon as reasonably practicable and in accordance with the Timetable, including taking each of the following steps:

- (a) **(BTH Information)** prepare the BTH Information in compliance with all applicable laws (in particular with the Corporations Act, RG 60 and the Listing Rules);
- (b) **(drafts of BTH Information)** make available to Bidder drafts of the BTH Information, consult with Bidder in relation to the content of those drafts, and consider in good faith, for the purpose of amending those drafts, comments from Bidder on those drafts;
- (c) **(approval of Bidder Information)** review the Bidder Information and seek approval from Bidder for the form and context in which the Bidder Information appears in the Scheme Booklet, which approval Bidder must not unreasonably withhold, condition or delay, and BTH must not lodge the Scheme Booklet with ASIC until such approval is obtained from (or unreasonably withheld, conditioned or delayed by) Bidder;
- (d) **(liaison with ASIC):**
  - (i) as soon as practicable but no later than 14 days before the First Court Date, provide an advanced draft of the Scheme Booklet to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act; and
  - (ii) liaise with ASIC during the period of its consideration of that draft of the Scheme Booklet and keep Bidder reasonably informed of any matters raised by ASIC in relation to the Scheme Booklet and use reasonable endeavours, in consultation with Bidder, to resolve any such matters;
- (e) **(approval of Scheme Booklet)** as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the BTH Board, or of a committee of the BTH Board appointed for the purpose, is held to consider approving the Scheme Booklet for despatch to the BTH Shareholders and BTH Optionholders, subject to orders of the Court under section 411(1) of the Corporations Act;
- (f) **(section 411(17)(b) statements)** apply to ASIC for the production of statements in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme and the Option Scheme and does not intend to appear before the Court on the First Court Date;
- (g) **(first Court hearing)** lodge all documents with the Court and take all other reasonable steps to ensure that promptly after, and provided that the approval in clause 5.1(e) has been received, an application is heard by the Court for an order under section 411(1) of the Corporations Act directing BTH to convene the Scheme Meeting and the Option Scheme Meeting;

- For personal use only
- (h) **(registration of Scheme Booklet)** if the Court directs BTH to convene the Scheme Meeting and the Option Scheme Meeting, on the first Business Day after such Court orders are made or as soon as possible after such orders are made, request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme and the Option Scheme in accordance with section 412(6) of the Corporations Act;
  - (i) **(updating BTH Information)** until the date of the Scheme Meeting and Option Scheme Meeting, promptly update the BTH Information with any information that arises after the Scheme Booklet has been dispatched that is necessary to ensure that the BTH Information does not contain any material statement that is false or misleading in a material respect (including because of any material omission from that statement);
  - (j) **(Independent Expert)** promptly appoint the Independent Expert to provide the Independent Expert's Report, and provide assistance and information reasonably required by the Independent Expert to enable it to prepare the Independent Expert's Report (including any updates to such report) and any other material to be prepared by them for inclusion in the Scheme Booklet (including any updates thereto). Subject to the Independent Expert's consent (which BTH will seek), provide a near final report from the Independent Expert to Bidder at least 7 Business Days prior to the provision of the Independent Expert's Report to ASIC for factual accuracy review only;
  - (k) **(court documents)** prepare, and reasonably consult with Bidder in relation to the content of, the documents required for the purpose of each of the Court hearings held for the purpose of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act in relation to the Scheme and the Option Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) and:
    - (i) provide drafts of those documents to Bidder in a timely manner;
    - (ii) provide Bidder with a reasonable opportunity to review and comment on those documents before they are lodged or filed with the Court; and
    - (iii) consider in good faith, for the purpose of amending drafts of those documents, comments from Bidder on those documents;
  - (l) **(representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act and allow, and not oppose, any application by Bidder for leave of the Court to be represented by counsel at such a Court hearing;
  - (m) **(consultation with Bidder in relation to Scheme Booklet)** reasonably consult with Bidder as to the content and presentation of the Scheme Booklet including:
    - (i) providing to Bidder drafts of the Scheme Booklet for the purpose of enabling Bidder to review and comment on those draft documents;
    - (ii) considering in good faith all timely comments made by Bidder when producing a revised draft of the Scheme Booklet; and
    - (iii) obtaining written consent from Bidder for the form and content in which the Bidder Information appears in the Scheme Booklet (such consent must not be unreasonably withheld, conditioned or delayed by Bidder);

- For personal use only
- (n) **(update Scheme Booklet)** until the date of the Scheme Meeting and the Option Scheme Meeting, promptly update the Scheme Booklet with, or where appropriate otherwise inform the market by way of announcement of, any information that arises after the Scheme Booklet has been dispatched that is necessary to ensure that the Scheme Booklet:
    - (i) contains all information that is required to be disclosed to BTH Shareholders and BTH Optionholders under any applicable law or RG 60; and
    - (ii) is not misleading or deceptive in any material respect and does not contain any material statement that is false or misleading in a material respect.
  - (o) **(convening Scheme Meeting and Option Scheme Meeting)** take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Scheme Booklet to the BTH Shareholders and BTH Optionholders and convening and holding the Scheme Meeting and Option Scheme Meeting, provided that if this deed is terminated under clause 12, BTH will take all steps reasonably required to ensure the Scheme Meeting and the Option Scheme Meeting is not held;
  - (p) **(Court approval application)** if:
    - (i) the resolution submitted to the Scheme Meeting is passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act (or, where clause 3.7 applies, the majority required under section 411(4)(a)(ii)(B) of the Corporations Act), subject to all other Conditions in clause 3.1 being satisfied or waived in accordance with this deed (other than the Condition in clause 3.1(c)), apply (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme and, without limiting this clause 5.1(p), lodge all relevant documents with the Court and take all other reasonable steps necessary to ensure that such application is heard by the Court at the hearing on the Second Court Date; and
    - (ii) the resolution submitted to the Option Scheme Meeting is passed by the majority required under section 411(4)(a)(i) of the Corporations Act, subject to all other Conditions in clause 3.2 being satisfied or waived in accordance with this deed (other than the Condition in clauses 3.2(b) and 3.2(d)), apply (and, to the extent necessary, re-apply) to the Court for orders approving the Option Scheme and, without limiting this clause 5.1(p), lodge all relevant documents with the Court and take all other reasonable steps necessary to ensure that such application is heard by the Court at the hearing on the Second Court Date;
  - (q) **(ASIC and ASX review)** keep Bidder reasonably informed of any material matters raised by ASIC or ASX in relation to the Scheme Booklet or the Transaction, and consult with and use reasonable endeavours to take into consideration any reasonable comments promptly provided by Bidder in relation to such matters raised by ASIC or ASX (provided that, where such issues relate to Bidder Information, BTH must not take any steps to address them without Bidder's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed));
  - (r) **(promoting merits of Transaction and proxy solicitation)** consider in good faith Bidder's reasonable suggestions regarding shareholder engagement and proxy solicitation actions to promote the Transaction and encourage:
    - (i) Scheme Shareholders to vote on the Scheme; and

- (ii) Scheme Optionholders to vote on the Option Scheme,

in each case, in accordance with the recommendation of the BTH Board, subject to applicable law and ASIC policy;

- (s) **(proxy reports)** keep Bidder reasonably informed on the status of proxy forms received for the Scheme Meeting and the Option Scheme Meeting, including over the period commencing 10 Business Days before the Scheme Meeting and the Option Scheme Meeting and ending on the deadline for receipt of proxy forms;
- (t) **(implementation of Scheme)** if the Scheme is approved by the Court:
  - (i) subject to the Listing Rules, lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act no later than the Business Day after the date on which the Court order was made (or such later date as agreed in writing by Bidder);
  - (ii) determine entitlements to the Scheme Consideration as at the Scheme Record Date in accordance with the Scheme;
  - (iii) execute proper instruments of transfer and effect and register the transfer of the Scheme Shares to Bidder on the Implementation Date; and
  - (iv) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme;
- (u) **(implementation of Option Scheme)** if the Option Scheme is approved by the Court:
  - (i) subject to the Listing Rules, lodge with ASIC an office copy of the orders approving the Option Scheme in accordance with section 411(10) of the Corporations Act no later than the Business Day after the date on which the Court order was made (or such later date as agreed in writing by Bidder);
  - (ii) determine entitlements to the Option Scheme Consideration as at the Scheme Record Date in accordance with the Option Scheme;
  - (iii) either:
    - (A) execute proper instruments of transfer and effect and register the transfer of the Scheme Options to Bidder on the Implementation Date; or
    - (B) cancel and extinguish the Scheme Options; and
  - (iv) do all other things contemplated by or necessary to give effect to the Option Scheme and the orders of the Court approving the Option Scheme;
- (v) **(suspension of trading)** if the Scheme becomes Effective, apply to ASX to suspend trading in BTH Shares with effect from the close of trading on the Effective Date;
- (w) **(removal from quotation)** if the Scheme becomes Effective, apply to ASX to have BTH removed from the official list of ASX, and quotation of BTH Shares on the ASX terminated, with effect on and from the close of trading on the Trading Day immediately following the Implementation Date (unless otherwise directed by Bidder in writing); and

- (x) (**compliance with laws**) do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations;

## 5.2 Bidder's obligations

Bidder must take all necessary steps to implement the Scheme as soon as is reasonably practicable in accordance with the Timetable, including each of the following:

- (a) (**Independent Expert**) subject to the Independent Expert entering into arrangements with Bidder including in relation to confidentiality in a form reasonably acceptable to Bidder, promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report for inclusion in the Scheme Booklet (including any updates to such report);
- (b) (**assistance with Scheme Booklet and Court documents**) promptly provide any assistance or information reasonably requested by BTH or its Advisers in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to BTH Shareholders) and any documents required to be filed with the Court in respect of the Scheme and the Option Scheme;
- (c) (**Scheme Consideration**) if the Scheme becomes Effective, pay or procure the payment of the Scheme Consideration in the manner and amount contemplated by clause 4 and the terms of the Scheme and the Deed Poll;
- (d) (**Option Scheme Consideration**) if the Option Scheme becomes Effective, pay or procure the payment of the Option Scheme Consideration in the manner and amount contemplated by clause 4 and the terms of the Option Scheme and the Option Scheme Deed Poll;
- (e) (**Deed Poll and Option Scheme Deed Poll**) by no later than the Business Day prior to the First Court Date, execute and deliver to BTH the Deed Poll and the Option Scheme Deed Poll;
- (f) (**Implementation of Scheme**) if the Scheme becomes Effective, do all things contemplated of it under the Scheme in accordance with the Deed Poll;
- (g) (**Implementation of Option Scheme**) if the Option Scheme becomes Effective, do all things contemplated of it under the Option Scheme in accordance with the Option Scheme Deed Poll;
- (h) (**Bidder Information**) prepare and provide to BTH the Bidder Information for inclusion in the Scheme Booklet in compliance with all applicable laws (in particular under the Corporations Act, RG 60 and the Listing Rules) and consult with BTH as to the content and presentation of the Bidder Information in the Scheme Booklet and (in good faith) take into account any comments on drafts of the Bidder Information provided by or on behalf of BTH;
- (i) (**confirmation of Bidder Information**) promptly after BTH requests that it does so, confirm in writing to BTH that:
- (i) it consents to the inclusion of the Bidder Information in the Scheme Booklet, in the form and context in which the Bidder Information appears; and
  - (ii) the Bidder Information in the Scheme Booklet is not misleading or deceptive in any material respect (whether by omission or otherwise), and the inclusion

of such Bidder Information, in that form and context, has been approved by the Bidder Board;

- (j) **(update Bidder Information)** promptly advise BTH in writing if it becomes aware:
  - (i) of information which should have been but was not included in the Bidder Information in the Scheme Booklet (including if known at the time), and promptly provide BTH with the omitted information; or
  - (ii) that the Bidder Information in the Scheme Booklet is misleading or deceptive in any material respect (whether by omission or otherwise), and promptly provide BTH with any information required to correct the misleading or deceptive statements;
- (k) **(Court representation)** procure that Bidder is represented by counsel at the Court hearings convened in relation to the Scheme and the Option Scheme, at which, through its counsel or solicitors, Bidder will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this deed and the Scheme and the Option Scheme;
- (l) **(compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations; and
- (m) **(Promotion of Transaction)** participate in endeavours reasonably requested by BTH to promote the merits of the Transaction.

### 5.3 Conduct of Court proceedings

- (a) BTH and Bidder are entitled to separate representation at all Court proceedings affecting the Transaction.
- (b) Nothing in this deed gives any party any right or power to give undertakings to the Court for or on behalf of the other party without that other party's written consent.
- (c) The parties must give all undertakings to the Court in such Court proceedings which are reasonably required to obtain Court approval and confirmation of the Transaction as contemplated by this deed.

### 5.4 Appeal process

If the Court refuses to make any orders directing BTH to convene the Scheme Meeting, the Option Scheme Meeting or approving the Scheme or the Option Scheme:

- (a) each party must consult with the other in good faith as to whether to appeal the Court's decision; and
- (b) BTH must appeal the Court's decision unless the parties agree otherwise or an independent senior counsel opines that, in their view, an appeal would have no reasonable prospect of success before the End Date.

### 5.5 Verification

- (a) BTH must undertake reasonable verification processes in relation to the information included in the Scheme Booklet (other than the Bidder Information and the Independent Expert's Report) so as to ensure that such information is not

misleading or deceptive in any material respect (whether by omission or otherwise).

- (b) Bidder must undertake reasonable verification processes in relation to the Bidder Information so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise).

## **5.6 Responsibility statements**

The Scheme Booklet will include a responsibility statement to the effect that:

- (a) Bidder will be responsible for the Bidder Information in the Scheme Booklet and, to the maximum extent permitted by law, BTH will not be responsible for any Bidder Information and will disclaim any liability for the Bidder Information appearing in the Scheme Booklet;
- (b) BTH will be responsible for the BTH Information in the Scheme Booklet and, to the maximum extent permitted by law, Bidder will not be responsible for any BTH Information and will disclaim any liability for the BTH Information appearing in the Scheme Booklet;
- (c) the Independent Expert is responsible for the Independent Expert's Report, and none of BTH, Bidder or their respective directors or officers assumes any responsibility for the accuracy or completeness of the Independent Expert's Report; and
- (d) if the Scheme Booklet contains a statement on the letterhead of the BTH tax adviser of the tax consequences of the Scheme and related matters for Scheme Shareholders, that tax adviser is responsible for that letter.

## **5.7 Disagreement on content**

If the parties disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form of the Scheme Booklet. If complete agreement is not reached after reasonable consultation, then:

- (a) if the disagreement relates to the form or content of any information appearing in the Scheme Booklet other than the Bidder Information, the BTH Board will, acting in good faith, decide the final form or content of the disputed part of the Scheme Booklet; and
- (b) if the disagreement relates to the form or content of the Bidder information, BTH will make such amendments to the form or content of the disputed part of the Bidder Information as Bidder reasonably requires.

## **5.8 Good faith co-operation**

Each party must procure that its Authorised Persons work (including by attending meetings and by providing information) in good faith and in a timely and co-operative fashion with the other parties to implement the Scheme and the Option Scheme, to prepare all documents required relating to the Scheme and the Option Scheme, and to agree and execute the strategy described in clause 6.4.

## 5.9 Notified Transaction Costs

At least 15 Business Days before the Second Court Date, BTH will notify the Bidder of the amount of the Transaction Costs (**Notified Transaction Costs**) and the TC Adjustment Amount, which specifies the composition of the Notified Transaction Costs.

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# 6 Conduct of business and transitional matters

## 6.1 Conduct of business

- (a) Subject to clause 6.2, from the date of this deed up to and including the Implementation Date, BTH must, and must ensure that each member of the BTH Group, uses reasonable endeavours to:
  - (i) **(ordinary course)** conduct its business and operations in the ordinary and usual course and substantially consistent with the manner in which such business and operation has been conducted in the 12 months prior to the date of this deed;
  - (ii) **(maintain relationships)** preserve its relationships with material customers, material suppliers, Government Agencies and any others having material business dealings with it, in each case, in all material respects, and to retain the services of its officers and key employees; and
  - (iii) **(no BTH Prescribed Occurrence)** not take or fail to take any action that constitutes a BTH Prescribed Occurrence.
- (b) Subject to clause 6.2, from the date of this deed up to and including the Implementation Date, BTH must not, and must procure that the BTH Group does not:
  - (i) **(no new business)** enter into any line of business or other activity in which the BTH Group is not engaged as of the date of this deed;
  - (ii) **(acquisitions and disposals)** in respect of any single transaction or series of related or similar transactions, acquire or dispose of any interest in a business, real property, entity or undertaking, the value of which exceeds US\$1,000,000 in aggregate;
  - (iii) **(capital expenditure)** in respect of any single transaction or series of related or similar transactions, incur or enter into commitments involving capital expenditure in excess of US\$1,000,000 in aggregate;
  - (iv) **(employees)**
    - (A) enter into a new employment contract with a potential employee of the BTH Group under which contract the total remuneration payable to that potential employee would exceed US\$300,000 in any 12 month period, other than to replace a role that becomes vacant after the date of this deed as a result of the resignation of an existing employee or in respect of a new employee who is employed in order to fill a role that is vacant as at the date of this deed;
    - (B) terminate the employment of, or materially vary the terms of employment of, any individual in respect of which the total annual



remuneration is greater than US\$225,000 (other than for cause or in the ordinary course of business);

- (v) **(financial indebtedness)** incur any additional financial indebtedness (except for draw-downs on existing banking facilities consistent with BTH's current budget or to refinance existing financing arrangements or agreements as of the date of this deed, provided that the principal amount of obligations and leverage ratio do not increase in any such refinancing), or guarantee the obligations of any person other than a member of the BTH Group, other than:
  - (A) in the usual and ordinary course of business;
  - (B) any such financial indebtedness or refinancing (irrespective of what form that takes) to or among members of the BTH Group; or
  - (C) in connection with derivative or similar transactions to manage exposure to the fluctuation in the rate or price of currency or interest rates (other than purely for speculative purposes);
- (vi) **(financial benefits)** give or agree to give a financial benefit to a related party of BTH;
- (vii) **(material contracts)** enter into, materially vary or terminate any contract under which the BTH Group would receive revenue, or make expenditure, of more than US\$500,000 over the life of the contract other than in connection with renewal or replacement of an existing contract in place on the date of this deed on equivalent terms in the ordinary course of business;
- (viii) **(legal proceedings)** settle any legal proceedings, claim, investigation, arbitration or other like proceeding where the settlement amount exceeds US\$500,000;
- (ix) **(dividends)** declare, pay or distribute any dividend, bonus or other share of its profits or assets or return or agree to return any capital to its members;
- (x) **(constitution)** amend its constitution;
- (xi) **(accounting policies)** alter in any material respect any accounting policy of any member of the BTH Group, other than any change required by applicable accounting standards;
- (xii) **(Taxes)** other than as would not be material individually or in the aggregate:
  - (A) make, change or revoke any Tax election in a manner inconsistent with past practice;
  - (B) adopt, change or revoke any accounting method with respect to Taxes;
  - (C) amend any Tax Return in a manner inconsistent with past practice;
  - (D) settle or compromise any Tax liability or any Claim, audit or other similar proceeding related to Taxes;
  - (E) enter into any closing agreement with respect to any Tax;

- (F) consent to any extension or waiver of the limitations period applicable to any Tax claim or assessment;
- (G) knowingly surrender any claim for a refund of Taxes; or
- (H) enter into any Tax allocation, Tax sharing, Tax indemnification or similar agreement or arrangement (other than any customary commercial contract the principal subject of which is not Taxes); or

(xiii) **(agree to do)** agree to do any of the matters set out above.

## 6.2 Permitted activities

The obligations of BTH under clauses 6.1(a) and 6.1(b) do not apply in respect of any matter or event to the extent:

- (i) required to be done or procured by BTH or BTH Group pursuant to this deed or the Scheme;
- (ii) Fairly Disclosed in the BTH Disclosure Letter or the Due Diligence Materials;
- (iii) Fairly Disclosed to the ASX or in a document lodged with ASIC within 24 months before the date of this deed;
- (iv) Bidder has provided prior written consent (such consent not to be unreasonably withheld, conditioned or delayed);
- (v) required to reasonably and prudently respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property) or as required by or in light of the COVID-19 virus (or any mutation, variation or derivative of that virus) provided that the response does not have a BTH Material Adverse Change;
- (vi) required to reasonably and prudently respond to regulatory or legislative changes (including without limitation changes to subordinate legislation) affecting the business of BTH or a BTH Group Member to a material extent, provided that, to the extent reasonable practicable, BTH has consulted with Bidder in good faith in respect of the proposal to take such action or not take such action (as applicable) and considers any reasonable and timely comments or requests of Bidder in relation to such proposal in good faith;
- (vii) required by any applicable law or regulation, or by an order, injunction or undertaking of a court or Government Agency, or by generally accepted accounting standards or generally accepted accounting principles or any contractual obligation of any member of the BTH Group (but only to the extent such contract was:
  - (A) entered into, and a copy of which was Fairly Disclosed to Bidder, before the date of this deed; or
  - (B) following the date of this deed in accordance with the terms hereof); or
- (viii) which is undertaken in response to a Competing Proposal which is, or would be reasonably likely to be, a Superior Proposal, but only to the extent permitted by clause 9.

### 6.3 Access and assistance

- (a) Subject to clause 6.3(b), from the date of this deed to the Implementation Date, BTH must provide Bidder with reasonable access (subject to the Confidentiality Deed) during normal business hours and on reasonable notice, to the management, offices, books, records and business operations of BTH that Bidder reasonably requires for the sole purpose of:
- (i) implementing the Transaction; or
  - (ii) any other purpose agreed in writing between the parties (acting reasonably).
- (b) The parties acknowledge that their rights and obligations under clause 6.3(a) shall be subject to the Confidentiality Deed and all applicable laws or requirements of any Government Agency.
- (c) Bidder must, and must use reasonable endeavours to procure that its representatives, each of their Related Bodies Corporate and their respective representatives:
- (i) keep all information obtained by it or them as a result of this clause 6.3 confidential in accordance with the terms of the Confidentiality Deed;
  - (ii) provide BTH with reasonable notice of any request for information or access; and
  - (iii) comply with the reasonable requirements of BTH in relation to any access granted.
- (d) Subject to clause 6.3(e), BTH must provide a copy to Bidder, as soon as practicable after they are available, of:
- (i) monthly management accounts and financial reports (including in relation to key financials and business operating metrics of BTH and each BTH Group Member); and
  - (ii) all financial information from monthly BTH Board packs, BTH Board materials or both.
- (e) Nothing in clause 6.3(a) or clause 6.3(d) gives Bidder any rights to undertake further due diligence investigations or any rights as to the decision making of BTH (or its Related Bodies Corporate) or its business, or requires BTH or any of its Related Bodies Corporate to:
- (i) disclose or make available any information in breach of an obligation of confidentiality to any person or applicable privacy laws;
  - (ii) take any action that would be reasonably expected to result in a breach of any applicable law, order, rule or direction of any Government Agency, or the entity's constituent documents;
  - (iii) without limitation to any obligations and covenants in clause 9, disclose or make available any information concerning the consideration of the Transaction or any actual or potential Competing Proposal (including for the avoidance of doubt any Competing Proposal made prior to the date of this deed), or any professional advice in relation to those matters; or

- (iv) provide any confidential, competitively sensitive or privileged information where the provision of such information is reasonably likely to cause prejudice to the commercial or legal interests of BTH taken as a whole, or would be reasonably likely to jeopardise any attorney-client, work product or other legal privilege provided that BTH takes reasonable steps to satisfy the reasonable information requests of Bidder concerning that matter (which includes, for the avoidance of doubt, redacting any confidential, competitively sensitive or privileged information); or
- (v) do anything that would, in the reasonable opinion of BTH (acting in good faith), result in undue disruption to BTH's and its Related Bodies Corporate's business.

#### 6.4 Change of control

As soon as practicable after the date of this deed, the parties must:

- (a) seek to identify any change of control, unilateral termination rights, renewal or similar provisions in any material contract to which a member of the BTH Group is party which may be triggered by the implementation of the Transaction (**Change of Control Requirements**); and
- (b) each acting reasonably, agree a proposed strategy (which, among other things, will have due regard to applicable legal restrictions) to seek any consents or waivers required in accordance with the terms of any identified Change of Control Requirements, and, if agreed between the parties as part of the proposed strategy, to then promptly seek those consents in accordance with the agreed strategy, but on the basis that (unless otherwise agreed in writing between the parties):
  - (i) BTH will initiate contact, with the relevant counterparties and request that they provide any consents or confirmations required or appropriate;
  - (ii) neither Bidder (or any Person acting on behalf of either of them) may contact any counterparties without BTH's prior written consent (which is not to be unreasonably withheld, conditioned or delayed);
  - (iii) BTH must cooperate with, and provide reasonable assistance to Bidder to obtain such consents or confirmations as expeditiously as reasonably practicable, including by promptly providing any information reasonably required by counterparties, provided that, nothing in this clause 6.5(b)(iii) requires BTH to (or consent to):
    - (A) agree to any amendments to the relevant material contract; or
    - (B) pay any monies to the counterparty, other than as provided for in the relevant material contract;
- (iv) Bidder must take all action necessary to comply with any requirements of the counterparties that are reasonably necessary to obtain the relevant consent or confirmation, including providing any information required and entering into parent guarantees or such other forms of guarantee or security as counter-parties may reasonably require and make officers and employees available, where necessary to meet with counter-parties to deal with any issues arising in relation to the matter, provided that, nothing in this clause 6.4(b)(iv) requires Bidder to (or consent to):
  - (A) agree to any amendments to the relevant material contract; or

- (B) pay any monies to the counterparty, other than as provided for in the relevant material contract; and
- (v) provided that each other party has complied with this clause 6.4, a failure by a member of the BTH Group to obtain any Third Party consent, waiver or confirmation, or the exercise of a termination right, will not constitute a breach of this deed by BTH and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this deed.

## 6.5 Appointment of directors

On the Implementation Date, subject to the Scheme Consideration having been paid to Scheme Shareholders in accordance with the Scheme, BTH must as soon as practicable take all reasonable steps to:

- (a) cause the appointment to the BTH Board of such persons as nominated by the Bidder in writing, subject to those persons having provided to BTH a duly signed consent to act as a director; and
- (b) procure that each director of BTH nominated by the Bidder in writing resigns from their office as a director of BTH by providing to the BTH Board their written resignation, such resignation (to the extent reasonable) to include a statement to the effect that the outgoing director has no Claim outstanding against any member of the BTH Group. Any such confirmation must not limit any Claim in the future under any deed of access and indemnity with any member of the BTH Group, any constituent document of any member of the BTH Group or any directors and officers insurance policy entered into by any member of the BTH Group.

## 6.6 Integration Committee

- (a) On and from the date of this deed up to and including the Implementation Date, the parties agree to establish a committee (**Integration Committee**) initially comprising of the following individuals:
- (i) as representatives of BTH: Tom Amos, Wayne Stevenson, David Keane, Cyril Desouza, Charles Chapman and Lucy Rowe; and
- (ii) as representative of Bidder: Rob Amen.
- (b) The role of the Integration Committee will be to act as a forum for discussion and planning in respect of:
- (i) the performance of the business of BTH;
- (ii) implementation of the Transaction in accordance with this deed;
- (iii) matters related to integration planning, including employee retention and incentivisation, stakeholder engagement and communications, business operations and functions or processes; and
- (iv) the process referred to in clause 6.4.
- (c) The Integration Committee will meet not less than once every two weeks, commencing on the one-week anniversary of the date of this deed, and at such other times as agreed between the members of the Integration Committee from

time to time. Meetings may be held via telephone or other forms of technology that provide representatives with an opportunity to participate.

- (d) The parties acknowledge and agree that:
- (i) the Integration Committee is a discussion and planning forum only, and the members of the Integration Committee do not have power to bind the other party or to give any consent, approval or waiver on behalf of such other party;
  - (ii) nothing in this clause 6.6 or elsewhere in this deed requires a party to:
    - (A) act at the direction of the other party or is intended to create a relationship of partnership, joint venture or similar between the parties; or
    - (B) take any action that would reasonably be expected to conflict with or violate the entity's constituent documents or any law;
  - (iii) the respective businesses of Bidder and the BTH Group are to continue to operate independently until, and subject to, the implementation of the Transaction; and
  - (iv) nothing in this clause 6.6 requires any of BTH's representatives on the Integration Committee to do anything which would unduly interfere with their responsibilities to BTH and the ongoing conduct of BTH's business.

#### 6.7 Co-operation with financing

- (a) During the period from the date of this deed to the earlier of the Implementation Date and the termination of this deed in accordance with its terms, and subject to confidentiality arrangements acceptable to BTH (acting reasonably), BTH must provide, must procure each member of the BTH Group to provide, and must cause each member of the BTH Group to use its commercially reasonable efforts to procure that their respective Representatives provide, in each case in a timely manner, reasonable assistance and co-operation in connection the arrangement, implementation and consummation of any debt financing by any Bidder Group Member (**Financing Arrangements**) as may be reasonably requested by Bidder in writing from time to time, including using commercially reasonable efforts to:
- (i) furnish Bidder within a reasonable time (including (subject to the Financing Sources providing confidentiality undertakings consistent with those under the Confidentiality Deed) providing any required consents under the Confidentiality Deed to the disclosure to the Financing Sources of) such financial, operating and other pertinent information regarding the BTH Group as may be reasonably requested by Bidder in connection with the arrangement, implementation or consummation of the Financing Arrangements;
  - (ii) participate in (and make appropriate senior officers and senior employees available for participation in) a reasonable number of meetings, presentations, drafting sessions and due diligence sessions at reasonable and mutually convenient times and provided that Bidder has given BTH reasonable notice of the relevant presentation, drafting session or due diligence session (as the case may be); and

- (iii) provide reasonable assistance to Bidder and its Financing Sources to satisfy any conditions and obligations of any Financing Arrangements to the extent it is within its reasonable control.
- (b) Nothing in clause 6.7(a) requires BTH or any member of the BTH Group or nor any of their respective Representatives to to:
  - (i) cause any Condition to not be satisfied or otherwise cause a breach of this deed;
  - (ii) take any action to the extent it would unreasonably interfere with the ongoing business or operations of the BTH Group (having regard to, among other things, the reasonableness of the notice given by Bidder of any requested assistance or cooperation);
  - (iii) provide any information to the extent it would be in breach of any obligation of confidentiality to any person, breach any applicable law, waive legal professional privilege or take any other action to the extent that it would reasonably be expected to breach any applicable law, the rules of any stock exchange, BTH's constituent documents or any contractual or equitable obligation;
  - (iv) execute any credit or facility agreements, pledge or security documents, or other certificates, legal opinions or documents in connection with the Financing Arrangements;
  - (v) incur any liability in connection with such Financing Arrangements prior to the Scheme being implemented; or
  - (vi) provide any financial assistance that BTH reasonably considers requires shareholder approval under Part 2J.3 of Chapter 2J of the Corporations Act or equivalent or analogous restriction in any jurisdiction or under the rules of any stock exchange.
- (c) Bidder must promptly and fully reimburse BTH for all reasonable out-of-pocket costs incurred by BTH in connection with any cooperation provided under this clause 6.7 (including reasonable advisors' fees and expenses).
- (d) Bidder must indemnify and hold harmless each BTH Group Member from and against any and all losses, damages, claims, costs or expenses suffered or incurred by any of them in connection with any such financing and any information utilised in connection therewith, except to the extent that such loss, damage, claim, cost or expense arises as a result of the fraud or wilful misconduct of a member of the BTH Group.
- (e) If Bidder provides BTH with notice that it would like to fund the repayment of the Regal Loan on the Implementation Date for the purposes of this clause 6.7(e), BTH must use reasonable endeavours to procure, subject to clause 6.7(f):
  - (i) the issue of any prepayment, cancellation or other notices required to enable the repayment of the Regal Loan on the Implementation Date; and
  - (ii) not less than 5 Business Days prior to the Implementation Date, the delivery to Bidder of copies of all:
    - (A) deeds of release;

- (B) payoff or discharge letters; and
- (C) any other certificates or documents,

required to enable the repayment of the Regal Loan, and (subject to payment of the requisite amounts) the release of all associated guarantees, indemnities, obligations, securities, liens, encumbrances and mortgages, on the Implementation Date, in each case in a form acceptable to Bidder (acting reasonably) and duly executed by the relevant counterparty.

- (f) For the avoidance of doubt, nothing in clause 6.7(e) requires BTH to become bound to pay any amount or perform any obligation before the Implementation Date.

## **6.8 Bonuses and other payments**

Bidder and BTH acknowledge and agree that:

- (a) any payments made (or proposed to be made) by a BTH Group Member to a director, officer or employee in the form of a retention or incentive bonus, severance or termination payment, or other similar payment in connection with (or as a consequence of) the Transaction (other than a bonus payable in the ordinary course of business in accordance with the employment terms of the relevant person in existence as at the date of this deed) must be on terms agreed between Bidder and BTH (each acting reasonably); and
- (b) any payments made in accordance with clause 6.8(a) will not constitute a breach of clause 6.1(b).

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## **7 Board recommendation**

### **7.1 BTH recommendation**

- (a) Subject to clause 7.3, BTH represents and warrants to Bidder, as at the date of this deed, that it has been advised by each BTH director that:
  - (i) he or she will act in accordance with this clause 7;
  - (ii) he or she will recommend that:
    - (A) BTH Shareholders vote in favour of the Scheme at the Scheme Meeting;
    - (B) BTH Optionholders vote in favour of the Option Scheme at the Option Scheme Meeting;
  - (iii) they do not hold any interest, directly or indirectly, that, as far as they are aware, would prevent them from making a recommendation or stating an intention as contemplated in clauses 7.2(a) and 7.2(b), respectively; and
  - (iv) he or she intends to vote, or cause to be voted, all:
    - (A) BTH Shares which he or she controls in favour of the Scheme at the Scheme Meeting; and



- (B) BTH Options which he or she controls in favour of the Option Scheme at the Option Scheme Meeting,

in each case, in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report that the Scheme is in the best interests of Scheme Shareholders and that the Option Scheme is in the best interests of the Scheme Optionholders (as applicable).

## 7.2 BTH's Statement to contain recommendation

Subject to clause 7.3, BTH must procure that the Scheme Booklet and the public announcement contemplated by clause 14.2 includes:

- (a) a unanimous recommendation by the BTH Board that:
- (i) in the absence of a Superior Proposal and subject to the Independent Expert opining at all times prior to the Second Court Date that the Scheme is in the best interests of BTH Shareholders, BTH Shareholders vote in favour of the Scheme; and
  - (ii) in the absence of a Superior Proposal and subject to the Independent Expert opining at all times prior to the Second Court Date that the Option Scheme is in the best interests of BTH Optionholders, BTH Optionholders vote in favour of the Option Scheme,

**(BTH Recommendation)**; and

- (b) a statement by each BTH director that he or she intends to vote in favour of:
- (i) the Scheme in respect of all BTH Shares controlled or held by, or on behalf of, that BTH director in the absence of a Superior Proposal and subject to the Independent Expert opining at all times prior to the Second Court Date that the Scheme is in the best interests of BTH Shareholders; and
  - (ii) the Option Scheme in respect of all BTH Options controlled or held by, or on behalf of, that BTH director in the absence of a Superior Proposal and subject to the Independent Expert at all times prior to the Second Court Date that the Option Scheme is in the best interests of BTH Optionholders,

**(BTH Voting Intention)**.

## 7.3 Withdrawal or modification of BTH Recommendation and BTH Voting Intention

- (a) BTH must use its best endeavours to ensure that no director of BTH (both individually and collectively together with the other members of the BTH Board):
- (i) changes, withdraws, qualifies or modifies his or her BTH Recommendation or BTH Voting Intention;
  - (ii) makes any public statement or recommendation:
    - (A) that is inconsistent with his or her BTH Recommendation and/or BTH Voting Intention of the Scheme or the Option Scheme; or
    - (B) supporting or endorsing a Competing Proposal; or

in each case except:

- (iii) where BTH receives a Competing Proposal and the relevant BTH director determines, after all of Bidder's rights under clause 9.6 have been exhausted, that the Competing Proposal constitutes a Superior Proposal;
  - (iv) where the Independent Expert opines, either prior to the despatch of the Scheme Booklet or prior to the 8:00am on the Second Court Date, that the Scheme is not in the best interests of BTH Shareholders or the Option Scheme is not in the best interests of BTH Optionholders (as applicable); or
  - (v) if permitted by clause 9.7, provided that the actual, proposed or potential Competing Proposal was not directly or indirectly brought by, or facilitated by, a breach by BTH of clauses 9.1, 9.2, 9.3 or 9.4 and BTH has complied with its obligations under clause 9.5.
- (b) Bidder acknowledges and agrees that, notwithstanding any other term of this deed, one or more directors of BTH may not make a recommendation under clause 7.1 or 7.2 or may change, withdraw or modify his or her recommendation without being in breach of clause 7.1, 7.2, or 7.3 in response to a requirement or request of the Court or a Government Agency that the relevant BTH director abstain or withdraw from making a BTH Recommendation, BTH Voting Intention or both.
- (c) For the purposes of this clause 7, customary qualifications and explanations contained in the Scheme Booklet and any public announcements in relation to a BTH Recommendation or BTH Voting Intention (including, for the avoidance of doubt, the public announcement contemplated by clause 14.2) to the effect that the BTH Recommendation or BTH Voting Intention is made:
- (i) in the absence of a Superior Proposal;
  - (ii) in respect of the Scheme:
    - (A) in respect of any public announcement issued before the issue of the Scheme Booklet, 'subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interests of BTH Shareholders'; and
    - (B) in respect of the Scheme Booklet and any public announcements issued at the time of or after the issue of the Scheme Booklet, '*subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of BTH Shareholders*'; and
  - (iii) in respect of the Option Scheme:
    - (A) in respect of any public announcement issued before the issue of the Scheme Booklet, '*subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Option Scheme is in the best interests of BTH Optionholders*'; and
    - (B) in respect of the Scheme Booklet and any public announcements issued at the time of or after the issue of the Scheme Booklet, '*subject to the Independent Expert continuing to conclude that the Option Scheme is in the best interests of BTH Optionholders*',

will not be regarded as a failure to make, or an adverse change, withdrawal, adverse modification or adverse qualification of, a BTH Recommendation or BTH Voting Intention.

- (d) Despite anything to the contrary in this clause 7, a statement made by BTH (or any BTH director) to the effect that no action should be taken by BTH Shareholders or BTH Optionholders pending the assessment of a Competing Proposal by the BTH Board or any statement contemplated by clause 9.6(f) shall not contravene this clause 7.

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## 8 Representations and warranties

### 8.1 BTH Warranties

BTH represents and warrants to Bidder each of the BTH Warranties as at the date of this deed and at 8:00am on the Second Court Date (except where any statement is expressed to be made only at a particular date, in which case it is given only at that date).

### 8.2 Bidder Warranties

Bidder represents and warrants to BTH each of the Bidder Warranties as at the date of this deed and at 8:00am on the Second Court Date (except where any statement is expressed to be made only at a particular date, in which case it is given only at that date).

### 8.3 Qualifications on Bidder Warranties

The Bidder Warranties are each subject to and are qualified by matters that:

- (a) are provided for in this deed; or
- (b) are within the actual knowledge of BTH or its Advisers or as at the date of this deed.

### 8.4 Qualifications on BTH Warranties

The BTH Warranties are each subject to and are qualified by matters that:

- (a) are provided for in this deed;
- (b) have been Fairly Disclosed by BTH to ASX or in a document lodged with ASIC (and publicly available) within 24 months prior to the date of this deed;
- (c) have been Fairly Disclosed in the Due Diligence Materials or the BTH Disclosure Letter; or
- (d) would have been Fairly Disclosed to Bidder had Bidder conducted searches 7 days before the date of this deed of public records maintained by:
  - (i) ASIC;
  - (ii) the register established under the *Personal Property Securities Act 2009* (Cth);
  - (iii) Land Titles Offices in each Australian State and Territory;
  - (iv) IP Australia; and
  - (v) the High Court of Australia, Federal Court of Australia and the Supreme Courts of each state and territory in Australia; or

- (e) are within the actual knowledge of Bidder or its Advisers as at the date of this deed.

### **8.5 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this deed 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 deed.

### **8.6 No survival**

Each representation and warranty in clauses 8.1 and 8.2 is severable and does not survive termination of this deed or implementation of the Scheme, and will be taken to have no further force or effect on and from termination of this deed or implementation of the Scheme. No covenant or agreement of any party contained in this deed (other than in clauses 10, 11, 12 and 16.2 to 16.14 (inclusive)) which is to be performed or complied with prior to or at the implementation of the Scheme shall survive the implementation of the Scheme, and will be taken to have no further force or effect on and from implementation of the Scheme.

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## **9 Exclusivity**

### **9.1 No existing discussions**

BTH represents and warrants to Bidder that, as at the date of this deed, each member of the BTH Group:

- (a) is not participating in any discussions or negotiations with a Third Party that concern, or that could reasonably be expected to lead to, a Competing Proposal;
- (b) has ceased any discussions or negotiations with any Third Party in relation to any actual, proposed or potential Competing Proposal;
- (c) is not a party to any agreement, arrangement or understanding with a Third Party in relation to any actual, proposed or potential Competing Proposal (for the avoidance of doubt, in each case whether in writing or otherwise), and, without limiting the foregoing, each of the Investcorp Transaction Documents has been validly terminated in accordance with its terms;
- (d) has ceased to provide or make available any information in relation to the BTH Group to a Third Party where such information was provided for the purpose of facilitating, or could reasonably be expected to lead to, a Competing Proposal; and
- (e) has requested in writing the return or destruction of any information (with such return or destruction to be effected as soon as practicable) in relation to the BTH Group to a Third Party at any time within the 12 months prior to the date of this deed, where such information was provided for the purpose of facilitating, or could reasonably be expected to lead to, a Competing Proposal.

## 9.2 No-shop

During the Exclusivity Period, BTH must not, and must ensure that each member of the BTH Group and their respective Authorised Persons do not, directly or indirectly:

- (a) solicit, invite, initiate or encourage any Competing Proposal;
- (b) solicit, invite, initiate or encourage any enquiries, proposals, discussions or negotiations with any Third Party in relation to, or that could reasonably be expected to lead to, an actual, proposed or potential Competing Proposal; or
- (c) communicate any intention to do any of these things referred to in clauses 9.2(a) or 9.2(b).

## 9.3 No-talk

Subject to clause 9.7, during the Exclusivity Period, BTH must not, and must ensure that each member of the BTH Group and their respective Authorised Persons do not, directly or indirectly:

- (a) facilitate, continue, negotiate, accept or enter into, or offer to facilitate, continue, negotiate, accept or enter into, or participate in, or offer to participate in, negotiations or discussions with any person;
- (b) negotiate, accept or enter into any agreement, arrangement or understanding; or
- (c) communicate any intention to do any of these things,

in relation to (or which may reasonably be expected to lead to) an actual, proposed or potential Competing Proposal.

## 9.4 No due diligence

Subject to clause 9.7, during the Exclusivity Period, except with the prior written consent of Bidder, BTH must not, and must ensure that each member of the BTH Group and their respective Authorised Persons do not, directly or indirectly:

- (a) solicit, invite, initiate, or encourage any person (other than Bidder) to undertake due diligence investigations in respect of the BTH Group, its businesses or operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, an actual, proposed or potential Competing Proposal; or
- (b) disclose, make available to any person (other than Bidder) or permit any such person to receive any non-public information relating to the BTH Group, its businesses or operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, an actual, proposed or potential Competing Proposal.

## 9.5 Notification of approaches

- (a) During the Exclusivity Period, BTH must promptly notify Bidder parties in writing of:
  - (i) any approach, attempt, inquiry or proposal made by any person to any member of the BTH Group or any of their respective Authorised Persons, to initiate any discussions or negotiations that concern an actual, proposed or potential Competing Proposal;

- (ii) any request made by any Third Party to any member of the BTH Group or any of their respective Authorised Persons, for any information relating to the BTH Group, its businesses or operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, an actual, proposed or potential Competing Proposal; and
- (iii) provision by any member of the BTH Group or any of their respective Authorised Persons of any information concerning the business or operations of the BTH Group to any Third Party (other than a Government Agency) in connection with an actual, proposed or potential Competing Proposal or any of the things described in clauses 9.5(a)(i) and 9.5(a)(ii),

whether direct or indirect, solicited or unsolicited, and in writing or otherwise. For the avoidance of doubt, any of the acts described in clauses 9.5(a)(i) to 9.5(a)(iii) may only be taken if permitted by clause 9.7.

- (b) A notice given under clause 9.5(a) must include all material details of the Competing Proposal (including the price (or if not cash, implied value), funding, form of consideration, proposed deal protection provisions, conditions, timing, break fee provisions and other key terms of any Competing Proposal and the identity of the proponent(s) of any such proposal), in each case to the extent known by BTH.
- (c) During the Exclusivity Period, BTH must promptly provide Bidder with:
  - (i) in the case of written materials, a copy of; or
  - (ii) in any other case, a written statement of,

any non-public information relating to the BTH Group or its businesses or operations made available or received by any person in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, an actual, proposed or potential Competing Proposal and which has not previously been provided to Bidder and is not commercially sensitive information of BTH.

## 9.6 Matching right

- (a) If BTH is permitted by virtue of clause 9.7 to engage in activity that would otherwise breach any of clauses 9.3 or 9.4, BTH must ensure that it has in place, or enters into, a confidentiality agreement with the person who has made the applicable Competing Proposal (**Rival Acquirer**) on customary terms and must not enter into any other agreement, understanding or commitment in respect of a Competing Proposal or a potential Competing Proposal except as permitted by clause 9.6(b).
- (b) If BTH receives an actual, proposed or potential Competing Proposal and as a result, any BTH director proposes to either:
  - (i) change, withdraw or modify his or her BTH Recommendation or BTH Voting Intention; or
  - (ii) approve or recommend entry into any agreement, commitment, arrangement or understanding relating to the actual, proposed or potential Competing Proposal (other than a confidentiality agreement contemplated by clause 9.6(a)),

no BTH director must do so until each of the following has occurred:

- (iii) the relevant BTH director has made the determination contemplated by clause 9.7(b) in respect of that actual, proposed or potential Competing Proposal;
  - (iv) BTH has given Bidder written notice (**Relevant Notice**) of the BTH director's proposal to take the action referred to in clauses 9.6(b)(i) or 9.6(b)(ii) (subject to Bidder's rights under clause 9.6(d));
  - (v) subject to clause 9.6(c), BTH has given Bidder all information required by clause 9.5(b);
  - (vi) Bidder's rights under clause 9.6(d) have been exhausted; and
  - (vii) the BTH directors have made the determination contemplated by clause 9.7(b) in respect of that actual, proposed or potential Competing Proposal after Bidder's rights under clause 9.6(d) have been exhausted and after evaluation of any Counter Proposal.
- (c) Prior to giving Bidder the information under clause 9.6(b)(v), BTH must advise the Rival Acquirer that the Rival Acquirer's name and other details which may identify the Rival Acquirer, as well as the key terms of the actual, proposed or potential Competing Proposal, will be provided by BTH to Bidder on a confidential basis.
- (d) If BTH gives a Relevant Notice to Bidder under clause 9.6(b)(iv), Bidder will have the right, but not the obligation, at any time during the period of 4 Business Days following the receipt of the Relevant Notice, to amend the terms of the Transaction including increasing the amount of consideration offered under the Transaction or proposing any other form of transaction (each a **Counter Proposal**), and if it does so then the BTH directors must review the Counter Proposal in good faith. If the BTH directors determine that the Counter Proposal would provide an equivalent or superior outcome to BTH and the BTH securityholders as a whole compared with the Competing Proposal (having regard to the matters noted in clause 9.7(b) and after having received advice from its external legal and financial advisors), then BTH and Bidder must use their reasonable endeavours to agree the amendments to this deed that are reasonably necessary to reflect the Counter Proposal and to enter into an amended agreement to give effect to those amendments and to implement the Counter Proposal as soon as reasonably practicable, and BTH must use reasonable endeavours to procure that the BTH directors recommend the Counter Proposal to the BTH Shareholders and BTH Optionholders and not recommend the applicable Competing Proposal (other than as expressly permitted by this deed).
- (e) For the purposes of this clause 9.6, each successive material modification of any Third Party expression of interest, offer or proposal in relation to an actual, proposed or potential Competing Proposal will constitute a new Competing Proposal and the procedures set out in clause 9.6 must again be followed prior to any BTH Group Member entering into any definitive agreement of the type referred to in clause 9.6(b)(ii) in respect of such actual, proposed or potential Competing Proposal.
- (f) Despite any other provision in this deed, a statement by BTH, the BTH Board or any BTH director only to the effect that:

- For personal use only
- (i) the BTH Board has determined that a Competing Proposal is a Superior Proposal and has commenced the matching right process set out in this clause 9.6; or
  - (ii) BTH Shareholders and BTH Optionholders should take no action pending the completion of the matching right process set out in this clause 9.6,

does not by itself:

- (iii) constitute an adverse change, withdrawal, adverse modification or adverse qualification of the BTH Recommendation, BTH Voting Intention or an endorsement of a Competing Proposal;
- (iv) contravene this deed;
- (v) give rise to an obligation to pay the BTH Break Fee under clause 10.3; or
- (vi) give rise to a termination right under clause 12.3.

### 9.7 Fiduciary out

The restrictions in clauses 9.3 and 9.4 do not apply to restrict any member of the BTH Group and their respective Authorised Persons from taking or refusing to take any action with respect to a Competing Proposal (in relation to which there has been no contravention of this clause 9) provided that:

- (a) the Competing Proposal is bona fide and is made by or on behalf of a person that the BTH board considers is of sufficient commercial standing; and
- (b) the BTH board has determined in good faith after:
  - (i) consultation with BTH's financial adviser, that the Competing Proposal is or may reasonably be expected to lead to a Superior Proposal; and
  - (ii) receiving written advice from the receiving party's external legal advisers experienced in transactions of this nature, that failing to take the action or refusing to take the action (as the case may be) with respect to the Competing Proposal would, or would be reasonably likely to, be inconsistent with the fiduciary or statutory duties owed by BTH's directors under applicable law, or it would otherwise be unlawful not to take that action, provided that the actual, proposed or potential Competing Proposal was not directly or indirectly brought by, or facilitated by, a breach of clauses 9.1, 9.2, 9.3 or 9.4 and BTH has complied with its obligations under clause 9.5.

For the avoidance of doubt, nothing in this clause 9 prevents or restricts BTH from responding to an expression of interest, offer, proposal or discussion in relation to, or that may be reasonably expected to encourage or lead to, an actual, proposed or potential Competing Proposal to:

- (c) acknowledge receipt; and / or
- (d) advise that Third Party that BTH is bound by the provisions of this clause 9 and is only able to engage in negotiations, discussions or other communications if the fiduciary out in this clause 9.7 applies.



## 9.8 Compliance with law

- (a) This clause 9 imposes obligations on BTH only to the extent that the performance of all or part of those obligations:
- (i) does not constitute unacceptable circumstances as declared by the Takeovers Panel; and
  - (ii) is not determined to be unlawful by a court (including by virtue of it being a breach of the BTH Board's fiduciary or statutory duties),
- subject to all proper avenues of appeal and review, judicial and otherwise, having been exhausted.
- (b) The parties must not make, or cause or permit to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination of a kind referred to in clause 9.8(a).

## 9.9 Normal provision of information

Nothing in this clause 9 prevents any member of the BTH Group from:

- (a) providing information to its Representatives;
- (b) providing information to any Government Agency;
- (c) fulfilling its legal obligations, including its obligations under the Listing Rules or to any Government Agency;
- (d) providing information to its auditors, customers, financiers, joint venturers and suppliers acting in that capacity in the ordinary course of business and consistent with past practice;
- (e) making presentations to, or responding to enquiries from, brokers, portfolio investors, analysts and institutional lenders and other third parties in the ordinary course of business or promoting the merits of the Transaction;
- (f) engaging with BTH Shareholders or BTH Optionholders (in their capacity as shareholder or optionholder) in relation to BTH Group, provided such engagement does not relate to BTH soliciting, inviting, encouraging or initiating an actual, proposed or potential Competing Proposal; or
- (g) promoting the merits of the Transaction.

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## 10 BTH Break Fee

### 10.1 Bidder declaration

Bidder represents and warrants to BTH that it would not have entered into this deed without the benefit of this clause 10 and it would not have entered into and continued the negotiations leading up to this deed unless Bidder had a reasonable expectation that BTH would agree to enter into a clause of this kind.

## 10.2 Acknowledgments in relation to BTH Break Fee

- (a) BTH acknowledges that Bidder has incurred and will incur significant costs, including significant opportunity costs, if they enter into this deed and the Scheme is subsequently not implemented. Those costs include external advisory costs, some internal costs of a similar kind, and out-of-pocket expenses.
- (b) BTH represents and warrants that:
  - (i) it has received legal advice on this deed and the operation of this clause 10; and
  - (ii) it considers this clause 10 to be fair and reasonable and that it is appropriate to agree to the terms in this clause 10 in order to secure the significant benefits to it (and BTH Shareholders and BTH Optionholders) resulting from the Scheme and the Option Scheme.
- (c) The parties acknowledge that:
  - (i) the amount of the costs is inherently unascertainable and that, even after termination of this deed, the costs will not be able to be accurately ascertained; and
  - (ii) the BTH Break Fee represents a genuine and reasonable estimate of cost and loss that Bidder will suffer if the Scheme and the Option Scheme is subsequently not implemented.

## 10.3 BTH Break Fee

BTH must pay to Bidder the BTH Break Fee in accordance with clause 10.4 if:

- (a) during the Exclusivity Period:
    - (i) any member of the BTH Board fails to recommend the Scheme or the Option Scheme in the manner described in clause 7.2 (including, for the avoidance of doubt, whether or not BTH has used its best endeavours to procure the BTH Recommendation);
    - (ii) any member of the BTH Board publicly withdraws or adversely modifies or qualifies their BTH Recommendation;
    - (iii) any member of the BTH Board makes a public statement:
      - (A) supporting, endorsing or recommending any Competing Proposal;
      - (B) to the effect that they no longer support the Scheme; or
      - (C) otherwise indicating that they no longer recommend the Transaction or recommend that BTH Shareholders or BTH Optionholders accept or vote in favour of a Competing Proposal of any kind that is announced (whether or not such proposal is stated to be subject to any pre-conditions) during the Exclusivity Period,
- other than in circumstances where:
- (D) the Independent Expert's Report (including any update, revision or amendment thereto) of the Independent Expert opines that the

Scheme is not in the best interests of Scheme Shareholders or the Option Scheme is not in the best interests of Scheme Optionholders (as applicable) (other than where the reason for that opinion is a Competing Proposal);

- (E) clause 7.3(b) applies; or
- (F) BTH is entitled to terminate this deed under clause 12.1;
- (iv) a Competing Proposal is announced before the End Date and, within 12 months of the Competing Proposal being announced, the Competing Proposal results in a person or persons (other than a member of the Bidder Group) completing the Competing Proposal or otherwise obtaining Control of BTH, merging or amalgamating with BTH or acquiring (directly or indirectly) an interest in all or a substantial part of the business or assets of the BTH Group; or
- (v) Bidder has terminated this deed under clause 12.1(a) and the Transaction does not complete,

provided that, for the avoidance of doubt, a statement made by BTH or the BTH Board to the effect that no action should be taken by BTH Shareholders and/or BTH Optionholders pending the assessment of a Competing Proposal by the BTH Board or any statement contemplated by clause 9.6(f) will not require BTH to pay the BTH Break Fee to Bidder.

#### **10.4 Payment**

The payment of the BTH Break Fee by BTH to Bidder provided for in this clause 10.3 must be made within 10 Business Days of receipt of a written demand for payment by Bidder unless a finding has been made by a court or Takeovers Panel as described in clause 10.5(e), in which case the amount payable shall be reduced to the amount which either the Takeovers Panel or a court determines does not constitute unacceptable circumstances or is enforceable (as applicable). The demand may only be made after the occurrence of an event referred to in clause 10.3.

#### **10.5 Qualifications**

- (a) No BTH Break Fee is payable if the Scheme becomes Effective, notwithstanding the occurrence of any event in clause 10.3.
- (b) To the extent that any amounts have already been paid to Bidder under this clause 10 and the Scheme becomes Effective, such amounts must be promptly (and in any event no later than 3 Business Days after the Effective Date) refunded to BTH.
- (c) The BTH Break Fee is not payable by BTH if prior to the BTH Break Fee becoming payable under clause 10.3, BTH was entitled to terminate this deed in accordance with clause 12.1(a).
- (d) The BTH Break Fee is only payable once.
- (e) This clause 10 does not impose an obligation on BTH to pay the BTH Break Fee to the extent (and only to the extent) that the obligation to pay the BTH Break Fee:
  - (i) constitutes unacceptable circumstances as declared by the Takeovers Panel; or

- (ii) is held to be unenforceable by one party against another as determined by a court,

after all proper avenues of appeal and review, whether judicial or otherwise, have been exhausted.

- (f) During the course of any Takeovers Panel or court proceedings (including any appeal or review thereof) referred to in clause 10.5(e), the parties must take all reasonable steps to ensure that any such declaration or determination has the minimum effect possible.
- (g) The parties must not make or cause or permit to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in clause 10.5(e). If the BTH Break Fee has already been paid to Bidder but clause 10.5(e) applies, Bidder will refund to BTH within 10 Business Days after receipt of a written demand from BTH an amount equal to the difference between the BTH Break Fee and any permitted amount of the Break Fee (unless otherwise required by the Takeovers Panel or a court of competent jurisdiction).
- (h) For the avoidance of doubt, any part of the BTH Break Fee that would not constitute unacceptable circumstances or that is not unenforceable or unlawful (as applicable) must be paid by BTH.

#### **10.6 Limitation of liability and other claims**

- (a) Notwithstanding any other provisions of this deed, and except in relation to fraud, or wilful or intentional breach of this deed by BTH:
- (i) the maximum liability of BTH to Bidder under or in connection with this deed including in respect of any breach of the deed will be the BTH Break Fee;
- (ii) payment of the BTH Break Fee pursuant to this deed shall be in full satisfaction of all liabilities of BTH under this deed;
- (iii) a payment by BTH in accordance with this clause 10 represents the sole and absolute liability of BTH under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by BTH in connection with this deed; and
- (iv) the amount of the BTH Break Fee payable to Bidder under this clause 10 shall be reduced by the amount of any loss or damage recovered by Bidder in relation to a breach of any other clause of this deed.
- (b) Nothing in this clause limits Bidder's right to seek and obtain, without limitation, injunctive relief or specific performance if BTH breaches or threatens to breach this deed.

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## **11 Bidder Break Fee**

### **11.1 Acknowledgments in relation to Bidder Break Fee**

- (a) Each party acknowledges that, if they enter into this deed and the Scheme and Option Scheme is subsequently not implemented, BTH will incur significant costs, including significant opportunity costs. Those costs include external advisory costs, some internal costs of a similar kind and out-of-pocket expenses.

- (b) In the circumstances referred to in clause 11.1(a), BTH has requested provision be made for the costs outlined in this clause 11, in the form of the Bidder Break Fee, without which BTH would not have entered into this deed.
- (c) Bidder represents and warrants that:
  - (i) it has received legal advice on this deed and the operation of this clause 11; and
  - (ii) it considers this clause 11 to be fair and reasonable and that it is appropriate to agree to the terms in this clause 11 in order to secure the significant benefits to Bidder (and its stakeholders) resulting from the Scheme and the Option Scheme.
- (d) The parties acknowledge that:
  - (i) the amount of the costs is inherently unascertainable and that, even after termination of this deed, the costs will not be able to be accurately ascertained; and
  - (ii) the Bidder Break Fee represents a genuine and reasonable estimate of cost and loss that BTH will suffer if the Scheme and the Option Scheme is subsequently not implemented.

### 11.2 Bidder Break Fee

Bidder must pay to BTH the Bidder Break Fee without set-off or withholding, within 10 Business Days after receipt of a written demand for payment from BTH, if:

- (a) BTH has terminated this deed under clause 12.1(a) and the Transaction does not complete; or
- (b) the Court fails to approve the terms of the Scheme or the Option Scheme (for which the approval of the requisite BTH Shareholders or BTH Optionholders has been obtained) as a result of a material non-compliance by Bidder with any of its obligations under this deed.

### 11.3 Qualifications

- (a) The Bidder Break Fee is only payable once.
- (b) This clause 11 does not impose an obligation on Bidder to pay the Bidder Break Fee to the extent (and only to the extent) that the obligation to pay the Bidder Break Fee:
  - (i) constitutes unacceptable circumstances as declared by the Takeovers Panel; or
  - (ii) is held to be unenforceable by one party against another as determined by a court,

after all proper avenues of appeal and review, whether judicial or otherwise, have been exhausted.

- (c) During the course of any Takeovers Panel or court proceedings (including any appeal or review thereof) referred to in clause 11.3(b), the parties must take all

reasonable steps to ensure that any such declaration or determination has the minimum effect possible.

- (d) The Bidder Break Fee is not payable by Bidder if prior to the Bidder Break Fee becoming payable under clause 11.2, Bidder was entitled to terminate this deed in accordance with clause 12.1(a).
- (e) The parties must not make or cause or permit to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in clause 11.3(b). If the Bidder Break Fee has already been paid to BTH but clause 11.3(b) applies, BTH will refund to Bidder within 10 Business Days after receipt of a written demand from Bidder an amount equal to the difference between the Bidder Break Fee and any permitted amount of the Bidder Break Fee (unless otherwise required by the Takeovers Panel or a court of competent jurisdiction).
- (f) For the avoidance of doubt, any part of the Bidder Break Fee that would not constitute unacceptable circumstances or that is not unenforceable or unlawful (as applicable) must be paid by Bidder.
- (g) To the extent that any amounts have already been paid to BTH under this clause 11 and the Scheme becomes Effective, such amounts must be promptly (and in any event no later than 3 Business Days after the Effective Date) refunded to Bidder.

#### **11.4 Limitation of liability and other claims**

- (a) Notwithstanding any other provisions of this deed, but subject to clause 11.4(b) and clause 11.4(c), and except in relation to fraud, or wilful or intentional breach of this deed by Bidder:
  - (i) the maximum liability of Bidder to BTH under or in connection with this deed including in respect of any breach of the deed will be the Bidder Break Fee; and
  - (ii) payment of the Bidder Break Fee pursuant to this deed shall be in full satisfaction of all liabilities of Bidder under this deed;
  - (iii) a payment by Bidder in accordance with this clause 11 represents the sole and absolute liability of Bidder under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by Bidder in connection with this deed; and
  - (iv) the amount of the Bidder Break Fee payable to BTH under this clause 11 shall be reduced by the amount of any loss or damage recovered by BTH in relation to a breach of any other clause of this deed.
- (b) Nothing in this clause limits BTH's right to seek and obtain, without limitation, injunctive relief or specific performance if Bidder breaches or threatens to breach this deed.
- (c) Nothing in clause 11.4(a) limits the liability of Bidder or any other person under clause 4.2 or the Deed Poll.

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## 12 Termination

### 12.1 Termination by either party

Bidder or BTH may, by notice in writing to the other parties, terminate this deed:

- (a) at any time prior to 8:00am on the Second Court Date if Bidder (in the case of a termination by BTH) or BTH (in the case of a termination by Bidder) (as applicable):
  - (i) either:
    - (A) is in breach of any of its obligations under this deed (other than a Bidder Warranty or a BTH Warranty not being true and correct) which would cause a Condition to not be satisfied, or become incapable of being satisfied, before the End Date; or
    - (B) is in breach of a representation and warranty given by them in this deed (being the Bidder Warranties in relation to Bidder and the BTH Warranties in relation to BTH, as applicable), where that breach of representation and warranty would cause a Condition to not be satisfied, or become incapable of being satisfied before the End Date;
  - (ii) the party wishing to terminate has given written notice to the other parties in a timely manner setting out details of the relevant circumstance and stating an intention to terminate this deed;
  - (iii) if capable of remedy, the relevant circumstances continue to exist for 10 Business Days (or any shorter period ending at 5:00pm on the day before the end of the Second Court Date) from the time the notice is given; and
  - (iv) the party wishing to terminate is not then in breach of this deed which would result in, and has not committed a deliberate act or omission which directly and materially contributed to, a Condition not being satisfied, or becoming incapable of being satisfied, before the time and date specified for its satisfaction (or being satisfied by the End Date, if no such time and date is specified).
- (b) in the circumstances set out in, and in accordance with, clause 3.8; or
- (c) at any time if the Effective Date for the Scheme has not occurred, or will not occur, on or before the End Date, provided that such failure of the Effective Date for the Scheme to occur on or before the End Date is not the result of:
  - (i) a breach of this deed by the party wishing to terminate which resulted in; or
  - (ii) a deliberate act or omission of the party wishing to terminate which directly and materially contributed to,a Condition not being satisfied on or before the End Date.

### 12.2 Termination by BTH

BTH may, by notice in writing to Bidder, terminate this deed at any time prior to 8:00am on the Second Court Date if, at any time before then, a majority of the BTH Board:

- For personal use only
- (a) fails to recommend the Scheme in the manner described in clause 7.2 (including, for the avoidance of doubt, whether or not BTH has used its best endeavours to procure the BTH Recommendation);
  - (b) has changed, withdrawn, qualified or modified their BTH Recommendation of the Scheme or the Option Scheme in the manner contemplated in clause 7.2; or
  - (c) makes a public statement indicating that they no longer recommend the Transaction or recommend a Competing Proposal (but excluding a statement to the effect that no action should be taken by BTH Shareholders and/or BTH Optionholders pending assessment of a Competing Proposal by the BTH Board or the completion of the matching right process set out in this clause 9.6),

in each case, where expressly permitted by, and in accordance with, this deed (including clause 7.3).

### 12.3 Termination by Bidder

- (a) Bidder may, by notice in writing to BTH, terminate this deed at any time prior to 8:00am on the Second Court Date if:
  - (i) for any reason whether or not permitted by this deed, at any time before then, any member of the BTH Board:
    - (A) fails to recommend the Scheme or the Option Scheme in the manner described in clause 7.2 (including, for the avoidance of doubt, whether or not BTH has used its best endeavours to procure the BTH Recommendation);
    - (B) has changed, withdrawn, qualified or modified their BTH Recommendation of the Scheme or the Option Scheme in the manner contemplated in clause 7.2; or
    - (C) make a public statement indicating that they no longer recommend the Transaction or recommend a Competing Proposal (but excluding a statement to the effect that no action should be taken by BTH Shareholders and/or BTH Optionholders pending assessment of a Competing Proposal by the BTH Board or the completion of the matching right process set out in this clause 9.6); or
  - (ii) in any circumstances, a member of the BTH Group enters into a definitive agreement to undertake or implement a Competing Proposal (and, for the avoidance of doubt, this does not include BTH entering into a confidentiality agreement or like agreement in relation to any engagement or action permitted by clause 9.7).
- (b) For the avoidance of doubt, a statement to the effect that no action should be taken by BTH Shareholders and/or BTH Optionholders pending the assessment of a Competing Proposal by the BTH Board, or any statement contemplated by clause 9.6(f) is not regarded as an adverse change of a recommendation for the purposes of this clause 12.3.

### 12.4 Other termination events

- (a) This deed is terminable if agreed to in writing by Bidder and BTH.



- (b) No party may terminate or rescind this deed, except as permitted under clause 3.8, 12.1, 12.2, 12.3 or 12.4.

### **12.5 Effect of termination**

- (a) In the event of termination of this deed under clause 3.8, 12.1, 12.2, 12.3 or 12.4 this deed will become void and have no effect, except that the provisions of clauses 8.5 to 8.6, 10, 11, 12 and 16.2 to 16.14 (inclusive) survive termination.
- (b) Termination of this deed does not affect any accrued rights of a party in respect of a wilful and material breach of this deed prior to termination.

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## **13 Releases**

### **13.1 Release of BTH Indemnified Parties**

- (a) Subject to any restrictions imposed by law, Bidder releases any and all rights that it may have as at the date of this deed and from time to time, and agrees with BTH that it will not make any Claim, against any BTH Indemnified Party in connection with:
  - (i) any breach of any covenant, representation or warranty given by BTH under this deed;
  - (ii) any disclosures containing any statement which is false or misleading (whether by omission or otherwise); or
  - (iii) any failure to provide information,except where a BTH Indemnified Party has engaged in fraud or wilful misconduct or concealment. To avoid doubt, nothing in this clause 13.1(a) limits the rights of Bidder to terminate this deed under clause 12.
- (b) BTH receives and holds the benefit of clause 13.1(a) as trustee for the BTH Indemnified Parties.

### **13.2 Release of Bidder Indemnified Parties**

- (a) Subject to any restrictions imposed by law, BTH releases any and all rights that it may have as at the date of this deed and from time to time, and agrees with Bidder that it will not make any Claim, against any Bidder Indemnified Party in connection with:
  - (i) any breach of any covenant, representation or warranty given by Bidder under this deed;
  - (ii) any disclosure containing any statement which is false or misleading (whether by omission or otherwise); or
  - (iii) any failure to provide information,except where a Bidder Indemnified Party has engaged in fraud or wilful misconduct or concealment. To avoid doubt, nothing in this clause 13.2(a) limits the rights of BTH to terminate this deed under clause 12.

- (b) Bidder receives and holds the benefit of clause 13.2(a) as trustee for the Bidder Indemnified Parties.

### 13.3 Directors' and officers' indemnity and insurance

- (a) Bidder acknowledges that, notwithstanding any other provision of this deed, BTH will, prior to the Implementation Date, enter into arrangements to secure directors and officers run-off insurance for up to a 7 year period from the Implementation Date on terms consistent with the directors and officers run-off insurance policy BTH has in place at the date of this deed (including pay any premiums and any amounts necessary to ensure such run off is in place prior to the Implementation Date, and that any actions to facilitate that insurance or in connection therewith will not, by themselves, be a BTH Material Adverse Change or BTH Prescribed Occurrence or breach any provision of this deed) provided that:
- (i) BTH must use reasonable endeavours to obtain in good faith the directors and officers run-off insurance from a reputable insurer on commercially reasonable terms;
  - (ii) BTH keeps Bidder reasonably informed of progress in relation to the directors and officers run-off insurance and provides Bidder with all information reasonably requested by Bidder in connection with the progress of obtaining the directors and officers run-off insurance; and
  - (iii) BTH consults with Bidder in advance in relation to the progress of obtaining, and all material communications with potential providers regarding, the directors and officers run-off insurance (including, but not limited to, pricing).
- (b) Subject to the Scheme becoming Effective and implementation of the Transaction, Bidder undertakes in favour of BTH and each other person who is a BTH Indemnified Party that it will, and that it will cause its Related Bodies Corporate to:
- (i) for a period of 7 years from the Implementation Date, ensure that the constitutions of BTH and each other BTH Group Member continue to contain such rules as are contained in those constitutions at the date of this deed that provide for each company to indemnify each of its current and previous directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a BTH Group Member; and
  - (ii) procure that BTH and each other BTH Group Member complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and, without limiting the foregoing, not take any deliberate action which would prejudice or adversely affect any directors' and officers' runoff insurance cover taken out prior to the Implementation Date.
- (c) The undertakings contained in this clause 13.3 are subject to any Corporations Act restriction, or any restriction in the law of a jurisdiction in which an entity is incorporated, and will be read down accordingly.
- (d) BTH receives and holds the benefit of this clause 13.3 as trustee for each director and officer of a member of the BTH Group.

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## 14 Confidentiality and Public Announcement

### 14.1 Confidentiality

Each party agrees and acknowledges that the Confidentiality Deed:

- (a) continues to operate in full force and effect after the date of this deed; and
- (b) survives any termination of this deed,

in each case subject to, and in accordance with, the terms of the Confidentiality Deed.

### 14.2 Public announcements on execution

- (a) Immediately after the execution of this deed, BTH must issue a public announcement in a form which has been agreed to in writing by Bidder (which agreement must not be unreasonably withheld, conditioned or delayed).
- (b) The BTH announcement must include:
  - (i) a unanimous recommendation by the BTH Board to BTH Shareholders that, in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme and the Option Scheme are in the best interest of BTH Shareholders and BTH Optionholders (as applicable), BTH Shareholders vote in favour of the Scheme and BTH Optionholders vote in favour of the Option Scheme; and
  - (ii) a statement that all the BTH Board members will vote (or will procure the voting of) all director:
    - (A) BTH Shares at the time of the Scheme Meeting in favour of the Scheme at the Scheme Meeting; and
    - (B) BTH Options at the time of the Option Scheme Meeting in favour of the Option Scheme at the Option Scheme Meeting.

### 14.3 Further public announcements

- (a) Subject to clause 14.3(b), the parties must:
  - (i) consult with each other before issuing and, to the extent practicable, give each other a reasonable opportunity to review and consider in good faith the views of the other party regarding, any press release or other public statement with respect to the Transaction; and
  - (ii) must not issue any such press release or make any such public statement prior to such consultation, except as may be required by applicable law, fiduciary duties or the Listing Rules.
- (b) The provisions of clause 14.3(a) do not apply to:
  - (i) any announcement, document or publication in connection with a Competing Proposal or withdrawal of a BTH Board recommendation; or

- (ii) any disclosure by BTH or Bidder of any information concerning this deed or the transactions contemplated by this deed in connection with any dispute between the parties regarding this deed, the Scheme, the Option Scheme or the transactions contemplated by this deed.

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## 15 Notices

### 15.1 Service of notices

- (a) A notice, consent or other communication under this deed (**Notice**) is only effective if:
- (i) it is in writing, signed by or on behalf of the party giving it; and
  - (ii) it is directed to the recipient's address for notices as follows:

#### **BTH**

Address: Level 5, 126 Phillip St, Sydney NSW 2000  
E-mail: lucy.rowe@automicgroup.com.au  
Attn: Lucy Rowe

with a copy to Gilbert + Tobin:

Address: Level 35, Tower 2, International Towers Sydney,  
200 Barangaroo Avenue, Barangaroo, NSW 2000  
E-mail: ccondoleon@gtlaw.com.au / wbainbridge@gtlaw.com.au /  
shorton@gtlaw.com.au / awong@gtlaw.com.au  
Attn: Costas Condoleon, Wes Bainbridge, Sarah Horton, Angus  
Wong

#### **Bidder**

Address: 5 Attadale Court, Elanora QLD 4221  
E-mail: RAmen@vectorcapital.com  
Attn: Rob Amen

with a copy to Johnson Winter Slattery:

Address: Level 14, 50 Bridge Street, Sydney NSW 2000  
E-mail: james.rozsa@jws.com.au / byron.koster@jws.com.au  
Attn: James Rozsa, Byron Koster

- (b) If a party changes address and fails to notify the other party of this change and the new address, delivery of Notices to a new address, or otherwise brought to the attention of the addressee, are deemed to be in compliance with the notice obligations under this clause 15.1.

### 15.2 Effective on receipt

A Notice given in accordance with clause 15.1 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;

- (b) if sent by prepaid post or internationally recognized delivery service, the Business Day after the date of posting (or the seventh Business Day after the date of posting if posted to or from outside Australia); or
- (c) if sent by email:
- (i) when the sender receives an automated message confirming delivery; or
  - (ii) 2 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,

but if the delivery or transmission under clause 15.2(a) or 15.2(b) is not on a Business Day or is after 5:00pm on a Business Day, the Notice is taken to be received at 9.00am on the Business Day after that delivery, receipt or transmission.

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## 16 General

### 16.1 Further acts

Each party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this deed.

### 16.2 Payments

Unless otherwise expressly provided in this deed, where an amount is required to be paid to a party (the **Receiving Party**) by another party under this deed, that amount shall be paid:

- (a) in immediately available and irrevocable funds by electronic transfer to a bank account or accounts notified by the Receiving Party in writing on or before the due date for payment, or in other such immediately payable funds as the parties may agree; and
- (b) without deduction, withholding or set-off.

### 16.3 Consents or approvals

Except as expressly provided in this deed, a party may conditionally or unconditionally in its absolute discretion give or withhold any consent or approval under this deed.

### 16.4 GST

- (a) Any reference in this clause 16.4 to a term defined or used in the GST Act is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply under or in connection with this deed does not include GST.
- (c) To the extent that any supply made by a party (**Supplier**) to another party (**Recipient**) under or in connection with this deed is a taxable supply, the Recipient must pay to the Supplier, in addition to the consideration to be provided under this

deed but for the application of this clause 16.4(c) for that supply (**GST Exclusive Consideration**), an amount equal to the amount of the GST Exclusive Consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. This clause 16.4(c) does not apply to any taxable supply under or in connection with this deed that is expressly stated to include GST.

- (d) The amount on account of GST payable in accordance with this clause 16.4 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.
- (e) Any reference in the calculation of any consideration or of any indemnity, reimbursement or similar amount to a cost, expense or liability incurred by a person (**Relevant Expense**) is a reference to the relevant expense reduced by an amount equal to any input tax credit entitlement of that person (or of the representative member of any GST group to which the person belongs) in relation to the Relevant Expense. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the relevant payment or consideration must be provided.
- (f) Unless expressly included, any monetary thresholds specified in this deed are exclusive of GST.

#### **16.5 Stamp duty**

Bidder must pay all stamp duties (if any) and any fines and penalties with respect to stamp duty in respect of this deed, the Scheme, the Option Scheme or the steps to be taken under this deed, the Scheme, or the Option Scheme (including the acquisition or transfer of BTH Shares and BTH Options pursuant to the Transaction).

#### **16.6 Expenses**

Except as otherwise provided in this deed, each party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this deed and the Scheme Booklet and the proposed, attempted or actual implementation of this deed and the Transaction.

#### **16.7 Amendments**

This deed may only be varied by a document signed by or on behalf of each of the parties.

#### **16.8 Assignment**

A party must not assign or novate this deed or otherwise deal with the benefit of it or a right under it, or purport to do so, without the prior written consent of the other party, which consent may be withheld at the absolute discretion of the party from whom consent is sought.

#### **16.9 Waiver**

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this deed.

- For personal use only
- (b) Any waiver or consent given by any party under this deed will only be effective and binding on that party if it is given or confirmed in writing by that party.
  - (c) No waiver of a breach of any term of this deed will operate as a waiver of another breach of that term or of a breach of any other term of this deed.
  - (d) Nothing in this deed obliges a party to exercise a right to waive any conditional term of this deed that may be in its power.

#### **16.10 Counterparts**

- (a) This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. Each counterpart is an original but the counterparts together are one and the same agreement.
- (b) This deed is binding on the parties on the exchange of duly executed counterparts.
- (c) The parties agree that a copy of an original executed counterpart sent by email to the email address of the other party specified in clause 15, instead of the original, is sufficient evidence of the execution of the original and may be produced in evidence for all purposes in place of the original.

#### **16.11 Entire agreement**

This deed and the Confidentiality Deed and any other documents specified by the parties for the purposes of this clause 16.11:

- (a) supersede all prior agreements, understandings, negotiations or deeds in respect of their subject matter; and
- (b) embody the entire understanding of the parties and constitutes the entire terms agreed on between the parties with respect to their subject matter.

#### **16.12 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed 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 deed.

#### **16.13 No merger**

The rights and obligations of the parties will not merge on completion of any transaction under this deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transaction.

#### **16.14 Governing law**

- (a) This deed is governed by and will be construed according to the laws of New South Wales.

- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and of the courts competent to determine appeals from those courts.

**16.15 Service of process**

Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of Notices under clause 15.

For personal use only



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## Schedule 1 Dictionary

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### 1 Dictionary

#### 1.1 Defined terms

In this deed, unless the context otherwise requires, the following words and expressions have meanings as follows:

**Adviser** means any person who is engaged to provide professional advice of any type (including legal, accounting, consulting or financial advice) to the applicable party.

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

**Associate** has the meaning given in Division 2 of Part 1.2 of the Corporations Act.

**ASX** means ASX Limited (ABN 98 008 624 691) or, if the context requires, the financial market operated by it.

**Authorisation** means any authorisation, consent, approval, registration, filing, agreement, notice of non-objection, notarisation, certificate, licence, permit, authority or exemption from, by or with a Government Agency.

**Authorised Person** means, in respect of a person:

- (a) a director, officer, contractor, agent or employee of the person;
- (b) an Adviser of the person; and
- (c) a director, officer or employee of an Adviser of the person.

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

**Bidder Break Fee** means \$1,826,000.

**Bidder Group** means Bidder and each of its Related Bodies Corporate (excluding, at any time, BTH and its Subsidiaries to the extent that BTH and its Subsidiaries are subsidiaries of Bidder at that time).

**Bidder Group Member** means a member of the Bidder Group.

**Bidder Information** means such information regarding Bidder that is provided by or on behalf of Bidder to BTH or the Independent Expert:

- (a) to enable the Scheme Booklet to be prepared and completed in compliance with all applicable laws;
- (b) to enable applications for Regulatory Approvals to be made; and
- (c) otherwise in compliance with Bidder's obligations under clause 5.2.

**Bidder Warranties** means the representations and warranties of Bidder set out in Schedule 3.

**BTH Board** means the board of directors of BTH as constituted from time to time (including, for the avoidance of doubt, any current or future directors of BTH) (or any committee of the board of directors of BTH constituted from time to time to consider the Transaction on behalf of BTH).

**BTH Break Fee** means \$1,826,000.

**BTH Disclosure Letter** means the letter so titled from BTH provided to Bidder on or prior to the date of this deed.

**BTH Equity Incentives** means:

- (a) the following rights which may convert into BTH Shares:
  - (i) 15,182,901 PSARs;
  - (ii) 4,993,700 Service Rights; and
- (b) up to a further 10,914,760 PSARs issued in accordance with the BTH Rights Plan.

**BTH Group** means BTH and its Subsidiaries.

**BTH Group Member** means a member of the BTH Group.

**BTH Indemnified Parties** means each Authorised Person of a member of the BTH Group.

**BTH Information** means all the information in the Scheme Booklet other than the Bidder Information and the Independent Expert's Report.

**BTH Material Adverse Change** means any event, occurrence or matter that occurs on or after the date of this deed, and which (individually or when aggregated with other such events, occurrences or matters) has or is reasonably likely to have the effect of diminishing the consolidated annual revenue of the BTH Group for the immediately preceding 12 month period to \$100,000,000 or below (calculated after taking into account any event, occurrence or matter on or after the date of this deed that has or could reasonably be expected to have a positive effect on consolidated annual revenue), in each case, other than an event, occurrence or matter:

- (a) required to be done or procured by BTH pursuant to this deed or the Transaction or expressly permitted by this deed, the Scheme or the Option Scheme;
- (b) to the extent that it was Fairly Disclosed in the BTH Disclosure Letter or the Due Diligence Materials;
- (c) to the extent it was Fairly Disclosed to the ASX or in a document lodged with ASIC within 24 months before the date of this deed;
- (d) to the extent it was actually known by Bidder prior to the date of the deed;
- (e) arising from any act or omission of Bidder or from any action which Bidder has previously approved or requested in writing;
- (f) relating to costs and expenses incurred by BTH associated with the Transaction process, including all fees payable to external advisers of BTH, to the extent such fees are Fairly Disclosed in the BTH Disclosure Letter or the Due Diligence Materials;

- (g) which arise from:
- (i) changes that affect the industry in which the BTH operates generally, provided that such changes do not have a materially and adversely disproportionate effect on BTH or the BTH Group as compared to other participants in the industry in which BTH operates;
  - (ii) changes in commodity prices, international or domestic financial markets, exchange rates or interest rates, provided that such changes do not have a materially and adversely disproportionate effect on BTH or the BTH Group as compared to other participants in the industry in which BTH operates;
  - (iii) general economic, political or business conditions, including changes or disruptions to, or fluctuations in, domestic or international financial markets, provided that such changes, disruptions and/or fluctuations do not have a materially and adversely disproportionate effect on BTH or the BTH Group as compared to other participants in the industry in which the BTH Group operates;
  - (iv) acts of terrorism, outbreak or escalation of war (whether or not declared), major hostilities, civil unrest, act of god, natural disaster or adverse weather conditions, cyber security incidents or the like;
  - (v) general outbreaks or escalation of illness (including COVID-19 or any mutation, variation or derivative) or the like, or from any law, order, rule or direction of any Government Agency in relation thereto, provided that such matters do not have a materially and adversely disproportionate effect on BTH or the BTH Group;
  - (vi) changes to accounting standards or policies or the interpretation of them, applicable laws or policies of a Government Agency of an applicable jurisdiction, provided that such matters do not have a materially and adversely disproportionate effect on BTH or the BTH Group;
  - (vii) any failure, in and of itself, by BTH or a member of the BTH Group to meet any internal or published projections, forecasts, estimates or predictions of revenues, earnings or other financial or operating metrics for any period (but this exception will not prevent the underlying cause or contributing factor of any such failure, if not falling within any other exception in this definition, from being taken into account in determining whether there has been a BTH Material Adverse Change); or
  - (viii) the announcement of, or entry into, or performance of obligations under, this deed and consummation of the transactions contemplated hereby (including, to the extent it arises out of the entry into or performance of those obligations, any loss of or adverse change in the relationship of BTH and any member of the BTH Group with their respective employees, customers, partners (including joint venture partners), creditors, suppliers, contractors or other contractual counterparties as at the date of this deed, including the loss of any contract).

**BTH Option** means an option issued by BTH entitling the holder to acquire a specified number of BTH Shares for a specified exercise price per BTH Share, but excludes the Regal Options.

**BTH Optionholder** means each person who is registered in the BTH Option Register as a holder of BTH Options.

**BTH Option Register** means the register of optionholders of BTH maintained by or on behalf of BTH in accordance with section 168(1) of the Corporations Act.

**BTH Prescribed Occurrence** means the occurrence of any of the following:

- (a) BTH converts all or any of its shares into a larger or smaller number of shares (see section 254H of the Corporations Act);
- (b) any member of the BTH Group resolves to reduce its share capital in any way;
- (c) any member of the BTH Group:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under subsections 257C(1) or 257D(1) of the Corporations Act;
- (d) any member of the BTH Group declares, pays or distributes any dividend;
- (e) any member of the BTH Group issues shares, or grants an option over its shares, or agrees to make such an issue of shares or grant such an option, other than:
  - (i) where the shares or other securities are issued, or where the options are granted, to BTH or an entity which is a wholly-owned Subsidiary of BTH, provided that BTH itself is not the issuing entity; or
  - (ii) in connection with the treatment of the BTH Equity Incentives as contemplated by clause 4.6;
- (f) any member of the BTH Group issues, or agrees to issue, convertible notes;
- (g) any member of the BTH Group disposes, or agrees to dispose, of the whole, or a substantial part, of the business or property of the BTH Group;
- (h) any member of the BTH Group creates or agrees to create any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property, other than in the usual and ordinary course of business consistent with past practice; or
- (i) any member of the BTH Group becomes Insolvent,

provided that a Prescribed Occurrence will not include any matter:

- (j) required, expressly permitted or expressly contemplated by this deed, the Transaction or the transactions contemplated by either;
- (k) to the extent it is Fairly Disclosed in filings of BTH with the ASX or in a document lodged with ASIC within 24 months prior to the date of this deed;
- (l) to the extent it is Fairly Disclosed in the BTH Disclosure Letter or the Due Diligence Materials;
- (m) required by law or by an order of a court or Government Agency; or
- (n) the undertaking of which Bidder has previously approved in writing (which approval must not be unreasonably withheld, conditioned or delayed).

**BTH Recommendation** has the meaning given to the term in clause 7.2(a).

**BTH Rights Plan** means the Bigtincan Holdings Limited Rights Plan approved by the BTH Board on 21 August 2023.

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

**BTH Shareholder** means each person who is registered in the BTH Share Register as a holder of BTH Shares.

**BTH Share Register** means the register of members of BTH maintained by or on behalf of BTH in accordance with section 168(1) of the Corporations Act.

**BTH Voting Intention** has the meaning given to that term in clause 7.2(b).

**BTH Warranties** means the representations and warranties of BTH set out in Schedule 4.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Sydney, New South Wales Australia and San Francisco, California United States of America.

**Change of Control Requirements** has the meaning given to that term in clause 6.4.

**Claim** means a claim, notice, demand, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute.

**Code** means the United States Internal Revenue Code of 1986.

**Competing Proposal** means any offer, proposal, agreement, arrangement or transaction (or expression of interest thereof), whether existing before, on or after the date of this deed, which, if entered into or completed, could mean that a Third Party would:

- (a) directly or indirectly acquire a Relevant Interest in, or have a right to acquire a legal, beneficial or economic interest in, or control of, more than 20% of the securities in any member of the BTH Group;
- (b) acquire Control of any member of the BTH Group;
- (c) directly or indirectly acquire or become the holder of, or otherwise acquire or have a right to acquire a legal, beneficial or economic interest in, or control of, all or substantially all or material part of the business or assets of any member of the BTH Group;
- (d) otherwise directly or indirectly acquire, be stapled with or merge with BTH; or
- (e) require BTH to abandon, or otherwise fail to proceed with, the Transaction,

whether by way of a takeover bid (including a reverse takeover), scheme of arrangement, shareholder approved acquisition or disposal, capital reduction, buy back, sale, lease or purchase of shares, other securities or assets, assignment of assets or liabilities, joint venture, dual listed company (or other synthetic merger), deed of company arrangements, any debt for equity arrangement, recapitalisation, refinancing or other transaction or arrangement; and

**Condition** means:

- (a) in respect of the Scheme, a condition set out in clause 3.1; and
- (b) in respect of the Option Scheme, a condition set out in clause 3.2,

and **Conditions** means all of them.

**Confidentiality Deed** means the Confidentiality Deed between BTH and Bidder dated 30 August 2023, as amended.

**Consultation Notice** has the meaning given to that term in clause 3.8(a)(i).

**Control** has the meaning given under section 50AA of the Corporations Act.

**Convertible Securities** means any securities or instruments issued by BTH that are exercisable for, or convertible into, BTH Shares, but excluding:

- (a) the BTH Equity Incentives;
- (b) the BTH Options; and
- (c) the Regal Options.

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

**Counter Proposal** has the meaning given to that term in clause 9.6(d).

**Court** means the Supreme Court of New South Wales or any other court of competent jurisdiction under the Corporations Act as the parties may agree in writing.

**Deed Poll** means the deed poll to be executed by Bidder prior to the First Court Date, substantially in the form set out in Schedule 6.

**Due Diligence Materials** means the information in relation to the BTH Group disclosed in writing by or on behalf of BTH to Bidder and its Representatives prior to the date of this deed in:

- (a) the Online Data Room; and
- (b) any written answers to requests for further information made by Bidder and its Representatives as contained in the Online Data Room.

**Effective** means:

- (a) when used in relation to the Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Scheme; and
- (b) when used in relation to the Option Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Option Scheme.

**Effective Date** means:

- (a) with respect to the Scheme, the date on which the Scheme becomes Effective; and

- (b) with respect to the Option Scheme, the date on which the Option Scheme becomes Effective.

**End Date** means the later of:

- (a) the date that is 9 months after the date of this deed; and  
(b) such other date and time agreed in writing between Bidder and BTH.

**Equity Commitment Letter** means the binding, executed commitment letters addressed to Bidder and BTH from Vector Capital VI, L.P. dated on or about the date of this deed.

**Exclusivity Period** means the period commencing on the date of this deed and ending on the earliest of:

- (a) the End Date;  
(b) the Implementation Date; and  
(c) the date this deed is terminated in accordance with its terms.

**Fairly Disclosed** means disclosed in sufficient detail to enable a reasonable and sophisticated recipient of the relevant information who is experienced in transactions of the nature of the Transaction and experienced in a business similar to any business conducted by the BTH Group, to identify the nature, substance and potential impact of the relevant fact, matter, circumstance or event.

**Financing Arrangements** has the meaning given to that term in clause 6.7(a).

**Financing Sources** means the persons (including, without limitation, lenders, agents and arrangers) that have committed to provide or arrange or otherwise enter into arrangements, in connection with all or any part of the Financing Arrangements, together with their affiliates, officers, directors, employees and representatives involved in such debt financing and their respective successors and assigns.

**First Court Date** means the date the Court first hears the application to order the convening of the Scheme Meeting and the Option Scheme Meeting under section 411(1) of the Corporations Act.

**GAAP** means generally accepted accounting principles as in effect in Australia.

**Government Agency** means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, ASIC, ASX, Foreign Investment Review Board and any regulatory organisation established under statute or any stock exchange.

**GST** means a goods and services tax, or similar value added tax, levied or imposed in Australia under the GST Law.

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

**GST Exclusive Consideration** has the meaning given to that term in clause 16.4(c).

**GST Law** has the meaning given to it in the GST Act.

**Headcount Test** means in respect of the resolution to approve the Scheme, the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the resolution at the Scheme Meeting is passed by a majority in number of BTH Shareholders present and voting, either in person or by proxy.

**IFRS** means International Financial Reporting Standards.

**Implementation Date** means:

- (a) with respect to the Scheme, the fifth Business Day, or such other Business Day as the parties agree, following the Scheme Record Date; and
- (a) with respect to the Option Scheme, the fifth Business Day, or such other Business Day as the parties agree, following the Scheme Record Date.

**Independent Expert** means an expert, independent of the parties, engaged by BTH to opine on the Transaction.

**Independent Expert's Report** means the report from the Independent Expert commissioned by BTH for inclusion in the Scheme Booklet, which includes a statement by the Independent Expert on whether, in its opinion:

- (a) the Scheme is in the best interests of BTH Shareholders (and the reasons for holding that opinion); and
- (b) the Option Scheme is in the best interests of BTH Optionholders (and the reasons for holding that opinion),

and includes any update, revision or amendment of that report by the Independent Expert.

**Insolvency Event** means in relation to a person:

- (a) **(insolvency official)** the appointment of a liquidator, provisional liquidator, administrator, statutory manager, controller, receiver, receiver and manager or other insolvency official (whether under an Australian law or a foreign law) to the person or to the whole or a substantial part of the property or assets of the person and the action is not stayed, withdrawn or dismissed within 14 days;
- (b) **(arrangements)** the entry by the person into a compromise or arrangement with its creditors generally;
- (c) **(winding up)** the calling of a meeting to consider a resolution to wind up the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or order for the winding up or deregistration of the person other than where the application or order (as the case may be) is set aside or withdrawn within 14 days;
- (d) **(ceasing business)** the person ceases or threatens to cease to carry on business;
- (e) **(insolvency)** the person is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act;
- (f) **(deregistration)** the person being deregistered as a company or otherwise dissolved;



- (g) (**deed of company arrangement**) the person executing a deed of company arrangement;
- (h) (**person as trustee or partner**) the person incurs a liability while acting or purporting to act as trustee (or co-trustee) or general partner of a trust or partnership (including a limited partnership) and the person is not entitled to be fully indemnified against the liability out of trust or partnership assets because of one or more of the following:
- (i) a breach of trust or obligation as partner by the person;
  - (ii) the person acting outside the scope of its powers as trustee or partner;
  - (iii) a term of the trust or partnership denying, or limiting, the person's right to be indemnified against the liability;
  - (iv) the assets of the trust or partnership being insufficient to discharge the liability; or
- (i) (**analogous events**) anything analogous to those set out in any of paragraphs (a) to (h) inclusive occurs in relation to the person under the laws of a foreign jurisdiction,

and a person shall be **Insolvent** if any event specified in paragraphs (a) to (i) inclusive occurs in respect of that person.

**Investcorp Transaction Documents** means:

- (a) the Scheme Implementation Deed entered into between BTH, Investcorp AI Acquisition Corp., Bigtincan Limited and BTH Merger Sub Limited and dated 21 October 2024;
- (b) the Business Combination Agreement entered into between BTH, Investcorp AI Acquisition Corp., Bigtincan Limited and BTH Merger Sub Limited and dated 21 October 2024 (**BCA**);
- (c) the Ancillary Agreements (as defined in the BCA); and
- (d) any agreement, arrangement or understanding entered into in connection with, or in furtherance of the transactions contemplated by, any of the above.

**Listing Rules** means the official listing rules of the ASX or NASDAQ, as the context requires.

**Notice** has the meaning given to that term in clause 15.1(a).

**Notified Transaction Costs** has the meaning given in clause 5.9.

**Online Data Room** means the documents and information (including, for the avoidance of doubt, information and responses to questions or requests for information from Bidder and its Representatives provided by BTH or its Representatives via a spreadsheet distributed via email) contained in the Ansarada data room entitled "Project Bobcat" on the date of this deed, to which Bidder and its Representatives were given access prior to the date of this deed, an electronic copy of which has been provided to Bidder by BTH or its Representatives on (or within 2 days of) the date of this deed.

**Option Scheme** means the proposed creditor's scheme of arrangement pursuant to Part 5.4 of the Corporations Act between BTH and Scheme Optionholders in respect of all Scheme Options, the form of which is to be agreed between Bidder and BTH but under which Scheme Optionholders will receive the Option Scheme Consideration, subject to any alterations or conditions that are:

- (a) agreed to in writing by Bidder and BTH and approved by the Court; or
- (b) made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by Bidder and BTH.

**Option Scheme Consideration** means the consideration to be provided by Bidder to each Scheme Optionholder for the cancellation and extinguishment, or the transfer to Bidder, of each Scheme Option, being:

- (a) in respect of those Scheme Options set out in Schedule 7, the relevant consideration set out in Schedule 7, provided that if, the Scheme Consideration is less than \$0.22 per Scheme Share as a consequence of the TC Adjustment Amount, the consideration set out in Schedule 7 shall be amended to take into account the adjusted Scheme Consideration (and otherwise using the same methodology); and
- (b) for all other Scheme Options an amount equal to the Scheme Consideration less the applicable exercise price for those Scheme Options.

**Option Scheme Deed Poll** means a deed poll, the form of which is to be agreed between Bidder and BTH, under which Bidder covenants in favour of the Scheme Optionholders to perform its obligations under the Option Scheme.

**Option Scheme Meeting** means the meeting of BTH Optionholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Option Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

**PSAR** means a performance share appreciation right granted under the BTH Rights Plan.

**Receiving Party** has the meaning given to that term in clause 16.2.

**Regal Loan** means the loan advanced by Regal Funds Management Pty Ltd as trustee for the Regal Tactical Credit Fund (as lender) to BTH (as borrower) pursuant to a loan agreement dated 29 August 2023, as amended.

**Regal Options** means the 24,000,000 options over BTH Shares issued by BTH to the trustee of the Regal Tactical Opportunities Fund (or its nominee) under an option deed poll dated on or about September 2023.

**Registered Address** means:

- (a) in relation to a Scheme Shareholder, the address shown in the BTH Share Register as at the Scheme Record Date; and
- (b) a Scheme Optionholder, the address shown in the BTH Option Register as at the Scheme Record Date.

**Regulatory Approval** means:

- (a) any approval, consent, Authorisation, registration, filing, lodgment, permit, franchise, agreement, notarisation, certificate, permission, licence, direction, declaration, authority, waiver, modification or exemption from, by or with a Government Agency; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Government Agency 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.

**Related Body Corporate** has the meaning given in section 50 of the Corporations Act.

**Relevant Expense** has the meaning given to that term in clause 16.4(e).

**Relevant Interest** has the meaning given in sections 608 and 609 of the Corporations Act.

**Relevant Notice** has the meaning given to that term in clause 9.6(b)(iv).

**Representative** of a party includes an employee, agent, officer, director, adviser, partner, joint venturer or sub-contractor of that party.

**RG 60** means Regulatory Guide 60 issued by ASIC.

**Rival Acquirer** has the meaning given to that term in clause 9.6(a).

**Scheme** means the proposed scheme of arrangement pursuant to Part 5.1 of the Corporations Act between BTH and Scheme Shareholders in respect of all Scheme Shares, substantially in the form set out in Schedule 5 or in such other form as the parties agree in writing, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by each party.

**Scheme Booklet** means the explanatory booklet or explanatory booklets to be prepared by BTH in respect of the Transaction in accordance with the terms of this deed and to be despatched to BTH Shareholders and BTH Optionholders (as applicable).

**Scheme Consideration** means the consideration to be provided by Bidder to each Scheme Shareholder for the transfer to Bidder of each Scheme Share, being \$0.22 less the TC Adjustment Amount per Scheme Share (provided that, if the TC Adjustment Amount is a negative number, the Scheme Consideration shall be \$0.22 per Scheme Share).

**Scheme Option** means a BTH Option on issue as at the Scheme Record Date.

**Scheme Optionholder** means a person who holds one or more Scheme Options.

**Scheme Meeting** means the meeting of BTH Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

**Scheme Record Date** means:

- (a) in respect of the Scheme, 5:00pm on the third Business Day (or such other Business Day as the parties agree in writing) following the Effective Date; and

- (b) in respect of the Option Scheme, 5:00pm on the third Business Day (or such other Business Day as the parties agree in writing) following the Effective Date.

**Scheme Share** means a BTH Share on issue as at the Scheme Record Date.

**Scheme Shareholder** means a person who holds one or more Scheme Shares.

**Second Court Date** means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme and the Option Scheme is heard or scheduled to be heard or, if the application is adjourned for any reason, means the date on which the adjourned application is heard or scheduled to be heard.

**Share Splitting** means in respect of the Scheme, the splitting by a holder of BTH Shares into two or more parcels of BTH Shares whether or not it results in any change in beneficial ownership of the BTH Shares.

**Service Right** means a service right granted under the BTH Rights Plan.

**Subsidiary** has the meaning given to that term in section 46 of the Corporations Act.

**Superior Proposal** means a bona fide written Competing Proposal received by the BTH Board, which the BTH Board determines, acting in good faith and in order to satisfy what the BTH Board reasonably considers to be its fiduciary or statutory duties (after receiving advice from its legal and financial advisers and not received as a result of a breach by BTH of its obligations under clause 9):

- (a) is reasonably capable of being valued and completed within a reasonable timeframe in accordance with its terms; and
- (b) would, if completed substantially in accordance with its terms, be reasonably likely to result in a transaction more favourable to BTH securityholders or BTH Shareholders or BTH Optionholders (as applicable) than the Transaction (as the Transaction may be amended or varied following application of the matching right set out in clause 9.6) having regard to matters including consideration, conditionality, funding, certainty and timing,

taking into account all aspects of the Competing Proposal and the Transaction, including conditions, the identity, reputation and financial condition of the person making the proposal and all relevant legal, regulatory and financial matters (including the value and type of consideration, funding, its conditions and the likelihood and timing of those conditions being satisfied, the level of certainty in respect of the funding required, the probability of the Competing Proposal being completed compared to the Transaction, any conditions precedent or other matters affecting the probability of the proposal being completed).

**Supplier** has the meaning given to that term in clause 16.4(c).

**Tax Act** means the *Income Tax Assessment Act 1997* (Cth).

**Taxes** means all federal, state, local, foreign or other taxes of any kind, charges, fees, duties, levies, customs, imposts, required deposits or other assessments in each case in the nature of or similar to a tax imposed by any Government Agency, including all income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, production, capital stock, ad valorem, value added, inventory, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use,

transfer, registration, alternative or add-on minimum, or estimated taxes, and including any interest, late charge, penalty or addition thereto, in each case, whether disputed or not.

**Tax Return** means any return, declaration, report, statement, information statement or other document filed or required to be filed with any Government Agency with respect to Taxes, including any claims for refunds of Taxes, any information returns and any amendments or supplements of any of the foregoing or attachments thereto.

**TC Adjustment Amount** will mean the amount calculated as follows:

$$\frac{(\text{Notified Transaction Costs} - \text{A\$4,000,000})}{\text{Number of Scheme Shares}}$$

**Timetable** means the indicative timetable in relation to the Transaction set out in Schedule 2 with such modifications as may be agreed in writing by the parties.

**Third Party** means a person other than BTH and Bidder (or their respective Related Bodies Corporate or Authorised Persons).

**Trading Day** has the meaning given to that term in the Listing Rules.

**Transaction** means the proposed acquisition by Bidder, in accordance with the terms and conditions of this deed, of all of the:

- (a) Scheme Shares through the implementation of the Scheme in accordance with this deed; and
- (b) Scheme Options through the implementation of the Option Scheme in accordance with this deed.

**Transaction Costs** means all outstanding third party costs, fees and expenses incurred or committed (or to be incurred or committed) by the BTH Group in relation to:

- (a) up to the date of this deed, the Transaction and the transaction contemplated by the Investcorp Transaction Documents and nominations to appoint new directors to the BTH Board at BTH's 2024 annual general meeting; and

from the date of this deed until (and including) Implementation, the Transaction.

## 1.2 Interpretation

In this deed the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;

- (f) a reference to:
- (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation, trust or other body corporate;
  - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
  - (iii) a party includes its agents, successors and permitted assigns;
  - (iv) a document includes all amendments or supplements to that document;
  - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this deed;
  - (vi) this deed includes all schedules and attachments to it;
  - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
  - (viii) a statute includes any regulation, ordinance, by-law or other subordinate legislation made under it;
  - (ix) an agreement other than this deed includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing;
  - (x) a monetary amount is in Australian dollars, unless specified otherwise; and
  - (xi) US\$ or USD is a reference to the currency of the United States of America;
- (g) an agreement on the part of two or more persons binds them jointly and each of them severally;
- (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (i) a reference to time is to Sydney, Australia time;
- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it; and
- (k) an obligation imposed by this deed on a party to use reasonable endeavours to ensure that an act or thing occurs or does not occur is to be read as including an obligation on that party to cause its subsidiaries to use reasonable endeavours to ensure that such act or thing occurs or does not occur, as the case may be.

### **1.3 Best and reasonable endeavours**

A reference to a party using or obligation on a party to use its best endeavours or reasonable endeavours or all reasonable endeavours does not oblige that party to:

- (a) pay money:
- (i) in the form of an inducement or consideration to a Third Party to procure something (other than the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing); or

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- (ii) in circumstances that are commercially onerous or unreasonable in the context of this deed, except for payment of any applicable fee for the lodgement or filing of any relevant application with any Government Agency or immaterial costs to procure that the thing is performed or occurs or does not occur;
  - (b) provide other valuable consideration to or for the benefit of any person;
  - (c) commence any legal action or proceeding against any person; or
  - (d) agree to commercially onerous or unreasonable conditions.

#### **1.4 Consents or approvals**

If the doing of any act, matter or thing under this deed is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion unless expressly provided otherwise.

#### **1.5 Knowledge, belief or awareness of BTH**

- (a) Certain statements made in this deed (including certain BTH Warranties) are given and made by BTH only on the basis of its knowledge, belief or awareness. For the purposes of this deed, BTH's knowledge, belief or awareness is limited to the actual knowledge, belief or awareness of the board of directors of BTH. The knowledge, belief or awareness of any person other than the persons identified in this clause 1.5(a) will not be imputed to BTH.
- (b) Without limiting clause 13, none of the persons named in clause 1.5(a) will bear any personal liability in respect of the BTH Warranties or otherwise under this deed.

#### **1.6 Knowledge, belief or awareness of Bidder**

- (a) Certain statements made in this deed (including certain Bidder Warranties) are given and made by Bidder only on the basis of its knowledge, belief or awareness. For the purposes of this deed, Bidder's knowledge, belief or awareness is limited to the actual knowledge, belief or awareness of Rob Amen, Tom Smith and Spencer Applegate. The knowledge, belief or awareness of any person other than the persons identified in this clause 1.6(a) will not be imputed to Bidder.
- (b) Without limiting clause 13, none of the persons named in clause 1.6(a) will bear any personal liability in respect of the Bidder Warranties or otherwise under this deed.

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## Schedule 2 Indicative Timetable

Event	Date
BTH lodges draft Scheme Booklet with ASIC for review and comment	Mid January 2025
First Court Date	Early February 2025
Scheme Meeting and Option Scheme Meeting	Early March 2025
Second Court Date	Early March 2025
Effective Date	Early to mid March 2025
Scheme Record Date	Mid March 2025
Implementation Date	Late March 2025

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## Schedule 3 Bidder Warranties

Bidder represents and warrants that:

- (a) **(Status)** Bidder is a validly existing corporation registered under the laws of its place of incorporation;
- (b) **(Power and corporate authorisation)** the execution and delivery of this deed has been properly authorised by all necessary corporate action and Bidder has full corporate power and lawful authority to execute and deliver this deed, the Deed Poll and the Option Scheme Deed Poll, and to perform or cause to be performed its obligations under this deed, the Deed Poll and the Option Scheme Deed Poll;
- (c) **(Documents binding)** this deed constitutes legal, valid and binding obligations on Bidder enforceable in accordance with its terms and the execution of this deed of itself does not result in a breach of or default under any agreement or deed or any writ, order, judgment or injunction, law, rule or regulation to which Bidder is a party or to which it is bound and it is not otherwise bound by any agreement that would prevent or restrict it from entering into, delivering or performing this deed;
- (d) **(Transactions permitted)** the execution and performance by it of this deed and each transaction contemplated by this deed did not and will not violate any provision of:
  - (i) a law or treaty or a judgment, ruling, order or decree of a Government Agency binding on it or any of its Related Bodies Corporate; or
  - (ii) its constituent documents;
- (e) **(No Regulatory Approvals)** no Regulatory Approval is required to be obtained by Bidder in order for it to execute, deliver and perform this deed;
- (f) **(no default)** the execution and performance of this deed does not conflict with or result in the breach of or a default under:
  - (i) any provision of Bidder's constitution or other constituent documents; or
  - (ii) any writ, order or injunction, judgement, law, rule, ruling or regulation to which it is a party or subject or by which it is bound;
- (g) **(Bidder Information)** the Bidder Information supplied or to be supplied for inclusion or incorporation by reference in the Scheme Booklet and any other document submitted or to be submitted to any Government Agency or any announcement or public statement regarding the Transaction contemplated hereby (including, without limitation, the announcement of the Transaction under clause 14.2 of this deed) shall not contain:
  - (i) any material statement which is materially misleading or deceptive (with any statement of belief or opinion being honestly held and formed on a reasonable basis), including by way of omission from that statement; or
  - (ii) any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances in which they are made, not misleading,

as at:

(iii) the date the Scheme Booklet is despatched to BTH Shareholders and BTH Optionholders; and

(iv) the time such information is filed, submitted or made publicly available,

subject, in each case, to the qualifications and limitations set forth in the materials provided by Bidder or that are included in such filings and/or mailings:

(h) **(basis of Bidder Information)** the Bidder Information:

(i) will be provided to BTH in good faith; and

(ii) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60, applicable Takeovers Panel guidance notes and the Listing Rules;

(i) **(new information)** it will, as a continuing obligation, provide to BTH all further or new information which arises after the Scheme Booklet has been despatched to BTH Shareholders and BTH Optionholders until the date of the Scheme Meeting and the Option Scheme Meeting which is necessary to ensure that the Bidder Information is not misleading or deceptive (including by way of omission) and do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances in which they are made, not misleading;

(j) **(Independent Expert)** all information provided by or on behalf of Bidder to the Independent Expert has been and will be (as applicable) prepared and provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;

(k) **(No Relevant Interest)** as at the date of this deed:

(i) no Bidder Group Member nor any of their Associates have any Relevant Interest in any BTH Shares, and no Bidder Group Member nor any of their Associates have a right to acquire any BTH Shares; and

(ii) no Bidder Group Member nor any of their Associates have entered into any agreement, arrangement or understanding that confers rights the economic effect of which is equivalent or substantially equivalent to holding, acquiring, or disposing of BTH Shares or any assets of any BTH Group Member (including cash-settled derivative contract, contracts for difference or other derivative contracts).

(l) **(No dealings with BTH Shareholders and BTH Optionholders)** neither Bidder nor any of its Associates has any agreement, arrangement or understanding with any BTH Shareholder or BTH Optionholder under which:

(i) that BTH Shareholder or BTH Optionholder (or an Associate of that BTH Shareholder or BTH Optionholder) would be entitled to receive any collateral benefit in relation to the Scheme or the Option Scheme (as applicable), or any consideration for their BTH Shares or BTH Options that is different from the Scheme Consideration or the Option Scheme Consideration (as applicable); or

(ii) the BTH Shareholder or BTH Optionholder agrees to vote in favour of the Scheme or the Option Scheme (as applicable) (or against any Competing Proposal);

- (m) **(No dealings with BTH directors or employees)** other than as disclosed to BTH in writing prior to the date of this deed and approved by the BTH Board, neither Bidder nor any of its Associates has any agreement, arrangement or understanding with any director or employee of BTH relating in any way to the Transaction or operations of BTH after the Effective Date;
- (n) **(Other dealings)** other than:
- (i) as Fairly Disclosed to BTH in writing by or on behalf of Bidder on or before the date of this deed; or
  - (ii) as contemplated by this deed or the Transaction,
- Bidder has no agreement, arrangement or understanding (whether written or oral) in relation to the securities, business, operations or assets of a BTH Group Member (including in relation to the securities, business or operations or assets of a BTH Group Member at the Implementation Date) or any other commercial or other arrangements related to BTH or another BTH Group Member, any territory or jurisdiction in which the BTH Group operates or the performance or conduct of the business of the BTH Group (in whole or in part), the Transaction, the Scheme or the Option Scheme;
- (o) **(Insolvency Event or regulatory action)** no Insolvency Event has occurred in relation to it, nor has any regulatory action of any nature been taken that would reasonably be likely to prevent or restrict its ability to fulfil its obligations under this deed, under the Deed Poll, under the Option Scheme Deed Poll, under the Scheme or under the Option Scheme;
- (p) **(No material breach of laws)** as far as Bidder is aware, as at the date of this deed, there is no material breach by any Bidder Group member of any law or regulation applicable to them (or order of any Government Agency having jurisdiction over them);
- (q) **(Brokers)** No broker, finder or banker is entitled to any brokerage, finder's or other fee or commission in connection with the Transaction, or the transactions contemplated under this deed, the Scheme, the Option Scheme, the Deed Poll or the Option Scheme Deed Poll, based upon arrangements made by or on behalf of Bidder;
- (r) **(Bidder ownership)** the document provided by Johnson Winter Slattery to Gilbert + Tobin on the date of this deed, regarding the direct and indirect ownership of Bidder, is true and accurate in all material respects as at the date of this deed;
- (s) **(Approvals)** Bidder does not require the approval of its shareholders or the approval or consent of any other person to enter into or perform any of its obligations under this deed, the Deed Poll or the Option Scheme Deed Poll;
- (t) **(Equity Commitment Letter)** in relation to the Equity Commitment Letter:
- (i) Bidder has disclosed a true and complete copy of the Equity Commitment Letter to BTH;
  - (ii) the Equity Commitment Letter has been executed by the parties thereto and constitutes legally valid and enforceable obligations on, and rights of, those parties that are enforceable in accordance with their terms; or
  - (iii) the Equity Commitment Letter has not been:

- (A) terminated or rescinded, and Bidder is not in default thereunder; or
  - (B) amended in any respect which will, or is reasonably likely to, prejudice Bidder's ability to pay the Scheme Consideration or the Option Scheme Consideration in accordance with this deed, the Deed Poll and the Option Scheme Deed Poll (as applicable) or to pay any other amount payable under the Equity Commitment Letter; and
- (iv) without the prior written consent of BTH, Bidder will not and must procure that each other member of the Bidder Group does not:
- (A) replace, amend, or agree to amend, the Equity Commitment Letter;
  - (B) waive, or agree to waive, any of its rights under the Equity Commitment Letter; and
  - (C) agree or consent to any novation, assignment or transfer of any counter-party's obligations under the Equity Commitment Letter, where to do so will prejudice Bidder's ability to pay the Scheme Consideration or the Option Scheme Consideration in accordance with this deed, the Deed Poll or the Option Scheme Deed Poll (as applicable), or to pay any other amount under the Equity Commitment Letter;
- (u) **(no default under Equity Commitment Letter)**: Bidder is not in default under the Equity Commitment Letter and no event has occurred which with notice, lapse of time or both, would result in a default under such letter, in each case, which will, or is reasonably likely to, prejudice Bidder's ability to pay the Scheme Consideration or the Option Scheme Consideration in accordance with this deed, the Deed Poll and the Option Scheme Deed Poll (as applicable);
- (v) **(Sufficient cash amounts – reasonable expectation at the date of this deed)** at all times between the date of this deed and 8:00am on the Second Court Date, Bidder has a reasonable basis to expect that it will have available to it on the Implementation Date sufficient cash amounts (whether from internal cash resources or external funding (including debt and equity financing) arrangements or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration and the Option Scheme Consideration in accordance with its obligations under this deed, the Scheme, the Option Scheme, the Deed Poll and the Option Scheme Deed Poll (as applicable);
- (w) **(Sufficient cash amounts - unconditional at Second Court Date)** by 8:00am on the Second Court Date, Bidder will have available to it on an unconditional basis (other than conditions relating to, or which will cease to apply or be satisfied following, the Scheme and the Option Scheme becoming Effective or procedural matters or documentary requirements which, by their terms or nature, can only be satisfied or performed after the Scheme or the Option Scheme becomes Effective) sufficient cash reserves (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy Bidder's obligations to pay the Scheme Consideration and the Option Scheme Consideration in accordance with its obligations under this deed, the Scheme, the Option Scheme, the Deed Poll and the Option Scheme Deed Poll (as applicable); and
- (x) **(Sufficient cash amounts – available on Implementation Date)** on the Implementation Date, Bidder will have available to it on an unconditional basis sufficient cash amounts (whether from internal cash resources or external funding

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(including debt and equity financing) arrangements or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration and the Option Scheme Consideration in accordance with its obligations under this deed, the Scheme, the Option Scheme, the Deed Poll and the Option Scheme Deed Poll (as applicable).

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## Schedule 4 BTH Warranties

BTH represents and warrants that:

- (a) **(Status)** BTH is a validly existing corporation registered under the laws of its place of incorporation;
- (b) **(Power and corporate authorisations)** the execution and delivery of this deed by BTH has been properly authorised by all necessary corporate action and BTH has full corporate power and lawful authority to execute and deliver this deed and to perform or cause to be performed its obligations under this deed, the Scheme and the Option Scheme;
- (c) **(Documents binding)** this deed constitutes legal, valid and binding obligations on BTH enforceable in accordance with its terms and the execution of this deed of itself does not result in a breach of or default under any agreement or deed or any writ, order, judgment or injunction, law, rule or regulation to which BTH or any of its Subsidiaries is a party or to which they are bound and it is not otherwise bound by any agreement that would prevent or restrict it from entering into, delivering or performing this deed;
- (d) **(Transactions permitted)** the execution and performance by it of this deed will not violate any provision of:
- (i) a law or treaty or a judgment, ruling, order or decree of a Government Agency binding on it or any of its Related Bodies Corporate; or
  - (ii) its constitution or other constituent documents.
- (e) **(Insolvency Event)** no Insolvency Event has occurred in relation to a member of the BTH Group;
- (f) **(BTH Information)** the BTH Information contained in the Scheme Booklet, and supplied or to be supplied for inclusion or incorporation by reference in any other document submitted or to be submitted to any Government Agency or any announcement or public statement regarding the Transaction contemplated hereby (including, without limitation, the announcement of the Transaction under clause 14.2 of this deed) shall not contain:
- (i) any material statement which is materially misleading or deceptive (with any statement of belief or opinion being honestly held and formed on a reasonable basis), including by way of omission from that statement; or
  - (ii) any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances in which they are made, not misleading,
- as at:
- (iii) the date the Scheme Booklet is despatched to BTH Shareholders and BTH Optionholders; and
  - (iv) the time such information is filed, submitted or made publicly available,

subject, in each case, to the qualifications and limitations set forth in the materials provided by BTH or that are included in such filings and/or mailings;

- (g) **(basis of BTH Information)** the BTH Information:
  - (i) will be prepared and included in the Scheme Booklet in good faith; and
  - (ii) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60, applicable Takeovers Panel guidance notes and the Listing Rules;
- (h) **(Independent Expert)** all information provided by or on behalf of BTH to the Independent Expert will be prepared and provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;
- (i) **(new information)** BTH will, as a continuing obligation (but in respect of the Bidder Information, only to the extent that Bidder provides BTH with updates to the Bidder Information), ensure that the Scheme Booklet is updated or supplemented to include all further or new information which arises after the Scheme Booklet has been despatched to BTH Shareholders and BTH Optionholders, until the date of the Scheme Meeting and the Option Scheme Meeting which is necessary to ensure that the Scheme Booklet:
  - (i) is not misleading or deceptive (including by way of omission) in any material respect; and
  - (ii) does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances in which they are made, not misleading;
- (j) **(Capital structure)** the issued capital of BTH  
as of the date of this deed is:
  - (A) 821,675,934 BTH Shares;
  - (B) 15,182,901 PSARs;
  - (C) 4,993,700 Service Rights;
  - (D) 42,712,693 BTH Options; and
  - (E) 24,000,000 Regal Options,and there are no other options, performance rights, shares, warrants, convertible notes, instruments or other securities (or offers, agreements or obligations to issue any of the foregoing) that may convert into BTH Shares (other than in connection with the treatment of the BTH Equity Incentives as contemplated by clause 4.6);
- (k) **(No material breach of laws)** as far as BTH is aware, as at the date of this deed, there is no material breach by any BTH Group member of any law or regulation applicable to them (or order of any Government Agency having jurisdiction over them), which breach would be reasonably likely to have the effect of causing a BTH Material Adverse Change;
- (l) **(Continuous disclosure)** BTH has complied in all material respects with its continuous disclosure obligations under ASX Listing Rule 3.1 and, other than in relation to this Transaction, it is not relying on the carve-out in Listing Rule 3.1A to

withhold any material information from public disclosure (other than the information in relation to the Transaction);

- (m) **(Disclosure Material)** the BTH Disclosure Letter and Due Diligence Materials were compiled in good faith, and BTH has not intentionally withheld from the BTH Disclosure Letter and Due Diligence Materials any information of which BTH is aware as at the date of this deed which, if disclosed, might reasonably be expected to affect the decision of Bidder to enter into this deed and complete the Transaction. For the avoidance of doubt, BTH makes no representation or warranty whatsoever as to the adequacy or sufficiency of the BTH Disclosure Letter and Due Diligence Materials for the purpose of Bidder acquiring BTH Shares or BTH Options;
- (n) **(Brokers)** no broker, finder or banker is entitled to any brokerage, finder's or other fee or commission in connection with the Transaction, or the transactions contemplated under this deed, the Scheme, the Option Scheme, the Deed Poll or the Option Scheme Deed Poll, based upon arrangements made by or on behalf of BTH;
- (o) **(Taxes)** except in each case as to matters that would not, individually or in the aggregate, be material to BTH or its Subsidiaries:
- (i) each of BTH and its Subsidiaries has duly and timely filed all Tax Returns which are required to be filed by or with respect to it, and has paid all Taxes which have become due;
  - (ii) all such Tax Returns are true, correct and complete and accurate and disclose all Taxes required to be paid;
  - (iii) all such Tax Returns have been examined by the relevant Government Agency or the period for assessment for Taxes in respect of such Tax Returns has expired;
  - (iv) there is no Claim, pending, or proposed or threatened in writing or, to the knowledge of BTH or its Subsidiaries, threatened, with respect to Taxes of BTH or any Subsidiary thereof or for which a lien may be imposed upon any of the assets of BTH or any Subsidiary thereof;
  - (v) no statute of limitations in respect of the assessment or collection of any Taxes of BTH or any Subsidiary for which a lien may be imposed on any of the assets of BTH or its Subsidiaries has been waived or extended, which waiver or extension is in effect, except for automatic extensions of time to file Tax Returns obtained in the ordinary course of business;
  - (vi) BTH and each Subsidiary thereof has complied with all applicable laws relating to the reporting, payment, collection and withholding of Taxes and has duly and timely withheld or collected, paid over to the applicable Government Agency and reported all Taxes (including income, social, security and other payroll Taxes) required to be withheld or collected by BTH or any Subsidiary thereof;
  - (vii) none of the assets of BTH or any Subsidiary thereof is required to be treated as owned by another Person for U.S. federal income Tax purposes pursuant to Section 168(f)(8) of the Code (as in effect prior to its amendment by the Tax Reform Act of 1986);



- (viii) there is no lien for Taxes (other than statutory liens for Taxes not yet due and payable and liens for Taxes which are being contested in good faith through appropriate proceedings and for which adequate accruals or reserves have been established in accordance with GAAP or IFRS) upon any of the assets of BTH or its Subsidiaries;
- (ix) there is no outstanding request for a ruling from any Government Agency, request for a consent by a Government Agency for a change in a method of accounting, subpoena or request for information by any Government Agency, or closing agreement with any Government Agency (within the meaning of Section 7121 of the Code or any analogous provision of applicable Law), with respect to BTH or any Subsidiary thereof;
- (x) no claim has been made by a Government Agency in writing in a jurisdiction where BTH or any Subsidiary thereof has not paid any tax or filed Tax Returns asserting that BTH or such Subsidiary is or may be subject to Tax in such jurisdiction;
- (xi) there is no outstanding power of attorney from BTH or any Subsidiary thereof authorizing anyone to act on behalf of BTH or a Subsidiary thereof in connection with any Tax, Tax Return or Claim relating to any Tax or Tax Return of BTH or any Subsidiary thereof;
- (xii) none of BTH or any Subsidiary thereof is, or has ever been, a party to any Tax sharing or Tax allocation contract, other than any customary commercial contract the principal subject of which is not Taxes; and
- (xiii) none of BTH or any Subsidiary thereof is currently or has ever been included in any consolidated, combined or unitary Tax Return other than a Tax Return that includes only BTH and its Subsidiaries;
- (p) **(interest)** except as would not have a BTH Material Adverse Change, the Due Diligence Materials Fairly Disclose details of any company, partnership, trust, joint venture (whether incorporated or unincorporated) or other enterprise in which BTH or another BTH Group Member owns or otherwise holds any interest;
- (q) **(material licences)** except as would not have a BTH Material Adverse Change, as at the date of this deed, the BTH Group has all licences, authorisations and permits necessary for it to conduct the business of the BTH Group as it is being conducted as at the date of this deed;
- (r) **(litigation)**: except as would not have a BTH Material Adverse Change:
  - (i) no BTH Group Member is:
    - (A) a party to or the subject of any legal action, formal investigation, proceeding, dispute, claim, demand, notice, direction, inquiry, arbitration, mediation, dispute resolution or litigation, in any such case which is material and which is not initiated by or involves any Bidder Group Member; or
    - (B) the subject of any ruling, judgement, order, declaration or decree by any Government Agency, in any such case which is material; and
  - (ii) so far as BTH is aware, there is no such legal action, investigation, proceeding, dispute, claim, demand, notice, direction, inquiry, arbitration, mediation, dispute resolution, litigation, ruling, judgement, order, declaration

or decree pending, threatened or anticipated, against any BTH Group Member;

(s) **(consents and approvals)** except for:

- (i) the filing of any required applications, filings and notices, as applicable, with ASX or ASIC;
- (ii) approval of the Scheme and the Option Scheme by Court; and
- (iii) in relation to any grants provided by any Government Agency,

no consents or approvals of or filings or registrations with any Government Agency are necessary in connection with:

- (iv) the execution and delivery by it of this deed; or
- (v) the implementation of the Scheme or the Option Scheme and the other transactions contemplated by this deed,

except for such consents, approvals, filings or registrations that, if not obtained or made, would not have a BTH Material Adverse Change;

(t) **(intellectual property)**: except as would not have a BTH Material Adverse Change:

- (i) each BTH Group Member owns, holds, possesses or is authorised to use all patents, patent rights, licences, inventions, copyrights, know-how (including trade secrets and other unpatented or unpatentable proprietary or confidential information, systems, processes or procedures), trademarks, service marks and other trade names currently used by them in connection with the business now operated by them (**Intangible Rights**); and
- (ii) no BTH Group Member has received any notice of any claim of infringement (and no BTH Group Member knows of any such claim of infringement) of any asserted rights of others with respect to the use of any of the Intangible Rights;

(u) **(data protection)** so far as BTH is reasonably aware, and except as would not have a BTH Material Adverse Change, in the last 12 months there have been no security breaches, violations of any security policy or applicable law or instances of unauthorised access to data or information used by any member of the BTH Group. The BTH Group maintains commercially reasonable policies and procedures regarding data security and privacy, and administrative, technical and physical safeguards, and the foregoing policies, procedures and safeguards are, in each case and in all material respects, in compliance with all applicable contractual obligations and applicable laws;

(v) **(no default)** no member of the BTH Group is in default under any document, agreement or instrument binding on it or its assets nor has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party a termination right or right to accelerate any right or obligation, under the document or agreement with that effect, except where such default or occurrence would not have a BTH Material Adverse Change;

- (w) **(BTH Shares not indirect Australian real property interests)** the relevant BTH Shares held by each Scheme Shareholder are not as at the date of this deed, and until (and including) the Implementation Date will not be, indirect Australian real property interests within the meaning of Division 855 of the Tax Act for the Scheme Shareholder;
- (x) **(financial information and filings):**
- (i) the financial statements of the BTH Group included (or incorporated by reference) in BTH Reporting Documents (as defined below) **(Financial Statements)**, including the related notes, where applicable:
    - (A) have been prepared from the books and records of the BTH Group;
    - (B) have been prepared in all material respects in accordance with the requirements of the Corporations Act and any other applicable laws and in accordance with the Accounting Standards; and
    - (C) give a true and fair view in all material respects of the consolidated financial position of the BTH Group and the consolidated results of operations and changes in cash flows and equity of the BTH Group as of the respective dates and for the periods therein set forth;
  - (ii) the Financial Statements (including the notes thereto):
    - (A) fairly present, in all material respects, the consolidated financial position of BTH Group, as of the respective dates thereof and the consolidated results of their operations, their consolidated comprehensive incomes or losses, their consolidated changes in shareholders' equity and their consolidated cash flows for the respective periods then ended (subject, in the case of the Unaudited Financial Statements, to normal year end adjustments (none of which are, individually or in the aggregate, material to BTH's business taken as a whole) and the absence of footnotes or inclusion of limited footnotes); and
    - (B) were prepared in accordance with IFRS, applied on a consistent basis during the periods covered (except as may be specifically indicated in the notes thereto and, in the case of the Unaudited Financial Statements, the absence of footnotes or the inclusion of limited footnotes).
  - (iii) to the extent any of the books and records of each BTH Group Member are required to be maintained in accordance with the Accounting Standards, the Corporations Act and other applicable laws, such books and records have been, and are being, maintained in all material respects in accordance with the relevant requirements;
  - (iv) as at the date of this deed, no member of the BTH Group has any liability of any nature whatsoever (whether absolute, accrued, contingent or otherwise and whether due or to become due), other than those liabilities:
    - (A) that are reflected or reserved against on the consolidated balance sheet of the BTH Group included in its report for the full year ended 30 June 2024 (including any notes thereto);
    - (B) incurred in the ordinary course of business since 30 June 2024; or

- (C) incurred in connection with this deed and the transactions contemplated by this deed;
- (v) since 30 June 2024:
- (A) no member of the BTH Group, nor, to the knowledge of BTH, any director, officer, auditor, accountant or Representative of any member of the BTH Group, has received or otherwise had or obtained knowledge of any complaint, allegation, assertion or claim, whether written or, to the knowledge of BTH, oral, regarding the accounting or auditing practices, procedures, methodologies or methods (including with respect to reserves, write-downs, charge-offs and accruals) of any member of the BTH Group or their respective internal accounting controls, including any complaint, allegation, assertion or claim that a member of the BTH Group has engaged in inappropriate accounting or auditing practices; and
  - (B) no employee of or legal adviser representing a member of the BTH Group, whether or not employed by a member of the BTH Group, has reported in writing evidence of a breach of securities laws, breach of fiduciary duty or similar breach by a member of the BTH Group or any of its directors, officers, employees or agents to the BTH Board or any committee thereof or the board of directors or similar governing body of any Subsidiary of BTH or any committee thereof, or to the knowledge of BTH, to any officer of a member of the BTH Group;
- (vi) since the admission of BTH to the official list of ASX, it has timely filed with ASIC and the ASX all required material reports, schedules, prospectuses, forms, statements, notices and other documents required to be filed with ASIC and the ASX, including any notices required to be filed by the Listing Rules (all of those documents being the **BTH Reporting Documents**);
- (vii) as of its date, each BTH Reporting Document complied in all material respects with the requirements of the Corporations Act and the Listing Rules and all rules, regulations and policy statements under the Corporations Act and the Listing Rules; and
- (viii) none of the BTH Reporting Documents as of the date of their respective filings (or, if amended or superseded by a filing prior to the date of this document, on the date of such amended or superseding filing) contained an untrue statement of a material fact or omitted to state a material fact required to be stated in it or necessary to prevent the statement made from being false or misleading in the circumstances in which it has been made;
- (y) (**certain payments**) no member of the BTH Group or, to BTH's knowledge, any of its respective officers, directors, employees, agents or representatives has, directly or indirectly, in connection with the business of the BTH Group:
- (i) made, offered or promised to make or offer any unlawful payment, loan or transfer of anything of value to or for the benefit of any government official, candidate for public office, political party or political campaign;
  - (ii) paid, offered or promised to make or offer any bribe, payoff, influence payment, kickback, unlawful rebate, or other similar unlawful payment of any nature;

- (iii) made, offered or promised to make or offer any unlawful contributions, gifts, entertainment or other unlawful expenditures;
  - (iv) established or maintained any unlawful fund of corporate monies or other properties;
  - (v) created or caused the creation of any false or inaccurate books and records of the BTH Group or any of its members related to any of the foregoing; or
  - (vi) otherwise violated any provision of the Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§78dd-1, et seq., the UK Bribery Act of 2010, or any other applicable anti-corruption or anti-bribery law;
- (z) **(employees)** except as would not have a BTH Material Adverse Change:
- (i) each BTH Group Member materially complies with all obligations under employment contracts, industrial agreements and awards, and with all codes of conduct and practice relevant to conditions of service and to the relations between it and the employees employed by it;
  - (ii) no BTH Group Member is a party to any workplace agreement with a trade union or industrial organisation, group of employees or individual employees in respect of the BTH Group and no industrial awards or workplace agreements apply to any employees of a BTH Group Member; and
  - (iii) no BTH Group Member is currently involved or has been involved in any dispute with any union, Government Agency or employee of a BTH Group Member at any time within the 12 months preceding the date of this deed;
- (aa) **(superannuation)** Except as would not have a BTH Material Adverse Change, each BTH Group Member that contributes, or is required to contribute to a superannuation fund:
- (i) has made when due, all contributions to each superannuation fund that the relevant BTH Group Member is obliged to make or has voluntarily committed to make; and
  - (ii) has made all superannuation contributions required to avoid any liability for a superannuation guarantee charge under the Superannuation Guarantee Charge Act 1992;
- (bb) **(real property)**
- (i) there are no freehold properties owned by the BTH Group;
  - (ii) BTH or another member of the BTH Group is the lessee of all leasehold estates reflected in the audited financial statements included in BTH's annual report for the financial year ended 30 June 2024 or acquired after that date (except for leases that have expired by their terms since that date), free and clear of all material encumbrances and is in possession of the properties purported to be leased thereunder, and each such lease is valid without default thereunder by the lessee or, to the knowledge of BTH, the lessor, except as would not have a BTH Material Adverse Change; and
  - (iii) to the knowledge of BTH, no BTH Group Member has received a notice to vacate or notice to quit from any third party pursuant to any real property

leased by a member of the BTH Group, except as would not have a BTH Material Adverse Change;

- (cc) **(Material contracts)** except as would not have a BTH Material Adverse Change:
- (i) each material contract of the BTH Group is in full force and effect and is valid and binding on the applicable member of the BTH Group and the relevant BTH Group Member has in all material respects complied with and performed all obligations required to be complied with or performed by it to date under each material contract;
  - (ii) as at the date of this deed, no member of the BTH Group has knowledge of, or has received notice of, any breach of any material contract of the BTH Group by any of the other parties thereto; and
  - (iii) as at the date of this deed, no event or condition exists which constitutes or, after notice or lapse of time or both, will constitute, a material breach or default on the part of the BTH Group or, to the knowledge of BTH, any other party thereto, of or under any material contract of the BTH Group, or which constitutes an event of default, prepayment event or similar event, or gives another party a termination right or right to accelerate any right or obligation (including a right or obligation to any payment or fees);
- (dd) **(related party transactions)** no member of the BTH Group has entered into, or agreed to enter into, a transaction which requires, or would require, the approval of the holders of BTH Shareholders under Chapter 10 of the Listing Rules;
- (ee) **(insurance)** the Due Diligence Materials contain complete and accurate particulars of all current insurance policies and cover notes taken out in respect of each member of the BTH Group (**Insurances**) and, except as would not have a BTH Material Adverse Change:
- (i) each Insurance is currently in full force and effect and all applicable premiums have been paid.
  - (ii) as at the date of this deed, there are no outstanding claims made by a member of the BTH Group or any person on its behalf under an Insurance or an insurance policy held by a member of the BTH Group; and
  - (iii) as of the date of this deed, no member of the BTH Group has received written notice of any threatened termination of, premium increase with respect to, or alteration of coverage under, any Insurance; and
- (ff) **(costs and expenses)** The Notified Transaction Costs will not be less than the actual Transaction Costs.

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## Scheme of arrangement

### **Bigtincan Holdings Limited**

Each person who holds one or more Scheme Shares as at the Scheme Record Date



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Date:

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## Parties

- 1 **Bigtincan Holdings Limited** (ACN 154 944 797) of Level 9, 64 York Street, Sydney NSW 2000 (BTH)
- 2 Each person who holds one or more Scheme Shares as at the Scheme Record Date (**Scheme Shareholders**)

The parties agree:

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## 1 Defined terms and interpretation

### 1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1, has the meaning given to it in the Dictionary; and
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

### 1.2 Interpretation

The interpretation clause in Schedule 1 sets out rules of interpretation for this deed.

---

## 2 Preliminary matters

- (a) BTH is a public company limited by shares, registered in New South Wales, and is admitted to the official list of ASX. BTH Shares are quoted for trading on ASX.
- (b) As at the date of the Implementation Deed, BTH had on issue or had granted (as applicable):
  - (i) 821,675,934 BTH Shares; and
  - (ii) 15,182,901 PSARs;
  - (iii) 4,993,700 Service Rights;
  - (iv) 42,712,693 BTH Options; and
  - (v) 24,000,000 Regal Options.
- (c) Bidder is a proprietary company limited by shares, registered in New South Wales.
- (d) Bidder and BTH agreed, by executing the Implementation Deed, to implement this Scheme.
- (e) If this Scheme becomes Effective, on the Implementation Date:

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- (i) Bidder must provide or procure the provision of the Scheme Consideration to the Scheme Shareholders in accordance with its obligations under the terms of this Scheme and the Deed Poll;
  - (ii) all the Scheme Shares and all of the rights and entitlements attaching to them on the Implementation Date will be transferred to Bidder and BTH will enter the name of Bidder in the BTH Share Register in respect of the Scheme Shares transferred to Bidder in accordance with the terms of this Scheme.
- (f) By executing the Deed Poll, Bidder has agreed to perform its obligations under this Scheme, including the obligation to provide or procure the provision of the Scheme Consideration to the Scheme Shareholders in accordance with the terms of this Scheme.

---

### 3 Conditions

#### 3.1 Conditions to this Scheme

This Scheme is conditional upon, and will have no force or effect until, the satisfaction of each of the following conditions precedent:

- (a) as at 8.00am on the Second Court Date, each of the conditions set out in clause 3.1 of the Implementation Deed (other than the condition relating to the approval of the Court set out in clause 3.1(c) of the Implementation Deed) have been satisfied or waived in accordance with the terms of the Implementation Deed;
- (b) as at 8.00am on the Second Court Date, neither the Implementation Deed nor the Deed Poll have been terminated in accordance with their terms;
- (c) the Court approves this Scheme under section 411(4)(b) of the Corporations Act either unconditionally and without modification or subject to any modifications or conditions made or required by the Court under section 411(6) of the Corporations Act and that are agreed to by Bidder and BTH in writing (such agreement not to be unreasonably withheld or delayed);
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Scheme, and that are agreed to by Bidder and BTH in writing (such agreement not to be unreasonably withheld or delayed), have been satisfied or waived; and
- (e) the coming into effect of the Scheme Order, in accordance with section 411(10) of the Corporations Act, on or before the End Date (or any later date BTH and Bidder agree in writing).

#### 3.2 Certificate

- (a) BTH will provide to the Court on the Second Court Date certificates signed by Bidder and BTH (or such other evidence as the Court requests) confirming (in respect of matters within their knowledge) whether or not the conditions in clauses 3.1(a) and 3.1(b) of this Scheme have been satisfied or waived in accordance with the terms of the Implementation Deed as at 8.00am on the Second Court Date.
- (b) The certificates referred to in clause 3.2(a) constitute conclusive evidence that the conditions in clauses 3.1(a) and 3.1(b) of this Scheme have been satisfied, waived or taken to be waived.

---

## 4 The Scheme

- (a) Subject to clause 3.1, this Scheme takes effect for all purposes on and from the Effective Date.
- (b) Without limiting any rights under the Implementation Deed, this Scheme will lapse and be of no further force or effect if:
  - (i) the Effective Date has not occurred on or before the End Date; or
  - (ii) the Implementation Deed or the Deed Poll is terminated in accordance with its terms,

unless BTH and Bidder otherwise agree in writing (and if required, as approved by the Court).

---

## 5 Implementation of the Scheme

### 5.1 Lodgement of Scheme Order with ASIC

If the conditions in clauses 3.1(a) to 3.1(d) are satisfied or waived, BTH must lodge with ASIC, in accordance with section 411(10) of the Corporations Act, an office copy of the Scheme Order approving this Scheme as soon as possible after, and in any event by 5.00pm on the first Business Day after the day on which the Court approves this Scheme.

### 5.2 Transfer of Scheme Shares

Subject to the Scheme becoming Effective, on the Implementation Date:

- (a) subject to provision of the Scheme Consideration in the manner contemplated by clause 6.2, the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to Bidder, without the need for any further act by any Scheme Shareholder (other than acts performed by BTH (or any directors, officers, or secretaries of BTH) as attorney and agent for Scheme Shareholders under clause 9) by:
  - (i) BTH delivering to Bidder a duly completed Scheme Transfer (and one or more Scheme Transfers can be a master transfer of all or part of all of the Scheme Shares), executed on behalf of the Scheme Shareholders by BTH; and
  - (ii) Bidder duly executing the Scheme Transfer, attending to the stamping of the Scheme Transfer (if required) and delivering it to BTH for registration; and
  - (iii) immediately following receipt of the duly executed Scheme Transfer in accordance with clause 5.2(a)(ii) or the transfer being effected under section 1074D of the Corporations Act (as the case may be), BTH must enter, or procure the entry of, the name of Bidder in the BTH Share Register in respect of all the Scheme Shares transferred to Bidder in accordance with this Scheme.

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## 6 Scheme Consideration

### 6.1 Scheme Consideration

Subject to the terms and conditions of this Scheme, in consideration of the transfer to Bidder of each Scheme Share held by a Scheme Shareholder under the terms of the Scheme, on the Implementation Date, Bidder will:

- (a) accept that transfer; and
- (b) provide to each Scheme Shareholder the Scheme Consideration for the Scheme Shares held by that Scheme Shareholder on the Scheme Record Date, in accordance with the terms of the Implementation Deed and the Scheme.

### 6.2 Provision of Scheme Consideration

- (a) The obligation of Bidder to provide the Scheme Consideration to Scheme Shareholders will be satisfied by Bidder:
  - (i) no later than the Business Day before the Implementation Date, depositing or procuring the deposit, in Immediately Available Funds into the Trust Account, of an amount equal to the aggregate amount of the Scheme Consideration payable to each Scheme Shareholder to be held by or on behalf of BTH on trust for the Scheme Shareholders. Any interest earned on the amount deposited (less bank fees and other charges) by Bidder will be for the account of Bidder; and
  - (ii) providing BTH with written confirmation that payment has been made in accordance with clause 6.2(a)(i).
- (b) On the Implementation Date, and subject to the receipt of the funds required to be deposited in accordance with clause 6.2(a), BTH must pay or procure the payment from the Trust Account the Scheme Consideration to each Scheme Shareholder based on the number of Scheme Shares held by such Scheme Shareholder as set out in the Share Register on the Scheme Record Date by doing any of the following below (in BTH's absolute discretion):
  - (i) paying or procuring the payment of, the relevant amount in Australian currency by electronic transfer to a bank account nominated by the Scheme Shareholder, where the Scheme Shareholder has made a valid election prior to the Scheme Record Date in accordance with the requirements of the BTH Registry to receive dividend payments from BTH into that bank account;
  - (ii) paying or procuring the payment of, the relevant amount in Australian currency by electronic transfer to a bank account nominated by the Scheme Shareholder by an appropriate authority received from the Scheme Shareholder to BTH; or
  - (iii) sending or procuring the despatch to each Scheme Shareholder by prepaid ordinary post to the address of the Scheme Shareholder recorded in the BTH Share Register as at the Scheme Record Date of a pre-printed cheque for the aggregate amount of Scheme Consideration due to that Scheme Shareholder in accordance with the Scheme.
- (c) In the event that:

- (i) either:
  - (A) a Scheme Shareholder does not have a Registered Address; or
  - (B) BTH as trustee for the Scheme Shareholder believes that a Scheme Shareholder is not known at the Scheme Shareholder's Registered Address, and no account has been notified in accordance with clauses 6.2(b)(i) or 6.2(b)(ii) or a deposit into such account is rejected or refunded; or
- (ii) a cheque issued under this clause 6 has been cancelled in accordance with clause 6.4(c),

BTH as the trustee for the Scheme Shareholder may credit the amount payable to the relevant Scheme Shareholder to a separate bank account of BTH (**Separate Account**) to be held until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 1995* (NSW). To avoid doubt, if the amount is not credited to a Separate Account, the amount will continue to be held in the Trust Account until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 1995* (NSW).

- (d) Until such time as the amount is dealt with in accordance with the *Unclaimed Money Act 1995* (NSW), BTH must hold the amount on trust for the relevant Scheme Shareholder, but any interest or other benefit accruing from the amount will be to the benefit of Bidder. An amount credited to the Separate Account or Trust Account (as applicable) under this clause is to be treated as having been paid to the Scheme Shareholder when credited to the Separate Account or Trust Account (as applicable). BTH must maintain records of the amounts paid, the people who are entitled to the amounts and any transfers of the amounts.
- (e) To the extent that there is a surplus in the amount held by BTH as the trustee for the Scheme Shareholders in the Trust Account (including any accrued interest), that surplus may be paid by BTH as the trustee for the Scheme Shareholders to Bidder following the satisfaction of BTH's obligations as the trustee for the Scheme Shareholders under this clause 6.2.

### 6.3 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any Scheme Consideration payable in respect of those Scheme Shares is payable to the joint holders and any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to either, at the sole discretion of BTH, the holder whose name appears first in the BTH Share Register as at the Scheme Record Date or to the joint holders; and
- (b) any other document required to be sent under this Scheme, will be forwarded to either, at the sole discretion of BTH, the holder whose name appears first in the BTH Share Register as at the Scheme Record Date or to the joint holders.

### 6.4 Unclaimed monies

- (a) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 7 of the *Unclaimed Money Act 1995* (NSW)).

- (b) Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of Bidder.
- (c) BTH may cancel a cheque issued under this clause 6 if the cheque:
- (i) is returned to BTH; or
  - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (d) During the period of one year commencing on the Implementation Date, on request in writing from a Scheme Shareholder to BTH (or the BTH Registry) (which request may not be made until the date which is 20 Business Days after the Implementation Date), BTH must reissue a cheque that was previously cancelled under this clause 6.4.

### **6.5 Remaining monies (if any) in Trust Account**

To the extent that, following satisfaction of BTH's obligations under the other provisions of clause 5 and this clause 6 and provided Bidder has by that time acquired the Scheme Shares in accordance with this Scheme, there is a surplus in the Trust Account, then subject to compliance with applicable laws, the other terms of this Scheme, the Deed Poll and the Implementation Deed, that surplus (less any bank fees and related charges) shall be paid by BTH (or the BTH Registry on BTH's behalf) to Bidder.

### **6.6 Orders of a Court or Government Agency**

- (a) If written notice is given to BTH (or the BTH Registry) or Bidder of an order or direction made by a court of competent jurisdiction or Government Agency that:
- (i) requires consideration to be provided to a third party in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder by BTH in accordance with this clause 6, then BTH or Bidder shall be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
  - (ii) prevents BTH or Bidder from providing consideration to any particular Scheme Shareholder in accordance with this clause 6, or the payment of such consideration is otherwise prohibited by applicable law, BTH shall be entitled to (as applicable) retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Scheme Consideration until such time as the provision of such Scheme Consideration in accordance with this clause 6 is permitted by that order or direction or otherwise by law.
- (b) To the extent that amounts are so deducted or withheld in accordance with clause 6.6(a), such deducted or withheld amounts will be treated for all purposes under this Scheme as having been paid to the person in respect of which such deduction and withholding was made, provided that such deducted or withheld amounts are actually remitted as required.
- (c) For the avoidance of doubt, if the relevant order or direction prevents the payment of only part of the Scheme Consideration which would otherwise be payable to a Scheme Shareholder, BTH and Bidder will provide to the Scheme Shareholder (or procure payment of) the maximum possible portion of the Scheme Consideration to which that Scheme Shareholder is entitled without giving rise to a breach of that



order or direction and this clause 6.6 will only apply in respect of the remaining portion.

## **6.7 Withholding**

Notwithstanding any other provision of this deed, if Bidder determines, having regard to legal or other professional advice, that Bidder is:

- (a) liable to pay an amount to the Commissioner of Taxation under section 14-200 of Schedule 1 to *Taxation Administration Act 1953* (Cth) in respect of the acquisition of Scheme Shares from a Scheme Shareholder, or
- (b) required by law (other than a law of the jurisdiction of Bidder) to withhold any amount from a payment to a Scheme Shareholder,

Bidder is entitled to withhold the relevant amount, including where such amount is in respect of clause 6.7(a), before making the payment to the Scheme Shareholder, and payment of the reduced amount shall be taken to be full payment of the relevant amount for the purposes of this Scheme (including (but not limited to) clause 6.1).

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## **7 Dealings in BTH Shares**

### **7.1 Determination of Scheme Shareholders**

To establish the identity of the Scheme Shareholders, dealings in BTH Shares or other alterations to the BTH Share Register will only be recognised if:

- (a) in the case of dealings of the type to be effected using CHESSE, the transferee is registered in the BTH Share Register as the holder of the relevant BTH Shares on or before the Scheme Record Date; and
- (b) in all other cases, registrable transfer or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received on or before the 5.00pm on the Scheme Record Date at the place where the BTH Share Register is kept,

and BTH will not accept for registration, nor recognise for the purpose of establishing the persons who are Scheme Shareholders nor for any other purpose (other than a transfer to Bidder pursuant to this Scheme and any subsequent transfer by Bidder or its successors in title), any transfer or transmission application or other request in respect of BTH Shares received after such times, or received prior to such times but not in registrable or actionable form (as appropriate).

### **7.2 Register**

- (a) BTH will, until the Scheme Consideration has been provided and the name and address of Bidder has been entered in the BTH Share Register as the holder of all of the Scheme Shares, maintain, or procure the maintenance of, the BTH Share Register in accordance with the provisions of this clause 7.2. The BTH Share Register in this form and the terms of the Scheme will solely determine entitlements to the Scheme Consideration.
- (b) As from the Scheme Record Date, each entry in the BTH Share Register (other than entries in the BTH Share Register in respect of Bidder and subsequent transferees) will cease to have effect, except as evidence of the entitlements of

Scheme Shareholders to the Scheme Consideration in respect of those BTH Shares.

- (c) BTH must register, or cause to be registered, registrable transmission applications or transfers of the Scheme Shares that are received in accordance with clause 7.1(b) before the Scheme Record Date provided that, for the avoidance of doubt, nothing in this clause 7.2(c) requires BTH to register a transfer that would result in a BTH Shareholder holding a parcel of BTH Shares that is less than a 'marketable parcel' (for the purposes of this clause 7.2(c) 'marketable parcel' has the meaning given in the Operating Rules).
- (d) As soon as possible on or after the Scheme Record Date, and in any event by 5:00pm on the first Business Day after the Scheme Record Date, BTH will ensure that details of the names, registered addresses and holdings of BTH Shares for each Scheme Shareholder as shown in the BTH Share Register as at the Scheme Record Date are available to Bidder in the form Bidder reasonably requires.

### **7.3 Effect of share certificates and holding statements**

Subject to the provision of the Scheme Consideration and registration of the transfer of the Scheme Shares to Bidder in accordance with this Scheme, as from the Scheme Record Date (and other than for Bidder or its successors in title following the Implementation Date), all share certificates and holding statements for Scheme Shares (other than statements of holding in favour of Bidder or its successors in title) will cease to have effect as documents of title in respect of those Scheme Shares.

### **7.4 No disposals after Scheme Record Date**

If this Scheme becomes Effective, each Scheme Shareholder, and any person claiming through that Scheme Shareholder, must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them after 5.00pm on the Scheme Record Date (other than to Bidder in accordance with this Scheme and any subsequent transfers by Bidder to its successors in title), and any attempt to do so will have no effect and BTH shall be entitled to disregard any such disposal, purported disposal or agreement.

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## **8 Quotation of BTH Shares**

- (a) BTH must apply to ASX to suspend trading of BTH Shares on the ASX with effect from the close of trading on the Effective Date.
- (b) On a date after the Implementation Date to be determined by Bidder, BTH must apply:
  - (i) for termination of the official quotation of BTH Shares on the ASX; and
  - (ii) to have itself removed from the official list of the ASX.

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## **9 General Scheme provisions**

### **9.1 Appointment of agent and attorney**

- (a) On this Scheme becoming Effective, each Scheme Shareholder, without the need for any further act by that Scheme Shareholder, irrevocably appoints BTH and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney for the purposes of:

(i) doing all things and executing and delivering all deeds, instruments, transfers or other documents as may be necessary or desirable to give effect to the terms of this Scheme and the transactions contemplated by it, including, without limitation, the effecting of a valid transfer or transfers (or the execution and delivery of any Scheme Transfer); and

(ii) enforcing the Deed Poll against Bidder,

and BTH accepts such appointment.

(b) BTH, as agent and attorney of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 9.1 to all or any of its directors, secretaries, employees and officers (jointly, severally, or jointly and severally).

## **9.2 Enforcement of Deed Poll**

BTH undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against Bidder (as applicable on behalf of and as agent and attorney for the Scheme Shareholders).

## **9.3 Scheme Shareholders' agreements**

Under this Scheme:

(a) each Scheme Shareholder irrevocably agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to Bidder in accordance with the terms of this Scheme;

(b) each Scheme Shareholder irrevocably agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;

(c) each Scheme Shareholder who holds their BTH Shares in a CHES Holding agrees to the conversion of those BTH Shares to an Issuer Sponsored Holding and irrevocably authorises BTH to do anything necessary, expedient or incidental (whether required by the Settlement Rules or otherwise) to effect or facilitate such conversion;

(d) each Scheme Shareholder agrees, after the Scheme Consideration is provided to it in accordance with the terms of this Scheme, on the direction of Bidder, to destroy any holding statements or share certificates relating to their BTH Shares;

(e) each Scheme Shareholder irrevocably acknowledges and agrees that this Scheme binds BTH and all Scheme Shareholders (including those who did not attend the Scheme Meeting and those who did not vote, or voted against this Scheme, at the Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of BTH; and

(f) each Scheme Shareholder irrevocably consents to BTH and Bidder doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental or expedient to the implementation and performance of this Scheme,

without the need for any further act by that Scheme Shareholder.

#### 9.4 Warranty by Scheme Shareholders

- (a) Each Scheme Shareholder is deemed to have warranted to BTH and Bidder on the Implementation Date, and to the extent enforceable, to have appointed and authorised BTH as that Scheme Shareholder's agent and attorney to warrant to Bidder, that:
- (i) all their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the date of the transfer of them to Bidder pursuant to this Scheme, be fully paid and free from all mortgages, charges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)), liens, pledges, encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind;
  - (ii) they have full power and capacity to sell and to transfer their Scheme Shares (together with all rights and entitlements attaching to those Scheme Shares) to Bidder pursuant to this Scheme; and
  - (iii) they have no existing right to be issued any BTH Shares or any other BTH equity securities.
- (b) BTH undertakes in favour of each Scheme Shareholder that it will provide such warranty, to the extent enforceable, to Bidder on behalf of that Scheme Shareholder.

#### 9.5 Title to Scheme Shares

- (a) Bidder will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by BTH of Bidder in the BTH Share Register as the holder of the Scheme Shares.
- (b) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to Bidder will, at the time of transfer of them to Bidder, vest in Bidder free from all mortgages, charges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)), liens, encumbrances, pledges and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind.

#### 9.6 Appointment of sole proxy

Immediately upon the provision of the Scheme Consideration in the manner contemplated in clause 6.2, and until Bidder is registered in the BTH Share Register as the holder of all Scheme Shares, each Scheme Shareholder:

- (a) without the need for any further act by that BTH Shareholder, irrevocably appoints Bidder as its proxy to (and irrevocably appoints Bidder as its attorney and agent for the purpose of appointing any director, secretary, agent or officer of Bidder as that BTH Shareholder's proxy and, where appropriate, its corporate representative to):
- (i) attend shareholders' meetings of BTH;
  - (ii) exercise the votes attaching to the BTH Shares registered in the name of the BTH Shareholder; and
  - (iii) sign any BTH Shareholders' resolution;

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- (b) acknowledges that no Scheme Shareholder may itself attend or vote at any meetings of BTH Shareholders or sign any BTH Shareholders' resolution, whether in person, by proxy or by corporate representative (other than pursuant to clause 9.6(a));
  - (c) must take all other actions in the capacity of BTH Shareholder as Bidder reasonably directs; and
  - (d) acknowledges and agrees that in exercising the powers conferred in clause 9.6(a), Bidder and any person nominated by Bidder under clause 9.6(a) may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.

#### **9.7 Notices**

- (a) Where a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to BTH, it will not be deemed to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at BTH's registered office or at the office of the BTH Registry as the case may be.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by a BTH Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

#### **9.8 Inconsistencies**

This Scheme binds BTH and all BTH Shareholders, and to the extent of any inconsistency, overrides the BTH constitution.

#### **9.9 No liability when acting in good faith**

Each Scheme Shareholder agrees that none of Bidder, BTH nor any director, officer, secretary or employee of any of those companies shall be liable for anything done or omitted to be done in good faith in the performance of this Scheme, the Deed Poll, or the transactions contemplated by the Scheme and / or the Deed Poll.

#### **9.10 Further assurance**

Each Scheme Shareholder and BTH will do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of this Scheme and the transactions contemplated by it.

#### **9.11 Alterations and conditions**

If the Court proposes to approve this Scheme subject to any conditions or alterations under section 411(6) of the Corporations Act, BTH may, by its counsel or solicitors, and with the prior consent of Bidder:

- (a) consent on behalf of all persons concerned, including each BTH Shareholder, to those alterations or conditions; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions which BTH has consented to.

### **9.12 Consent**

Each of the Scheme Shareholders consents to BTH doing all things necessary or incidental to, or to give effect to, the implementation of this Scheme and the transactions contemplated by it, whether on behalf of the Scheme Shareholders, BTH or otherwise.

### **9.13 Duty**

Bidder will:

- (a) pay all duty (including stamp duty and any related fines, penalties and interest) payable on or in connection with this Scheme and the Deed Poll, the performance of the Deed Poll and any instrument executed under or any transaction effected by or made under or in connection with this Scheme and the Deed Poll (including, the transfer by Scheme Shareholders of the Scheme Shares to Bidder pursuant to this Scheme); and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 9.13(a).

### **9.14 Governing Law**

- (a) This Scheme is governed by and will be construed according to the laws of New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and of the courts competent to determine appeals from those courts. The parties irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process have been brought in an inconvenient forum.

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## Schedule 1 Dictionary

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### 1 Dictionary

In this deed:

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

**ASX** means ASX Limited (ABN 98 008 624 691) or, if the context requires, the financial market operated by it.

**Bidder** means Big Wombat Pty Ltd (ACN 682 671 852).

**BTH Option** has the meaning given to that term in the Implementation Deed.

**BTH Registry** means Computershare Investor Services Pty Limited (ACN 078 279 277), or any replacement share registry services provider to BTH.

**BTH Share Register** means the register of members of BTH maintained by or on behalf of BTH in accordance with section 168(1) of the Corporations Act.

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

**BTH Shareholder** means each person who is registered in the BTH Share Register as a holder of BTH Shares.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Sydney, New South Wales.

**CHESS** means the Clearing House Electronic Subregister System operated by ASX Settlement Pty Ltd and ASX Clear Pty Limited.

**CHESS Holding** has the meaning given in the Settlement Rules.

**Corporations Act** means the *Corporations Act 2001* (Cth), as amended by any applicable ASIC class order, ASIC legislative instrument or ASIC relief.

**Court** means the Supreme Court of New South Wales or any other court of competent jurisdiction under the Corporations Act as the parties may agree in writing.

**Deed Poll** means the deed poll dated [ ] under which Bidder covenants in favour of the Scheme Shareholders to perform all actions attributed to it under this Scheme.

**Effective** means, when used in relation to the Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to that Scheme.

**Effective Date** means the date on which this Scheme becomes Effective.

**End Date** means the later of:

- (a) date that is 9 months after the date of the Implementation Deed; and
- (a) such other date and time agreed in writing between Bidder and BTH.

**Government Agency** means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, Australian Taxation Office, Foreign Investment Review Board, ASIC, ASX and any regulatory organisation established under statute or any stock exchange.

**Implementation Date** means the fifth Business Day, or such other Business Day as the parties agree in writing, following the Scheme Record Date.

**Implementation Deed** means the scheme implementation deed dated 5 December 2024 between Bidder and BTH, as amended or varied from time to time.

**Issuer Sponsored Holding** has the meaning given in the Settlement Rules.

**Registered Address** means in relation to a Scheme Shareholder, the address shown in the BTH Share Register as at the Scheme Record Date.

**Operating Rules** means the official operating rules of ASX.

**PSAR** has the meaning given to that term in the Implementation Deed.

**Regal Option** has the meaning given to that term in the Implementation Deed.

**Registered Address** means, in relation to a BTH Shareholder, the address shown in the BTH Share Register as at the Scheme Record Date.

**Scheme** means this scheme of arrangement pursuant to Part 5.1 of the Corporations Act proposed between BTH and the BTH Shareholders as set out in this document together with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and that are agreed to by Bidder and BTH.

**Scheme Booklet** means the explanatory booklet to be prepared by BTH in respect of the Transaction in accordance with the terms of this deed and to be despatched to BTH Shareholders.

**Scheme Consideration** means the consideration to be provided by the Bidder to each Scheme Shareholder for the transfer to Bidder of each Scheme Share, being \$0.22 per Scheme Share.

**Scheme Meeting** means the meeting of BTH Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Scheme and includes any adjournment or postponement of that meeting.

**Scheme Order** means the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme.

**Scheme Record Date** means, in respect of this Scheme, 5.00pm on the third Business Day (or such other Business Day as the parties agree in writing) following the Effective Date.

**Scheme Share** means a BTH Share on issue as at the Scheme Record Date.

**Scheme Shareholder** means each person who holds one or more Scheme Shares.



**Scheme Transfer** means, in relation to each Scheme Shareholder, a duly completed and executed proper instrument of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, which may be a master transfer of all or part of all of the Scheme Shares.

**Second Court Date** means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving this Scheme is heard or scheduled to be heard or, if the application is adjourned for any reason, means the date on which the adjourned application is heard or scheduled to be heard.

**Separate Account** has the meaning given in clause 6.2(c).

**Service Right** has the meaning given to that term in the Implementation Deed.

**Settlement Rules** means the ASX Settlement Operating Rules, being the official operating rules of the settlement facility provided by ASX Settlement Pty Ltd.

**Share Splitting** means the splitting by a holder of BTH Shares into two or more parcels of BTH Shares whether or not it results in any change in beneficial ownership of the BTH Shares.

**Subsidiary** has the meaning given to that term in section 46 of the Corporations Act.

**takes effect or taking effect** means on and from the first time when an office copy of the Scheme Order approving the Scheme pursuant to section 411(4)(b) of the Corporations Act is lodged with ASIC pursuant to section 411(10) of the Corporations Act.

**Transaction** means the proposed acquisition by Bidder, in accordance with the terms and conditions of the Implementation Deed, of all of the Scheme Shares through the implementation of the Scheme in accordance with the Implementation Deed.

**Trust Account** means an Australian dollar denominated trust account with an ADI operated by BTH as trustee for the benefit of the Scheme Shareholders.

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## 2 Interpretation

In this Scheme, except where the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this Scheme;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:
  - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation, trust or other body corporate;

- (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
- (iii) a party includes its agents, successors and permitted assigns;
- (iv) a document includes all amendments or supplements to that document;
- (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this Scheme;
- (vi) this Scheme includes all schedules and attachments to it;
- (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
- (viii) a statute includes any regulation, ordinance, by-law or other subordinate legislation made under it;
- (ix) an agreement other than this Scheme includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
- (x) a monetary amount is in Australian dollars
- (xi) US\$ or USD is a reference to the currency of the United States of America;
- (g) an agreement on the part of two or more persons binds them jointly and each of them severally;
- (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (i) a reference to time is to Sydney, Australia time; and
- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Scheme or any part of it.

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## Deed poll

### Big Wombat Pty Ltd

In favour of each person registered as a holder of BTH Shares as at the Scheme Record Date

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Date:

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## This deed poll is made by

**Big Wombat Pty Ltd** (ACN 682 671 852) of 5 Attadale Court, Elanora QLD 4221 (**Bidder**)

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## In favour of

each person registered as a holder of BTH Shares in the BTH Share Register as at the Scheme Record Date (**Scheme Shareholders**)

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## Background

- A BTH and Bidder have entered into the Implementation Deed.
- B In the Implementation Deed, Bidder agrees to make this deed poll.
- C Bidder is executing this deed poll for the purposes of covenanting in favour of the Scheme Shareholders to perform its obligations under the Implementation Deed and the Scheme.

**This deed poll provides as follows:**

---

## 1 Defined terms and interpretation

### 1.1 Defined terms

In this deed poll:

- (a) **Implementation Deed** means the scheme implementation deed dated 5 December 2024 between BTH and Bidder relating to the implementation of the Scheme;
- (b) **Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between BTH and the Scheme Shareholders, the form of which is set out in Schedule 5 to the Implementation Deed (or such other form as agreed in writing by BTH and Bidder), subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by BTH and Bidder; and
- (c) Unless the context otherwise requires, terms defined in the Implementation Deed have the same meaning when used in this deed poll.

### 1.2 Interpretation

Clause 1.2 of Schedule 1 of the Implementation Deed applies to the interpretation of this deed poll, except those references to 'this deed' in clause 1.2 of schedule 1 of the Implementation Deed are to be read as references to 'this deed poll'.

### 1.3 Nature of deed poll

Bidder acknowledges that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it;
- (b) under the Scheme, each Scheme Shareholder, without the need for any further act by the Scheme Shareholder, irrevocably appoints BTH and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this deed poll against Bidder.

---

## 2 Conditions

### 2.1 Conditions

This deed poll and the obligations of Bidder under this deed poll are subject to the Scheme becoming Effective.

### 2.2 Termination

This deed poll and the obligations of Bidder under this deed poll to the Scheme Shareholders will automatically terminate and the terms of this deed poll will be of no further force or effect if:

- (a) the Implementation Deed is terminated in accordance with its terms before the Effective Date; or
- (b) the Scheme is not Effective on or before the End Date or any later date as the Court, with the consent of BTH and Bidder, may order,

unless BTH and Bidder otherwise agree in writing (and, if required, as approved by the Court).

### 2.3 Consequences of termination

If this deed poll terminates under clause 2.2, then, in addition and without prejudice to any other rights, powers or remedies available to the Scheme Shareholders:

- (a) Bidder is released from its obligations to further perform this deed poll except those obligations contained in clause 6.1; and
- (b) each Scheme Shareholder retains the rights and remedies they have against Bidder in respect of any breach of this deed poll which occurred before it was terminated.

---

## 3 Scheme obligations

Subject to clause 2, Bidder undertakes in favour of each Scheme Shareholder to:

- (a) provide, or procure the provision of, the Scheme Consideration to each Scheme Shareholder in accordance with the terms of the Scheme; and
- (b) undertake or procure the undertaking of all other actions, and give each acknowledgement, representation and warranty (if any) attributed to it under the Scheme,

in each case, subject to and in accordance with the terms of the Scheme.

---

## 4 Warranties

Bidder represents and warrants in favour of each Scheme Shareholder, in respect of itself, that:

- (a) it is a corporation validly existing under the laws of its place of incorporation;
- (b) it has the full capacity, corporate power and lawful authority to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance by it of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) this deed poll is valid and binding on it and is enforceable against it in accordance with its terms; and
- (e) this deed poll does not conflict with, or result in the breach of or default under, any provision of the Bidder constituent documents, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

---

## 5 Continuing obligations

This deed poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) Bidder has fully performed its obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.2.

---

## 6 General

### 6.1 Duty

Bidder will:

- (a) pay all duty (including stamp duty and any related fines, penalties and interest) (if any) payable in respect of the Scheme and this deed poll, the performance of this deed poll and each transaction effected by or made under or in connection with the Scheme and this deed poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 6.1(a).

### 6.2 Governing law and jurisdiction

- (a) This deed poll is governed by the laws in force in New South Wales.
- (b) Bidder irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts competent to determine appeals from those courts in respect of any proceedings arising out of or in connection with this deed poll. Bidder irrevocably waives any objection to the venue of any legal



process in these courts on the basis that the process has been brought in an inconvenient forum.

### 6.3 Notices

- (a) Any notice or other communication to Bidder in connection with this deed poll must be:
- (i) in legible writing in English;
  - (ii) signed by or on behalf of the person making the communication or that person's duly authorised agent; and
  - (iii) given by hand delivery, pre-paid post, or email in accordance with the details set out below:

Address: 5 Attadale Court, Elanora QLD 4221  
Email: RAmen@vectorcapita.com  
Attn: Rob Amen

with a copy to Johnson Winter Slattery:

Address: Level 14, 50 Bridge Street, Sydney NSW 2000  
Email: james.rozsa@jws.com.au / byron.koster@jws.com.au  
Attn: James Rozsa, Byron Koster

- (b) Subject to clause 6.3(c), any notice or other communication given in accordance with clause 6.3(a) will be deemed to have been duly given as follows:
- (i) if delivered by hand, on delivery;
  - (ii) if sent by pre-paid post, on the 6th Business Day after the date of postage, or if to or from a place outside Australia, on the 10th Business Day after the date of postage; and
  - (iii) if sent by email:
    - (A) when the sender receives an automated message confirming delivery;
    - (B) the time that the intended recipient confirms receipt of the email by reply email; or
    - (C) two 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.

- (c) Any notice or other communication that, pursuant to clause 6.3(b), would be deemed to be given:
- (i) other than on a Business Day or after 5:00pm on a Business Day is regarded as given at 9:00am on the following Business Day; and
  - (ii) before 9:00am on a Business Day is regarded as given at 9:00am on that Business Day,

where references to time are to time in the place the recipient is located.

#### 6.4 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed poll by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed poll.
- (b) Bidder may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (c) No Scheme Shareholder may rely on words or conduct of Bidder as a waiver of any right unless the waiver is in writing and signed by Bidder. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (d) No waiver of a breach of a term of this deed poll operates as a waiver of another breach of that term or of a breach of any other term of this deed poll.
- (e) The meanings of the terms used in this clause 6.4 are set out below.

<b>Term</b>	<b>Meaning</b>
<b>conduct</b>	includes a failure or delay in the exercise, or partial exercise, of a right.
<b>right</b>	any right arising under or in connection with this deed poll (including a breach of, or default under this deed poll) and includes the right to rely on this clause.
<b>waiver</b>	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

#### 6.5 Variation

A provision of this deed poll or any right created under it may not be varied unless:

- (a) if before the First Court Date, the variation is agreed to by BTH and Bidder in writing; or
- (b) if on or after the First Court Date, the variation is agreed to by BTH and Bidder in writing and the Court indicates that the variation would not of itself preclude approval of the Scheme,

in which event Bidder must enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation.

## **6.6 Cumulative rights**

The rights, powers and remedies of Bidder, and the Scheme Shareholders under this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this deed poll.

## **6.7 Assignment**

- (a) The rights created by this deed poll are personal to Bidder, and each Scheme Shareholder and must not be dealt with at law or in equity without the prior written consent of Bidder.
- (b) Any purported dealing in contravention of clause 6.7(a) is invalid.

## **6.8 Further action**

Bidder must, at its own expense, do all things and execute all documents necessary to give full effect to this deed poll and the transactions contemplated by it.

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## Execution page

### Executed as a deed poll

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Signed, sealed and delivered by **Big Wombat Pty Ltd (ACN 682 671 852)** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

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Signature of sole director

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Name of sole director (print)

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## Schedule 7 Option Scheme Consideration

BTH Option	Exercise price (A\$)	Expiry date	Number (as at the date of this deed)	Option Scheme Consideration (A\$)
ESOP - 26-Oct-2022 - \$0.52	0.52	26/10/2029	2,318,531	0.02551744
Exec ESOP - 25-Oct-2022 - \$0.495	0.495	25/10/2029	1,343,939	0.02784470
NEW ESOP - 01-Apr-2020 - \$0.54	0.54	1/04/2027	2,275,600	0.00525615
NEW ESOP - 01-Apr-2020 - \$0.68	0.68	1/04/2027	10,000	0.00207987
NEW ESOP - 01-Apr-2020 - \$0.74	0.74	1/04/2027	6,250	0.00142689
NEW ESOP - 01-Apr-2020 - \$0.80	0.8	1/04/2027	5,000	0.00099023
NEW ESOP - 01-Apr-2021 - \$0.92	0.92	1/04/2028	414,875	0.00218018
NEW ESOP - 01-Apr-2021 - \$0.92	0.92	1/04/2028	10,000	0.00218018
NEW ESOP - 01-Dec-2018 - \$0.31	0.31	1/12/2025	1,100,000	0.00998979
NEW ESOP - 01-Jan-2020 - \$0.33	0.33	1/01/2027	1,500,000	0.02102515
NEW ESOP - 01-Jan-2020 - \$0.35	0.35	1/01/2027	3,000	0.01782321
NEW ESOP - 01-Jan-2020 - \$0.50	0.5	1/01/2027	1,500,000	0.00535360
NEW ESOP - 01-Jan-2020 - \$0.67	0.67	1/01/2027	111,000	0.00151174
NEW ESOP - 01-Jan-2021 - \$1.16	1.16	1/01/2028	555,375	0.00061359
NEW ESOP - 01-Jul-2018 - \$0.32	0.32	1/07/2025	450,000	0.00337310
NEW ESOP - 01-Jul-2018 - \$0.33	0.33	1/07/2025	925,000	0.00268657
NEW ESOP - 01-Jul-2019 - \$0.32	0.32	1/07/2026	450,000	0.01632421
NEW ESOP - 01-Jul-2019 - \$0.51	0.51	1/07/2026	87,500	0.00235496
NEW ESOP - 01-Jul-2019 - \$0.52	0.52	1/07/2026	400,000	0.00213339
NEW ESOP - 01-Jul-2020 - \$0.54	0.54	1/07/2027	2,843,750	0.00672333
NEW ESOP - 01-Jul-2020 - \$0.67	0.67	1/07/2027	1,250	0.00306514
NEW ESOP - 01-Jul-2020 - \$0.82	0.82	1/07/2027	313,050	0.00132298
NEW ESOP - 01-Jul-2021 - \$0.92	0.92	1/07/2028	1,347,827	0.00281619
NEW ESOP - 01-Jul-2021 - \$1.04	1.04	1/07/2028	105,625	0.00182611
NEW ESOP - 01-Jul-2021 - \$1.04 - US	1.04	1/07/2028	1,600,543	0.00182611
NEW ESOP - 01-Oct-2019 - \$0.54	0.54	1/10/2026	359,625	0.00274970
NEW ESOP - 01-Oct-2020 - \$1.15	1.15	1/10/2027	139,125	0.00041881
NEW ESOP - 02-Jul-2018 - \$0.33	0.33	2/07/2025	20,000	0.00271366

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BTH Option	Exercise price (A\$)	Expiry date	Number (as at the date of this deed)	Option Scheme Consideration (A\$)
NEW ESOP - 04-Apr-2022 - \$0.87 (BS)	0.87	4/04/2029	1,862,178	0.00612938
NEW ESOP - 12-Nov-2018 - \$0.35	0.35	12/11/2025	150,000	0.00497767
NEW ESOP - 13-Apr-2022 - \$0.77	0.77	13/04/2029	133,275	0.00860439
NEW ESOP - 14-Apr-2018 - \$0.35	0.35	14/04/2025	10,000	0.00045454
NEW ESOP - 14-Apr-2022 - \$0.79	0.79	14/04/2029	60,375	0.00806752
NEW ESOP - 14-May-2019 - \$0.34	0.34	14/05/2026	3,000	0.01168821
NEW ESOP - 15-Dec-2023 - \$0.34	0.34	15/12/2030	240,000	0.06068602
NEW ESOP - 16-Jan-2023 - \$0.63	0.63	16/01/2030	66,500	0.01920675
NEW ESOP - 1-July-2022 - \$0.49	0.49	1/07/2029	631,875	0.02562830
NEW ESOP - 1-Oct-2022 - \$0.63	0.63	1/10/2029	130,000	0.01715643
NEW ESOP - 20-Jun-2022 - \$0.465	0.465	20/06/2029	2,250,000	0.02794349
NEW ESOP - 21-Aug-2019 - \$0.36	0.36	21/08/2026	78,000	0.01234026
NEW ESOP - 21-Nov-2018 - \$0.35	0.35	21/11/2025	150,000	0.00522950
NEW ESOP - 23-Aug-2021 - \$1.195	1.195	23/08/2028	425,000	0.00128441
NEW ESOP - 24-Aug-2023 - \$0.44	0.44	24/08/2030	750,000	0.04143614
NEW ESOP - 24-Aug-2023 - \$0.47	0.47	24/08/2030	36,250	0.03768395
NEW ESOP - 24-Aug-2023 - \$0.53	0.53	24/08/2030	17,000	0.03137518
NEW ESOP - 26-Nov-2019 - \$0.55	0.55	26/11/2026	3,000	0.00318838
NEW ESOP - 4-Apr-2022 - \$0.77	0.77	6/06/2029	227,500	0.00935651
NEW ESOP - 4-Apr-2022 - \$0.87	0.87	4/04/2029	640,375	0.00612938
NEW ESOP - 7-Mar-2023 - \$0.63	0.495	7/03/2030	12,500	0.03093864
NEW ESOP Refresh Award - 4-Apr-2022 - \$0.87	0.87	4/04/2029	1,480,000	0.00612938

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**Execution page**

**Executed as a deed.**

**BTH**

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Signed, sealed and delivered by **Bigtincan Holdings Limited (ACN 154 944 797)** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:



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Signature of director

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Tom Amos

Name of director (print)



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Signature of director/secretary

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Wayne Stevenson

Name of director/secretary (print)

**Bidder**

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Signed, sealed and delivered by **Big Wombat Pty Ltd (ACN 682 671 852)** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

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Signature of sole director

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Name of sole director (print)

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## Execution page

Executed as a deed.

**BTH**

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Signed, sealed and delivered by **Bigtincan Holdings Limited (ACN 154 944 797)** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

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Signature of director

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Signature of director/secretary

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Name of director (print)

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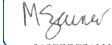
Name of director/secretary (print)

**Bidder**

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Signed, sealed and delivered by **Big Wombat Pty Ltd (ACN 682 671 852)** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

DocuSigned by:

  
M Zauner

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Signature of sole director

Mathew Shane Zauner

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Name of sole director (print)