

Scheme Implementation Agreement

Dated 13 August 2018

Bravo HoldCo Pty Ltd (ACN 628 069 474) ("**Bidder Parent**")
Bravo BidCo Pty Ltd (ACN 628 070 459) ("**BidCo**")
Capilano Honey Limited (ABN 55 009 686 435) ("**Target**")

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Scheme Implementation Agreement

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Scheme Implementation Agreement

Details

Parties	Bidder Parent, BidCo and Target	
Bidder Parent	Name	Bravo HoldCo Pty Ltd
	ACN	628 069 474
	Formed in	Australia
	Address	C/- King & Wood Mallesons Level 61, Governor Phillip Tower 1 Farrer Place, Sydney NSW 2000
	Email	capilano@wattlehillcap.com
	Attention	Deane Conway
BidCo	Name	Bravo BidCo Pty Ltd
	ACN	628 070 459
	Formed in	Australia
	Address	C/- King & Wood Mallesons Level 61, Governor Phillip Tower 1 Farrer Place, Sydney NSW 2000
	Email	capilano@wattlehillcap.com
	Attention	Deane Conway
Target	Name	Capilano Honey Limited
	ABN	55 009 686 435
	Formed in	Queensland, Australia
	Address	399 Archerfield Rd Richlands QLD 4077
	Email	a.zbasnik@capilano.com.au
	Attention	Annette Zbasnik
	<i>With a copy to:</i>	Ben McKee Email: b.mckee@capilano.com.au Rebecca Maslen-Stannage Email: Rebecca.Maslen-Stannage@hsf.com

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Governing law New South Wales, Australia

- Recitals**
- A** The Target and Bidder Parent have agreed that BidCo will acquire the Target by means of a members' scheme of arrangement under Part 5.1 of the Corporations Act.
 - B** At the request of Bidder Parent, the Target intends to propose the Scheme and issue the Scheme Booklet.
 - C** The Target, Bidder Parent and BidCo have agreed to implement the Scheme on the terms and conditions of this document.

Scheme Implementation Agreement

General terms

1 Definitions and interpretation

1.1 Definitions

Unless the contrary intention appears, these meanings apply:

ACCC means the Australian Competition and Consumer Commission.

ASIC means the Australian Securities & Investments Commission.

Associate has the meaning set out in section 12 of the Corporations Act, as if section 12(1) of the Corporations Act included a reference to this document.

ASX means ASX Limited or the market operated by it, as the context requires.

Authorised Officer means a director or secretary of a party or any other person nominated by a party to act as an Authorised Officer for the purposes of this document.

Bidder Group means Bidder Parent and its Subsidiaries (including BidCo but excluding each member of the Target Group).

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

Bidder Parent Constitution means the constitution in relation to Bidder Parent to be adopted by Bidder Parent, in substantially the form agreed between the Target and Bidder Parent before entry into this document.

Bidder Parent Share means a fully paid ordinary share in the capital of Bidder Parent having the rights specified in the Bidder Parent Constitution and Bidder Parent Shareholders Deed.

Bidder Parent Shareholders Deed means the shareholders deed in relation to Bidder Parent to be adopted by Bidder Parent.

Bidder Parent Share Offer has the meaning set out in the Scheme.

Bidder Confidential Information has the meaning given to 'Confidential Information' in the Confidentiality and Exclusivity Agreement.

Bidder Indemnified Parties means Bidder Parent, its officers, employees and advisers, its Related Bodies Corporate and the officers, employees and advisers of each of its Related Bodies Corporate.

Bidder Information means the information regarding the Bidder Group as is required to be included in the Scheme Booklet under the Corporations Act, Corporations Regulations or ASIC Regulatory Guide 60. Bidder Information does not include information about the Target Group (except to the extent it relates to any statement of intention relating to the Target Group following the Effective Date).

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

Cash Consideration means \$20.06 cash per Scheme Share held by a Scheme Participant.

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Claim means, in relation to a party, a demand, claim, action or proceeding made or brought against the party, however arising and whether present.

Competing Transaction means a proposal, transaction or arrangement (whether by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale or issue of securities, joint venture or otherwise) which, if completed substantially in accordance with its terms, would mean a person (other than Bidder Parent or any of its Related Bodies Corporate) whether alone or together with its Associates would:

- (a) directly or indirectly acquire an interest or Relevant Interest in or become a holder of 20% or more of the Target Shares (other than as custodian, nominee or bare trustee);
- (b) acquire control of the Target or a material member of the Target Group, within the meaning of section 50AA of the Corporations Act;
- (c) directly or indirectly acquire, obtain a right to acquire, or otherwise obtain an economic interest in all of a substantial part of the assets of or business conducted by the Target Group; or
- (d) otherwise acquire or merge (including by reverse takeover bid or dual listed company structure) with the Target Group.

Conditions Precedent means the conditions precedent set out in clause 3.1.

Confidentiality and Exclusivity Agreement means the confidentiality and exclusivity agreement dated 11 July 2018 between Wattle Hill RHC Fund 1 (ABN 44 165 694 297), ROC Partners Pty Limited (ABN 50 169 312 681) and the Target.

Confidential Information means Bidder Parent Confidential Information or Target Confidential Information.

Consortium has the meaning given in the Confidentiality and Exclusivity Agreement.

Controller has the meaning it has in the Corporations Act.

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

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

Costs includes costs, charges and expenses, including those incurred in connection with advisers and any legal costs on a full indemnity basis.

Court means the Federal Court of Australia, or such other court of competent jurisdiction under the Corporations Act agreed by the parties.

Deed Poll means a deed poll substantially in the form of Annexure C to this document.

Details means the section of this document headed "Details".

Disclosed means fairly disclosed:

- (a) by a party in writing to the other or its Representatives, or contained in the data room made available by the Target to the Bidder Group prior to the date of this document; or

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- (b) in any announcement made by Target on ASX prior to the date of this document.

Effective, when used in relation to the Scheme, means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

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

Election means an election that a Scheme Participant may make in accordance with the Scheme:

- (a) to receive Cash Consideration in respect of all (but not less than all) Target Shares held by them on the Record Date;
- (b) to receive Scrip Consideration in respect of all (but not less than all) Target Shares held by them on the Record Date;
- (c) if, and only if, the Scheme Participant elects to receive Scrip Consideration in accordance with paragraph (b), to subscribe for Bidder Parent Shares in accordance with the Bidder Parent Share Offer,

subject to the Scaleback Arrangements (in the case of paragraphs (b) and (c) only).

Election and Subscription Form means the election form to be specified by Bidder Parent whereby Scheme Participants can make the Election.

Employee Share Right means 60,000 options issued under the long term incentive plan operated by the Target Group.

Encumbrance means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or 12(2) of the PPSA or any agreement to create any of them or allow them to exist.

End Date means the date that is 9 months after the date of this document or such other date as is agreed by Bidder Parent and Target.

Equity Commitment Letter means the binding executed commitment letter addressed to Bidder Parent from each of Wattle Hill RHC Fund 1 and Roc Capital Pty Ltd (ABN 37 167 858 764) as trustee for Roc B&Y Investment Trust dated on or about the date of this document.

Exclusivity Period means the period from and including the date of this document to the earlier of:

- (a) the termination of this document in accordance with its terms; and
- (b) the End Date.

Foreign Scheme Shareholder means a Scheme Participant who is a citizen or resident or whose address in the Register as at the Record Date is a place outside Australia or New Zealand unless Bidder Parent agrees in writing that it is lawful and not unduly onerous or impracticable to issue Bidder Parent Shares to that Scheme Participant under the Scheme.

Foundation Share has the meaning given in the Target Constitution.

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First Court Date means the first day on which an application made to the Court, in accordance with clause 6.2(h), for orders under section 411(1) of the Corporations Act convening the Scheme Meeting is heard.

Implementation Date means the 5th Business Day following the Record Date.

Incoming Director means the persons to be appointed directors of the Target on the Implementation Date as notified by Bidder Parent to the Target before the Second Court Date.

Independent Expert means the independent expert appointed by the Target under clause 6.2(c).

Independent Expert's Report means the report from the Independent Expert for inclusion in the Scheme Booklet, including any update or supplementary report, stating whether or not in the Independent Expert's opinion the Scheme is fair and reasonable to, and in the best interests of Scheme Shareholders.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this document); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 14 days), resolution passed, or any other action taken, in each case in connection with that person, in respect of any of the things described in paragraphs (a), (b) or (c); or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this document reasonably deduces it is so subject); or
- (g) it has a receiver or manager appointed to any of its assets; or
- (h) it is otherwise unable to pay its debts when they fall due; or
- (i) something having a substantially similar effect to (a) to (h) happens in connection with that person under the law of any jurisdiction.

Listing Rules means the Listing Rules of ASX and any other applicable rules of ASX modified to the extent of any express written waiver by ASX.

Losses means all claims, demands, damages, losses, costs, expenses and liabilities.

Material Adverse Effect means a Specified Event which has, has had, or is reasonably likely to have, either individually or when aggregated with any Specified Events of a similar kind or category, the effect of:

- (a) the value of consolidated net assets of the Target Group (taken as a whole) being reduced by at least \$10,000,000 against what it would have been but for that Specified Event; or
- (b) the value of consolidated annual net profit after tax of the Target Group being reduced by at least \$2,000,000 against what it would have been but for that Specified Event,

but does not include a Specified Event:

- (c) occurring as a result of any matter, event or circumstance required or permitted by this document or the Scheme or the transaction contemplated by either;
- (d) arising as a result of any generally applicable change in law or governmental policy applicable to Australian business generally;
- (e) arising from changes in economic or business conditions (including interest rates) applicable to Australian business generally;
- (f) arising from a matter disclosed to ASX or in a publicly available document lodged with ASIC by Target or Disclosed to the Bidder Group prior to the date of this document;
- (g) occurring with the written consent of Bidder Parent;
- (h) resulting from a change in generally accepted accounting principles or the interpretation of them; or
- (i) resulting from war, terrorism, civil unrest, act of God, lightning, storm, flood, bushfire, earthquake or explosion, cyclone, tidal wave, landslide, adverse weather conditions occurring on or after the date of this document.

Outgoing Director means each director of the Target in office immediately before the Implementation Date.

Permitted Dividend means the dividend of \$0.42 per Target Share, announced by the Target on 20 June 2018.

Proposed Transaction means the proposed acquisition of the Target Shares by BidCo by way of a scheme of arrangement.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Record Date means 5.00pm on the third Business Day following the Effective Date or such other date as the Target and Bidder Parent agree.

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

Regulator's Draft means the draft of the Scheme Booklet in a form acceptable to both parties which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act.

Regulatory Authority includes:

- (a) ASX, ACCC, ASIC and the Takeovers Panel;
- (b) a government or governmental, semi-governmental or judicial entity or authority;

- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (d) any regulatory organisation established under statute.

Reimbursement Fee means \$1,450,000.

Related Body Corporate has the meaning it has in the Corporations Act.

Related Party has the meaning given in the Corporations Act.

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

Representative means, in relation to a party:

- (a) a Related Body Corporate;
- (b) a director, officer or employee of the party or any of the party's Related Bodies Corporate; or
- (c) an adviser to the party or any of the party's Related Bodies Corporate, where an "adviser" means, in relation to an entity, a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant who provides advisory services in a professional capacity and who has been engaged by that entity.

Scaleback Arrangements has the meaning specified in the Scheme.

Scheme means the scheme of arrangement under part 5.1 of the Corporations Act under which the Scheme Shares will be transferred to Bidder Parent substantially in the form of Annexure B together with any amendment or modification made pursuant to section 411(6) of the Corporations Act.

Scheme Booklet means, in respect of the Scheme, the information booklet to be approved by the Court and despatched to Scheme Shareholders which includes the Scheme, an explanatory statement complying with the requirements of the Corporations Act and notices of meeting and proxy forms.

Scheme Consideration means the consideration payable by Bidder Parent for the transfer of Scheme Shares held by a Scheme Participant to Bidder Parent, as defined in the Scheme.

Scheme Meeting means the meeting to be convened by the Court at which Scheme Shareholders will vote on the Scheme.

Scheme Participants means each person who is a Scheme Shareholder at the Record Date.

Scheme Share means all Target Shares (excluding the Foundation Share).

Scheme Shareholder means the holder of Scheme Shares.

Scrip Consideration means one Bidder Parent Share for each Scheme Share in respect of which a Scheme Participant makes a valid Election, subject to the Scaleback Arrangements.

Second Court Date means the day on which the Court makes an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme.

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Specified Event means an event, occurrence or matter (including the announcement or commencement of a Claim, dispute, litigation or a material enforcement action or investigation by a Regulatory Authority) that:

- (a) occurs after the date of this document; or
- (b) occurs before the date of this document but is only announced or publicly disclosed after the date of this document.

Subsidiary of an entity means another entity which:

- (a) is a subsidiary of the first entity within the meaning of the Corporations Act; and
- (b) is part of a consolidated group constituted by the first entity and the entities it is required to include in the consolidated financial statements it prepares, or would be if the first entity was required to prepare consolidated financial statements.

Superior Proposal means a bona fide written proposal of the kind referred to in the definition of "Competing Transaction" which the Target Board, acting in good faith, and after taking advice from its legal and financial advisers, determines is:

- (a) reasonably capable of being completed taking into account all aspects of the Competing Transaction, including its conditions; and
- (b) more favourable to Scheme Shareholders than the Scheme, taking into account all aspects of the Competing Transaction, including the identity, reputation and financial condition of the person making such proposal, legal, regulatory and financial matters.

Target Board means the board of directors of the Target.

Target Confidential Information has the meaning given to 'Confidential Information' in the Confidentiality and Exclusivity Agreement.

Target Constitution means the constitution of the Target.

Target Consolidated Tax Group means the consolidated tax group of which the Target is the head company (where 'consolidated group' and 'head company' have the same meaning as in the Tax Act).

Target Group means the Target and its Subsidiaries.

Target Indemnified Parties means the Target, its officers, employees, and advisers and its Related Bodies Corporate and the officers, employees and advisers of each of its Related Bodies Corporate.

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

Target Prescribed Event means, except to the extent contemplated by this document or the Scheme, any of the following events:

- (a) **(conversion)** the Target converts all or any of its shares into a larger or smaller number of shares;
- (b) **(reduction of share capital)** the Target or another member of the Target Group resolves to reduce its share capital in any way or resolves to reclassify, combine, split or redeem or repurchase directly or indirectly any of its shares;

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- (c) **(buy-back)** the Target or another member of the Target Group:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) **(distribution)** the Target makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie) except for the Permitted Dividend or as otherwise approved in writing by Bidder Parent;
- (e) **(issuing or granting shares or options)** any member of the Target Group:
 - (i) issues shares;
 - (ii) grants an option over its shares; or
 - (iii) agrees to make such an issue or grant such an option,

in each case other than as Disclosed to Bidder Parent, to a person who is not a Target or wholly-owned entity of the Target Group, subject to clause 4.6 of this document;
- (f) **(securities or other instruments)** any member of the Target Group issues or agrees to issue securities or other instruments convertible into shares or debt securities in each case to a person who is not a Target or wholly-owned entity of the Target Group;
- (g) **(constitution)** the Target adopts a new constitution or modifies or repeals its constitution or a provision of it, other than as agreed between the Target and Bidder Parent;
- (h) **(disposals)** any member of the Target Group disposes, or agrees to dispose of the whole or a substantial part of its business or property;
- (i) **(acquisitions, disposals or tenders)** any member of the Target Group
 - (i) acquires or disposes of;
 - (ii) agrees to acquire or dispose of; or
 - (iii) offers, proposes, announces a bid or tenders for,

any business, assets, entity or undertaking the value of which exceeds \$1,000,000 other than in the ordinary course of business (individually or in aggregate);
- (j) **(Encumbrances)** any member of the Target Group creates, or agrees to create, any Encumbrance over, or declares itself the trustee of, the whole or a substantial part of its business or property;
- (k) **(employment arrangements)** any member of the Target Group:
 - (i) increases the remuneration of, or otherwise varies the employment arrangements with, any of its directors or employees whose total employment cost exceeds \$200,000;
 - (ii) accelerates the rights of any of its directors or employees to compensation or benefits of any kind (including under any Target

executive or employee share plans) whose total employment cost exceeds \$200,000; or

- (iii) pays any of its directors or employees whose total employment cost exceeds \$200,000 a termination or retention payment (otherwise than in accordance with an existing contract in place at the date of this document);
- (l) **(commitments and settlements)** any member of the Target Group:
 - (i) enters into any contract or commitment involving revenue or expenditure of more than \$1,000,000 over the term of the contract or commitment, excluding honey sale agreements entered into in the ordinary course of business and consistent with transactions previously entered into;
 - (ii) (without limiting the above) enters into any contract or commitment relating to the same matter or project involving revenue or expenditure which exceeds \$1,000,000 in aggregate over the term of the contracts or commitments, excluding honey sale agreements entered into in the ordinary course of business and consistent with transactions previously entered into;
 - (iii) terminates or amends in a material manner any contract material to the conduct of the Target Group's business or which involves revenue or expenditure of more than \$1,000,000 over the term of the contract, excluding honey sale agreements entered into in the ordinary course of business and consistent with transactions previously entered into; or
 - (iv) accepting as a settlement or compromise of a material matter (relating to an amount in excess of \$1,000,000) less than the full compensation due to the Target or a Subsidiary of the Target;
- (m) **(Insolvency)** the Target or any of its Related Bodies Corporate becomes Insolvent,

provided that a Target Prescribed Event listed in items (a) to (n) will not occur where the Target has first consulted with Bidder Parent in relation to the event and Bidder Parent has approved the proposed event.

Target Representations and Warranties means the representations and warranties of the Target set out in clause 12.1.

Target Share means an ordinary fully paid share in the capital of the Target.

Target Shareholder means each person registered in the Register as a holder of Target Shares.

Tax Act means the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth), or both as the context requires.

Timetable means the timetable set out in Schedule 1 or as otherwise agreed between the parties.

Transaction Implementation Committee means a committee to be made up of:

- (a) the chief executive officer of each of the Target and Bidder Parent; and
- (b) such other persons as the parties may agree from time to time.

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Transaction Document means this document and each of the following:

- (a) Confidentiality and Exclusivity Agreement;
- (b) Scheme;
- (c) the Deed Poll;
- (d) Scheme Booklet; and
- (e) any other document in connection with the Scheme that Bidder Parent and Target agree should be regarded as a 'Transaction Document'.

1.2 General interpretation

Headings and labels used for definitions are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this document:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;
- (e) a reference to "**person**" includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to Sydney time;
- (h) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (i) a reference to "**law**" includes common law, principles of equity and legislation (including regulations);
- (j) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (k) a reference to "**regulations**" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (l) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually; and
- (m) a reference to any thing (including an amount) is a reference to the whole and each part of it.

1.3 Inconsistent agreements

If a provision of this document is inconsistent with a provision of another Transaction Document, the provisions of this document prevail to the extent of the inconsistency.

1.4 Confidentiality and Exclusivity Agreement

The Confidentiality and Exclusivity Agreement continues to have effect as at the date of this document, with the exception of the exclusivity provisions in clause 14 of the Confidentiality and Exclusivity Agreement which cease to have effect and are replaced with the exclusivity provisions in clause 10 of this document.

2 Agreement to propose and implement Scheme

2.1 Target to propose Scheme

The Target agrees to propose the Scheme on and subject to the terms and conditions of this document.

2.2 BidCo

Bidder Parent must procure that BidCo complies with all relevant obligations of Bidder Parent and BidCo under this document and the Scheme.

2.3 Agreement to implement Scheme

The parties agree to implement the Scheme on the terms and conditions of this document.

3 Conditions Precedent

3.1 Conditions Precedent

Subject to this clause 3, the Scheme will not become Effective, and the obligations of Bidder Parent and BidCo under clause 4.3 are not binding, until each of the following Conditions Precedent are satisfied or waived to the extent and in the manner set out in this clause.

Condition Precedent		Party entitled to benefit	Party responsible
(a)	(Shareholder approval) Scheme Shareholders approve the Scheme by the requisite majorities in accordance with the Corporations Act.	Cannot be waived	Target
(b)	(Court approval) the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.	Cannot be waived	Target
(c)	(Regulatory intervention) no Court or Regulatory Authority has issued or taken steps to issue an order, temporary restraining order, preliminary or permanent injunction, decree or ruling or taken any action enjoining, restraining or otherwise imposing a legal restraint or prohibition preventing the Scheme and no such order, decree, ruling, other action or refusal is in effect as at 8.00am on the Second Court Date.	Both	Both

Condition Precedent		Party entitled to benefit	Party responsible
(d)	(No Material Adverse Effect) no Material Adverse Effect occurs between the date of this document and 8.00am on the Second Court Date.	Bidder Parent	Target
(e)	(Minimum scrip take-up) the total number of Bidder Parent Shares to be issued to Scheme Shareholders electing to receive Scrip Consideration, together with the total number of Bidder Parent Shares to be issued under the Bidder Parent Share Offer, represents not less than 15% of the issued share capital in Bidder Parent (on a fully diluted basis).	Bidder Parent	Both

3.2 Reasonable endeavours

Each of the Target and Bidder Parent agree to use reasonable endeavours to procure that:

- (a) each of the Conditions Precedent for which it is a party responsible (as noted in clause 3.1):
 - (i) is satisfied as soon as practicable after the date of this document; and
 - (ii) continues to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
- (b) there is no occurrence within its control or the control of its Subsidiaries that would prevent the Condition Precedent for which it is a party responsible being satisfied.

For the avoidance of doubt, the Target will not be in breach of its obligations under clause 3.2(a) or clause 3.2(b) to the extent that it takes an action or omits to take an action in response to a Competing Transaction as permitted by clause 10.

3.3 Waiver of Conditions Precedent

- (a) A Condition Precedent may only be waived in writing by the party or parties entitled to the benefit of that Condition Precedent as noted in clause 3.1 and will be effective only to the extent specifically set out in that waiver.
- (b) A party entitled to waive the breach or non-fulfilment of a Condition Precedent under this clause 3.3 may do so in its absolute discretion.
- (c) If either the Target or Bidder Parent waives the breach or non-fulfilment of a Condition Precedent in accordance with this clause 3.3, then:
 - (i) subject to clause 3.3(c)(ii), that waiver precludes that party from suing the other for any breach of this document arising as a result of the breach or non-fulfilment of that Condition Precedent or arising from the same event which gave rise to the breach or non-fulfilment of that Condition Precedent; but
 - (ii) if the waiver of the Condition Precedent is itself conditional and the other party:

- (A) accepts the condition, the terms of that condition apply notwithstanding any inconsistency with clause 3.3(c)(i); or
- (B) does not accept the condition, the Condition Precedent has not been waived.
- (d) A waiver of a breach or non-fulfilment in respect of a Condition Precedent does not constitute:
- (i) a waiver of a breach or non-fulfilment of any other Condition Precedent arising from the same event; or
 - (ii) a waiver of a breach or non-fulfilment of that Condition Precedent resulting from any other event.

3.4 Notices in relation to Conditions Precedent

Each party must:

- (a) **(notice of satisfaction)** promptly notify the other of satisfaction of a Condition Precedent and must keep the other informed of any material development of which it becomes aware that may lead to the breach or non-fulfilment of a Condition Precedent;
- (b) **(notice of failure)** immediately give written notice to the other of a breach or non-fulfilment of a Condition Precedent, or of any event which will prevent a Condition Precedent being satisfied; and
- (c) **(notice of waiver)** upon receipt of a notice given under clause 3.4(b), give written notice to the other party as soon as possible (and in any event before 5.00pm on the day before the Second Court Date) as to whether or not it waives the breach or non-fulfilment of any Condition Precedent resulting from the occurrence of that event, specifying the Condition Precedent in question.

3.5 Consultation on failure of Condition Precedent

If:

- (a) there is a breach or non-fulfilment of a Condition Precedent which is not waived in accordance with this document by the time or date specified in this document for the satisfaction of the Condition Precedent;
- (b) there is an act, failure to act or occurrence which will prevent a Condition Precedent being satisfied by the time or date specified in this document for the satisfaction of the Condition Precedent (and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this document); or
- (c) the Scheme has not become Effective by the End Date,

the parties must consult in good faith with a view to determine whether:

- (d) the Scheme may proceed by way of alternative means or methods;
- (e) to extend the relevant time for satisfaction of the Condition Precedent or to adjourn or change the date of an application to the Court; or
- (f) to extend the End Date.

3.6 Failure to agree

If the parties are unable to reach agreement under clause 3.5 within 5 Business Days (or any shorter period ending at 5.00pm on the day before the Second Court Date):

- (a) subject to clause 3.6(b), either party may terminate this document (and that termination will be in accordance with clause 13.1(g)(i)); or
- (b) if a Condition Precedent may be waived and exists for the benefit of one party only, that party only may waive that Condition Precedent or terminate this document (and that termination will be in accordance with clause 13.1(g)(ii)),

in each case before 8.00am on the Second Court Date. A party will not be entitled to terminate this document under this clause if the relevant Condition Precedent has not been satisfied or agreement cannot be reached as a result of a breach of this document by that party or a deliberate act or omission of that party.

4 Outline of Scheme

4.1 Scheme

The Target must propose a scheme of arrangement under which:

- (a) all of the Scheme Shares held by Scheme Participants at the Record Date will be transferred to BidCo; and
- (b) each Scheme Participant will be entitled to receive the Scheme Consideration.

4.2 Scheme Consideration

Subject to and in accordance with this document and the Scheme, each Scheme Participant is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Participant. In accordance with the Scheme, if a Scheme Participant does not make an Election to receive the Scrip Consideration they will be deemed to have made an Election to receive the Cash Consideration.

4.3 Payment of Cash Consideration

Subject to this document and the Scheme, BidCo undertakes to the Target (in its own right and separately as trustee or nominee of each Scheme Participant) that, in consideration of the transfer to BidCo of each Scheme Share held by a Scheme Participant, BidCo will do the following on the Implementation Date:

- (a) accept that transfer; and
- (b) pay or procure the payment of the Cash Consideration in accordance with the Scheme.

Where the calculation of the Cash Consideration to be provided to a particular Scheme Participant would result in the Scheme Participant becoming entitled to a fraction of a cent, the fractional entitlement will be rounded up or down (as applicable) to the nearest cent.

4.4 Issue of Bidder Parent Shares

- (a) Subject to the Scheme becoming Effective, Bidder Parent must issue Bidder Parent Shares to the Scheme Participants who have made valid

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Elections to receive the Scrip Consideration in accordance with the Scheme.

- (b) Subject to the Scheme becoming Effective, Bidder Parent must procure the issuance of Bidder Parent Shares to the Scheme Participants who have made valid Elections to apply for Bidder Parent Shares pursuant to the Bidder Parent Share Offer in accordance with the Scheme.
- (c) Each Bidder Parent Share issued as Scrip Consideration or pursuant to the Bidder Parent Share Offer will:
 - (i) rank equally in all respects with each other Bidder Parent Share and will have the rights set out in the Bidder Parent Constitution and the Bidder Parent Shareholders Deed; and
 - (ii) be fully paid and free from any mortgage, charge, lien, encumbrance or other security interest.
- (d) The issue of Bidder Parent Shares as Scrip Consideration and pursuant to the Bidder Parent Share Offer will be subject to the Scaleback Arrangements.
- (e) Bidder Parent will not issue (or procure the issue of) any Bidder Parent Shares to Foreign Scheme Shareholders.
- (f) To facilitate the issue of Bidder Parent Shares to Scheme Participants, the Target must procure the provision to Bidder Parent of, a complete copy of the Register as at the Record Date (which must include the name, address and registered holding of each Scheme Participant as at the Record Date), within two Business Days after the Record Date. The details and information to be provided under this clause must be provided in such form as Bidder Parent may reasonably require.

4.5 Election mechanism

- (a) The Target must ensure that an Election and Subscription Form is made available to Scheme Shareholders to whom the Scheme Booklet is sent.
- (b) The Election and Subscription Form must include the relevant matters set out in the Scheme and must otherwise be in a form specified by the Bidder Parent.
- (c) The Target must procure that, to the extent practicable, Scheme Shareholders who acquired Target Shares after the date of despatch of the Scheme Booklet receive an Election and Subscription Form.

4.6 Employee incentives

- (a) The Target must ensure that, by no later than the Effective Date, there are no outstanding Employee Share Rights.
- (b) In order to comply with its obligation under clause 4.6(a), the Target must cause each outstanding Employee Share Right to either:
 - (i) vest and, following such vesting, if:
 - (A) exercised before the date that is 2 Business Days before the Record Date, cause the relevant number of Target Shares to be issued to the former holder in sufficient time to allow the former holder to participate in the Scheme; or

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(B) not exercised before the date that is 2 Business Days before the Record Date, be cancelled and terminated immediately following the date that is 2 Business Days before the Record Date; or

(ii) be cancelled and terminated by no later than the Record Date on terms Disclosed to Bidder Parent before entry into this document.

4.7 No amendment to the Scheme without consent

The Target must 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 without the prior written consent of Bidder Parent (not to be unreasonably withheld or delayed).

5 Bidder Parent Shareholders Deed

Scheme Shareholders who receive Bidder Parent Shares will be subject to (and it will be a condition of acceptance of Scrip Consideration and of participation in the Bidder Parent Share Offer, and a Scheme term that each such shareholder enter into) the Bidder Parent Shareholders Deed.

The Bidder Parent Shareholders Deed will be substantially in the form set out in Annexure D.

6 Implementation

6.1 General obligations

The Target and Bidder Parent must each:

- (a) use all reasonable endeavours and commit necessary resources; and
- (b) procure that its officers and advisers work in good faith and in a timely and co-operative fashion with the other party,

to produce the Scheme Booklet and implement the Scheme as soon as reasonably practicable and in accordance with the Timetable.

6.2 Target's obligations

Subject to any change of recommendation by the Target Board that is permitted by clause 7, the Target must take all reasonable steps to implement the Scheme on a basis consistent with this document and as soon as reasonably practicable, and in particular must:

- (a) **(announce directors' recommendation)** following execution of this document, announce, in a form agreed between the Target and Bidder Parent (on the basis of statements made to the Target by each member of the Target Board) that:
 - (i) the Target Board intends to unanimously recommend to Scheme Participants that the Scheme be approved; and
 - (ii) each Target Board member who holds Scheme Shares, intends to vote Scheme Shares that he or she directly or indirectly owns or controls in favour of the Scheme,

subject to:

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- (iii) the Independent Expert concluding, and continuing to conclude, that the Scheme is fair and reasonable to, and in the best interests of, the Scheme Shareholders; and
 - (iv) there being no Superior Proposal.
- (b) **(preparation of Scheme Booklet)** subject to clause 6.2(e)(i), as soon as practicable after the date of this document, prepare and despatch the Scheme Booklet:
 - (i) in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the Listing Rules; and
 - (ii) which includes a statement by the Target Board:
 - (A) unanimously recommending that Scheme Shareholders vote in favour of the Scheme subject to the Independent Expert continuing to conclude that the Scheme is fair and reasonable to, and in the best interests of, Scheme Shareholders and there being no Superior Proposal; and
 - (B) that each Target Board member who holds Scheme Shares intends to vote Scheme Shares that he or she directly or indirectly owns or controls in favour of the Scheme subject to the Independent Expert continuing to conclude that the Scheme is fair and reasonable to, and in the best interests of, Scheme Shareholders and there being no Superior Proposal;
- (c) **(Independent Expert)** promptly appoint the Independent Expert and provide any assistance and information reasonably requested by the Independent Expert to enable the Independent Expert to prepare its report for the Scheme Booklet as soon as practicable;
- (d) **(section 411(17)(b) statement)** apply to ASIC for the production of a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (e) **(consultation with Bidder Parent)** consult with Bidder Parent as to the content and presentation of:
 - (i) the Scheme Booklet, which includes:
 - (A) allowing Bidder Parent a reasonable opportunity to review and make comments on successive drafts of the Scheme Booklet (accepting that any review of the Independent Expert's Report is limited to review for factual accuracy of those parts that include information relating to Bidder Parent);
 - (B) taking any reasonable comments made by Bidder Parent into account in good faith when producing a revised draft of the Scheme Booklet;
 - (C) providing to Bidder Parent a revised draft of the Scheme Booklet within a reasonable time before the draft of the Scheme Booklet which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act is finalised; and

- (D) obtaining Bidder Parent's consent to the inclusion of Bidder Information (including in respect of the form and context in which Bidder Parent Information appears in the Scheme Booklet); and
- (ii) documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating processes, affidavits, submissions and draft minutes of Court orders), and consider in good faith any comments on, or suggested amendments to, those documents from Bidder Parent prior to filing those documents with the Court;
- (f) **(lodgement of Regulator's Draft)**
 - (i) no later than 14 days before the First Court Date, provide an advanced draft of the Scheme Booklet ("**Regulator's Draft**") to ASIC for its review for the purposes of section 411(2) of the Corporations Act, and provide a copy of the Regulator's Draft to Bidder Parent immediately thereafter; and
 - (ii) keep Bidder Parent reasonably informed of any material issues raised by ASIC in relation to the Regulator's Draft and, where practical to do so, consult with Bidder Parent in good faith prior to taking any steps or actions to address those material issues (provided that, where those issues relate to Bidder Parent Information, the Target must not take any steps to address them without Bidder Parent's prior written consent, not to be unreasonably withheld);
- (g) **(supplementary disclosure)** if, after despatch of the Scheme Booklet, the Target becomes aware:
 - (i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
 - (ii) of information that is required to be disclosed to Target Shareholders under any applicable law but was not included in the Scheme Booklet,

promptly consult with Bidder Parent in good faith as to the need for, and the form of, any supplementary disclosure to Scheme Shareholders, and make any disclosure that the Target considers reasonably necessary in the circumstances, having regard to applicable laws and to ensure that there would be no breach of clause 12.1(g) if it applied as at the date that information arose;
- (h) **(Court application)** apply to the Court for an order under section 411(1) of the Corporations Act directing the Target to convene the Scheme Meeting;
- (i) **(send Scheme Booklet)** send the Scheme Booklet to Scheme Shareholders as soon as practicable after the Court orders the Target to convene the Scheme Meeting;
- (j) **(Scheme Meeting)** convene the Scheme Meeting to agree to the Scheme in accordance with any orders made by the Court pursuant to section 411(1) of the Corporations Act;

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- (k) **(director's voting)** use its reasonable endeavours to procure that each member of the Target Board votes any Scheme Shares in which they have a Relevant Interest in favour of the Scheme unless there has been a change of recommendation as permitted under clause 7.1;
 - (l) **(Court approval)** subject to all Conditions Precedent, other than paragraph (b) in clause 3.1 being satisfied or waived in accordance with this document, apply to the Court for an order approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;
 - (m) **(Conditions Precedent certificate)** at the hearing on the Second Court Date, provide to the Court (through its counsel):
 - (i) a certificate confirming (in respect of matters within the Target's knowledge) whether or not the Conditions Precedent for which it is responsible, as noted in clause 3.1 (other than paragraph (b)), have been satisfied or waived in accordance with clause 3, a draft of which must be provided to Bidder Parent by 5.00pm on the Business Day prior to the Second Court Date; and
 - (ii) any certificate provided to it by Bidder Parent under clause 6.3(f);
 - (n) **(lodge copy of Court order)** lodge with ASIC an office copy of the Court order approving the Scheme as approved by the Scheme Shareholders at the Scheme Meeting in accordance with section 411(10) of the Corporations Act no later than 5pm on the Business Day after that office copy is received (or any later date agreed in writing by Bidder Parent);
 - (o) **(Register)** close the Register as at the Record Date to determine the identity of Scheme Participants and their entitlements to Scheme Consideration;
 - (p) **(instruments of transfer)** subject to Bidder Parent and BidCo satisfying their obligations under clause 4.3, on the Implementation Date:
 - (i) execute proper instruments of transfer and effect the transfer of Scheme Shares to BidCo in accordance with the Scheme; and
 - (ii) register all transfers of Scheme Shares held by Scheme Participants to BidCo;
 - (q) **(Suspension of trading)** apply to ASX to suspend trading in Target Shares with effect from the close of trading on the Business Day following the Scheme Meeting (conditional on the Scheme being approved at the Scheme Meeting);
 - (r) **(listing)** take all reasonable steps to maintain the Target's listing on ASX, notwithstanding any suspension of the quotation of the Target Shares, up to and including the date referred to in clause 6.2(q); and
 - (s) **(other steps)** do all other things necessary to give effect to the Scheme and the orders of the Court approving the Scheme.

6.3 Bidder Parent's obligations

Bidder Parent must take all reasonable steps to assist the Target to implement the Scheme on a basis consistent with this document and as soon as reasonably practicable, and in particular must:

- (a) **(Bidder Information)** prepare and promptly provide to the Target for inclusion in the Scheme Booklet the Bidder Information (in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the Listing Rules) and consent to the inclusion of that information in the Scheme Booklet;
- (b) **(further Bidder Information)** promptly provide to the Target any further or new Bidder Information as may arise after the Scheme Booklet has been sent to Scheme Shareholders and until the date of the Scheme Meeting as may be necessary to ensure that the Bidder Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission) and to ensure that there would be no breach of clause 12.3(g) if it applied as at the date on which such further or new Bidder Information arose;
- (c) **(Independent Expert information)** provide any assistance or information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (d) **(representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act, at which, through its counsel, Bidder Parent must undertake, and procure that BidCo undertake (if requested by the Court) to do all things and take all steps within its power as may be necessary in order to ensure the fulfilment of its obligations under this document and the Scheme;
- (e) **(Deed Poll)** prior to the Scheme Booklet being sent, sign and deliver the Deed Poll to the Target and procure that BidCo signs and deliver to the Target the Deed Poll;
- (f) **(Conditions Precedent certificate)** before 8.00am on the Second Court Date, provide to the Target for provision to the Court at the hearing on that date a certificate confirming (in respect of matters within Bidder Parent's knowledge) whether or not the Conditions Precedent for which Bidder Parent is responsible, as noted in clause 3.1 (other than paragraph (b)), have been satisfied or waived in accordance with clause 3, a draft of which must be provided to the Target by 5.00pm on the Business Day prior to the Second Court Date;
- (g) **(Share transfer)** if the Scheme becomes Effective, procure that BidCo accept a transfer of the Target Shares as contemplated by clause 4.3(a);
- (h) **(Scheme Consideration)** if the Scheme becomes Effective, pay or procure the payment of the Scheme Consideration in the manner and amount contemplated by clause 4.3(b) and the terms of the Scheme; and
- (i) **(Bidder Parent Shareholders Deed)** procure that the Shareholders Deed is executed by Bidder Parent and its shareholders and that deed remains in force from the time of its execution until the Implementation Date.

6.4 Scheme Booklet responsibility statement

The responsibility statement to appear in the Scheme Booklet, in a form to be agreed by the parties, will contain words to the effect of:

- (a) the Target has prepared, and is responsible for, the content of the Scheme Booklet other than, to the maximum extent permitted by law, the

Bidder Information, the Independent Expert's Report or any other report or letter issued to the Target by a third party; and

- (b) Bidder Parent has prepared, and is responsible for, the Bidder Information in the Scheme Booklet (and no other part of the Scheme Booklet).

6.5 Disagreement on content of Scheme Booklet

If Bidder Parent and Target 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 the Bidder Information contained in the Scheme Booklet, the Target will make any amendments as Bidder Parent reasonably requires; and
- (b) if the disagreement relates to the form or content of any other part of the Scheme Booklet, the Target Board will, acting in good faith, decide the final form or content of the disputed part of the Scheme Booklet.

6.6 Verification

Each party must undertake appropriate verification processes for the information supplied by that party in the Scheme Booklet.

6.7 Conduct of Court proceeding

The Target and Bidder Parent are entitled to separate representation at all Court proceedings relating to the Scheme. This document does not give the Target or BidCo any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent. The Target must give, and Bidder Parent must procure that BidCo give, all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Scheme as contemplated by this document.

6.8 Appeal process

If the Court refuses to make orders convening the Scheme Meeting or approving the Scheme, the Target, and Bidder Parent must, appeal the Court's decision to the fullest extent possible except to the extent that:

- (a) the parties agree otherwise; or
- (b) an independent senior counsel of the New South Wales bar advises that, in their opinion, an appeal would have no reasonable prospect of success before the End Date,

in which case either party may terminate this document in accordance with clause 13.1(g)(iii).

6.9 Transaction Implementation Committee

The parties must establish a Transaction Implementation Committee as soon as reasonably practical after the date of this document. The role of the Transaction Implementation Committee will be to act as a forum for consultation and planning by the parties to:

- (a) implement the Scheme; and

- (b) subject to clause 6.10, ensure the smooth transition of the management of the business and affairs of the Target Group to the BidCo following the implementation of the Scheme.

6.10 No partnership or joint venture

Subject to this document, nothing in this clause requires either party to act at the direction of the other. The business of each party will continue to operate independently from the other until the Implementation Date. The parties agree that nothing in this document constitutes the relationship of a partnership or a joint venture between the parties.

7 Target Board recommendation

7.1 Best endeavours

The Target must use its best endeavours to procure that none of its directors withdraws, or changes their recommendation in favour of the Scheme, unless:

- (a) there is a Superior Proposal; or
- (b) the Independent Expert concludes that the Scheme is not fair and reasonable to, or not in the best interests of, the Scheme Shareholders, or adversely changes its previously given opinion that the Scheme is fair and reasonable to and in the best interests of the Scheme Shareholders; and
- (c) the Target Board determines in good faith and acting reasonably, having received expert advice in writing from its legal advisors that they must do so because of their fiduciary or statutory duties to Scheme Shareholders.

8 Directors and employees

8.1 Release of Target and Target directors and officers

Subject to the Corporations Act, Bidder Parent releases its rights, and agrees with the Target that it will not make a claim, against any Target Indemnified Party (other than the Target and its Related Bodies Corporate) as at the date of this document and from time to time in connection with:

- (a) any breach of any representations and warranties of the Target or any other member of the Target Group in this document; or
- (b) any disclosure containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except whether the Target Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. Nothing in this clause 8.1 limits the Bidder Parent's rights to terminate this document under clause 13.1.

8.2 Release of Bidder Parent and Bidder Parent directors and officers

Subject to the Corporations Act, the Target releases its rights, and agrees with Bidder Parent that it will not make a claim, against any Bidder Indemnified Party (other than Bidder Parent and its Related Bodies Corporate) as at the date of this document and from time to time in connection with:

- (a) any breach of any representations and warranties of Bidder Parent or any other member of the Bidder Group in this document; or

- (b) any disclosure containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except whether the Bidder Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. Nothing in this clause 8.2 limits the Target's rights to terminate this document under clause 13.1.

8.3 Benefit for Bidder Indemnified Parties

Bidder Parent receives and holds the benefit of this clause to the extent it relates to each Bidder Indemnified Party on behalf of each of them.

8.4 Benefit for Target Indemnified Parties

The Target receives and holds the benefit of this clause to the extent it relates to each Target Indemnified Party on behalf of each of them.

8.5 Appointment/retirement of Target directors

On the Implementation Date, but subject to the Scheme Consideration having been paid to the Scheme Participants and receipt by the Target of signed consents to act, the Target must use its reasonable endeavours to:

- (a) cause the appointment of each Incoming Director to the Target Board; and
- (b) procure that each of the Outgoing Directors retire from the Target Board, and use all reasonable endeavours to procure that each Outgoing Director provides written notice to the effect that they have no claim outstanding for loss of office, remuneration or otherwise against the Target,

in each case, in accordance with the Target Constitution, the Corporations Act and the Listing Rules.

8.6 Directors' and officers' insurance

- (a) Subject to the Scheme becoming Effective and subject to the Corporations Act, Bidder Parent undertakes in favour of the Target and each other person who is a Target Indemnified Party that it will:
- (i) for a period of 7 years from the Implementation Date, ensure that the constitutions of the Target and each other member of the Target Group continue to contain such articles as are contained in those constitutions at the date of this document that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to the maximum extent permitted by law; and
- (ii) procure that the Target and each other member of the Target Group 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, ensure that the directors' and officers' run-off insurance cover for those directors and officers is maintained for a period of 7 years from the retirement date of each director and officer.
- (b) Notwithstanding any other provision of this document, the Target may, prior to Implementation Date, enter into arrangement to secure director and officers' run-off insurance for up to 7 years from the Implementation Date. Any actions to facilitate, or in connection with, that insurance will

not be a Target Prescribed Event or a breach of any provision of this document.

8.7 Benefit of undertaking for Target Group

The Target acknowledges that it receives and holds the benefit of clause 8.6 to the extent it relates to each director and officer of a member of the Target Group on behalf of each of them.

9 Conduct of business

9.1 Overview

From the date of this document up to and including the Implementation Date, the Target must, and must cause each member of the Target Group to, conduct its business in the ordinary course and in substantially the same manner as previously conducted.

9.2 Specific obligations

Without limiting clause 9.1 and other than with the prior approval of Bidder Parent (which approval must not be unreasonably withheld or delayed) or as required by this document, the Target must, during the period contemplated by clause 9.1, use reasonable endeavours to ensure that the Target and each member of the Target Group:

- (a) **(business and assets)** maintains the condition of its business and assets;
- (b) **(officers and employees)** keeps available the services of its officers and employees;
- (c) **(relationships)** preserves its relationships with customers, suppliers, licensors, licensees, joint venturers and others with whom it has business dealings;
- (d) **(change of control consents)** provides all assistance as may reasonably be requested by the Bidder Parent to obtain any change of control consents identified by the Bidder Group as being required in connection with the Proposed Transaction;
- (e) **(financial reporting)** provides regular reports on the affairs of the Target Group in a timely manner to Bidder Parent;
- (f) **(Claim)** promptly notifies Bidder Parent of any material Claims (including, without limitation, before a court or Government Agency) which may be threatened, brought, asserted or commenced against any member of the Target Group or their directors or officers and consult with Bidder Parent in relation to such matter to the extent reasonably required;
- (g) **(no Target Prescribed Event or Material Adverse Effect)** ensures that, between (and including) the date of this document and 8.00am on the Second Court Date, there is no occurrence reasonably within its control or the control of any Target Group entity that would constitute a Target Prescribed Event or Material Adverse Effect; and
- (h) **(notification)** promptly notifies the Bidder Parent of anything of which it becomes aware that makes any of the Target Representations and Warranties false, inaccurate, misleading or deceptive in any material respect.

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9.3 Prohibited actions

Other than with the prior approval of Bidder Parent (which approval must not be unreasonably withheld or delayed) or as required by this document the Target must not, and must ensure that each member of the Target Group does not, during the period referred to in clause 9.1:

- (a) **(acquisitions, disposals and tenders);**
- (i) acquire or dispose of;
 - (ii) agree to acquire or dispose of; or
 - (iii) offer, propose, announce a bid or tender for,

any business, assets or securities, entity or undertaking the value of which exceeds \$1,000,000 individually or \$2,000,000, other than in the ordinary course of business, in aggregate (outside transactions otherwise Disclosed or approved);
- (b) **(financial accommodation)** other than in the ordinary course of business, provide financial accommodation other than to members of the Target Group in excess of A\$100,000 (individually or in aggregate);
- (c) **(employment agreements)** other than in the ordinary course of business, increase the remuneration of (including with regard to superannuation benefits) or benefits provided to or pay any bonus (other than in accordance with existing arrangements and in the ordinary course) or issue any securities or options to, or otherwise vary the employment agreements with, any of its directors or employees, subject to clause 4.6;
- (d) **(accelerate rights)** subject to clause 4.6, accelerate the rights of any of its directors or employees to benefits of any kind;
- (e) **(termination payments)** pay a director, executive or employee a termination payment, other than as provided for in an existing employment contract in place as at the date of this document and a copy of which has previously been provided to Bidder Parent;
- (f) **(dividends)** announce, declare or pay any dividends other than the Permitted Dividend;
- (g) **(derivatives)** enter into an agreement, arrangement or transaction with respect to derivative instruments (including swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments, except:
- (i) derivative instruments including foreign exchange hedging entered into in the ordinary course of business and consistent with past practice or in relation to the payment of a distribution by the Target; or
 - (ii) in connection with the rolling over or renewals of existing positions in the ordinary course of business;
- (h) **(accounting policies)** change accounting policy other than any change required by applicable accounting standards;
- (i) **(competing commitments)** other than in the ordinary course of business, entering into a contract or commitment restraining a member

of the Target Group from competing with any person or conducting activities in any market;

- (j) **(tax)** do anything that would result in a change in the Target Consolidated Tax Group; or
- (k) **(agree)** agree to do any of the matters set out above.

9.4 Exceptions to conduct of business provisions

Nothing in this clause 9 restricts the ability of the Target to take any action which:

- (a) is expressly required or permitted by this document, the Scheme, or otherwise required by law or any order of a Court or Regulatory Authority;
- (b) has been Disclosed to Bidder Parent;
- (c) has been disclosed by the Target to ASX before the date of this document;
- (d) has been agreed to in writing by Bidder Parent; or
- (e) is undertaken in the ordinary course of the Target Group's business.

9.5 Access to people and Target Information

Between the date of this document and the Implementation Date, so long as the Target Board considers the Scheme to be in the best interests of, the Scheme Shareholders, the Target must:

- (a) as soon as reasonably practicable provide Bidder Parent and its officers and advisers with any documents, records, and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) reasonably requested by them; and
- (b) provide Bidder Parent and its officers and advisers with reasonable access to the Target's officers and advisers which Bidder Parent reasonably requires for the purposes of:
 - (i) understanding the Target's financial position (including its cash flow and working capital position), trading performance and management control systems;
 - (ii) implementing the Scheme;
 - (iii) preparing for carrying on the business of the Target following implementation of the Scheme; and
 - (iv) any other purpose which is agreed in writing between the parties.

provided that:

- (c) nothing in this clause requires the Target to provide information concerning the Target's consideration of the Scheme; and
- (d) compliance with any such request would not, in the Target's reasonable opinion, result in undue disruption to the Target Group's business.

9.6 No amendment or waiver of Equity Commitment Letter

- (a) As a continuing obligation Bidder Parent will not, without the Target's prior written consent, amend or permit the amendment of the Equity Commitment Letter nor waive any of its rights under the Equity Commitment Letter in any respect.
- (b) As a continuing obligation, the Bidder Parent will enforce its rights under the Equity Commitment Letter wherever necessary to enable Bidder Parent and BidCo to:
 - (i) perform their obligations under this document; or
 - (ii) meet any Claims made by Target against the Bidder Parent or BidCo under or in respect of this document.

10 Exclusivity

10.1 No existing discussions

- (a) The Target represents and warrants that, other than the discussions with Bidder Parent and its Representatives in respect of the Scheme, it is not currently in negotiations or discussions in respect of any Competing Transaction with any person.
- (b) Bidder Parent represents and warrants that, other than discussions with the Target and its Representatives in respect of the Proposed Transaction, neither they nor their Related Bodies Corporate are currently in negotiations or discussions in respect of any other honey-related business.

10.2 No-shop

During the Exclusivity Period, the Target must ensure that neither it nor any of its Representatives directly or indirectly:

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

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

10.3 No-talk

Subject to clause 10.5, during the Exclusivity Period, the Target must ensure that neither it nor any of its Representatives:

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

a Competing Transaction or any agreement, understanding or arrangement that may be reasonably expected to lead to a Competing Transaction, even if that person's Competing Transaction was not directly or indirectly solicited, invited, encouraged or initiated by the Target or any of its Representatives or even if the person has publicly announced the Competing Transaction.

10.4 Due diligence information

Subject to clauses 10.5 and 10.6, during the Exclusivity Period, the Target must ensure that neither it nor any of its Representatives in relation to a Competing Transaction:

- (a) enables any person other than Bidder Parent to undertake due diligence investigations on any member of the Target Group or their businesses or operations; or
- (b) makes available to any person, or permits any person to receive, other than Bidder Parent (in the course of due diligence investigations or otherwise) any non-public information relating to any member of the Target Group or their businesses or operations.

10.5 Exceptions

Clause 10.3 and clause 10.4 and the obligation under clause 10.7(a) to inform the Bidder Parent of the identity of a potential Third Party bidder or acquirer do not apply to the extent that they restrict the Target or the Target Board from taking or refusing to take any action with respect to a genuine potential Competing Transaction (which was not solicited, invited, encouraged or initiated by the Target in contravention of clause 10.2) provided that the Target Board has determined, in good faith and acting reasonably that:

- (a) after consultation with its financial advisors, such a genuine Competing Transaction is, or could reasonably be considered to become, a Superior Proposal; and
- (b) after receiving legal advice from its external legal advisers (who must be reputable advisers experienced in transactions of this nature) that failing to respond to such a genuine Competing Transaction would be reasonably likely to constitute a breach of the Target Board's fiduciary or statutory obligations.

10.6 Further exceptions

Nothing in this document prevents the Target from:

- (a) continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to the Scheme or its business generally; or
- (b) fulfilling its continuous disclosure requirements.

10.7 Notice of unsolicited approach

During the Exclusivity Period, the Target must promptly inform Bidder Parent if it or any of its Representatives:

- (a) receives any unsolicited approach with respect to any Competing Transaction and must disclose to Bidder Parent reasonable details of the Competing Transaction, including price and the identity of the potential Third Party bidder or acquirer in respect of the actual, proposed or potential Competing Transaction. If the exception in clause 10.5 applies such that the Target is not required to disclose the identity of the potential Third Party bidder or acquirer, the Target must, instead, promptly provide to the Bidder Parent all reasonable information regarding the characteristics of the potential Third Party bidder or acquirer, including (but not limited to) whether it is Australian or foreign, publicly listed or unlisted, a financial or strategic investor; or

- (b) receives any information relating to the Target or any of its Related Bodies Corporate or any of their businesses or operations or any request for access to the books or records of the Target or any of its Related Bodies Corporate, which the Target believes relates, or is likely to relate, to a current or future Competing Transaction.

10.8 Matching right

Without limiting clauses 10.2 and 10.3 but subject to clause 10.5, during the Exclusivity Period, the Target must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a Third Party, the Target or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Transaction unless:

- (a) the Target Board acting in good faith and in order to satisfy what the Target Board considers to be its statutory or fiduciary duties (having received advice from its external legal advisers), determines that the Competing Transaction would be or would be likely to be an actual, proposed or potential Superior Proposal;
- (b) the Target has provided Bidder Parent with reasonable details of the actual, proposed or potential Competing Transaction, including price and the identity of the Third Party making the actual, proposed or potential Competing Transaction;
- (c) the Target has given Bidder Parent at least 3 Business Days after the date of the provision of the information referred to in clause 10.8(b) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction; and
- (d) Bidder Parent has not submitted a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction by the expiry of the 3 Business Day period referred to in clause 10.8(c), which the Target Board, acting reasonably and in good faith, determines would provide an equivalent or superior outcome for Scheme Shareholders as a whole compared with the Competing Transaction.

The Target acknowledges and agrees that each successive modification of any actual, proposed or potential Competing Transaction will constitute a new actual, proposed or potential Competing Transaction for the purposes of the requirements under clause 10.8 and accordingly the Target must comply with clause 10.8(a) and clause 10.8(b) in respect of any new actual, proposed or potential Competing Transaction unless clauses 10.8(c) and 10.8(d) (inclusive) apply.

10.9 Bidder counterproposal

If Bidder Parent proposes to the Target, or announces amendments to the Proposed Transaction or a new proposal that constitute a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction ("**Bidder Counterproposal**") by the expiry of the 3 Business Day period referred to in clause 10.8(c), the Target must procure that the Target Board considers the Bidder Counterproposal and if the Target Board, acting reasonably and in good faith, determines that the Bidder Counterproposal would provide an equivalent or superior outcome for Scheme Shareholders as a whole compared with the Competing Transaction, taking into account all of the terms and conditions of the Bidder Counterproposal, then:

- (a) the Target and Bidder Parent must use their best endeavours to agree the amendments to this document and, enter into, the transaction documents that are reasonably necessary to reflect the Bidder

Counterproposal and to implement the Bidder Counterproposal, in each case as soon as reasonably practicable; and

- (b) the Target must procure that each of the directors of the Target continues to recommend the Proposed Transaction (as modified by the Bidder Counterproposal) to Scheme Shareholders.

11 Reimbursement Fee

11.1 Background

This clause has been agreed in circumstances where:

- (a) Bidder Parent and Target believe that the Scheme will provide significant benefits to the Bidder Group, Target and their respective shareholders, and Bidder Parent and Target acknowledge that, if they enter into this document and the Scheme is subsequently not implemented, the Bidder Group will incur significant costs, including those set out in clause 11.5;
- (b) Bidder Parent requested that provision be made for the Reimbursement Fee, without which Bidder Parent would not have entered into this document; and
- (c) both Bidder Parent Board and Target Board believe that it is appropriate for both parties to agree to the payment referred to in this clause to secure BidCo's and Bidder Parent's participation in the Scheme.

11.2 Payment by the Target to Bidder Parent

The Target agrees to pay the Reimbursement Fee to Bidder Parent without withholding or set off if the Scheme does not proceed because:

- (a) **(Competing Transaction)** during the Exclusivity Period, a Competing Transaction is announced and within 12 months of the date of such announcement a Competing Transaction of the kind referred to in paragraphs (b), (c) or (d) of the definition of "Competing Transaction" completes or the relevant third party who announced or made the Competing Transaction (or any of its Associates) otherwise acquires control of the Target;
- (b) **(change of recommendation by majority)** during the Exclusivity Period, a majority of the Target Director fails to recommend the Scheme or withdraws their recommendation, adversely changes or qualifies their recommendation or otherwise makes a public statement indicating that he or she no longer supports the Scheme, except where the change of recommendation or statement is made after the Independent Expert concludes that in the opinion of the Independent Expert the Scheme is not fair or not reasonable to or not in the best interests of Scheme Shareholders (other than where a Competing Transaction has been proposed or announced before the report is issued which the Independent Expert may reasonably regard to be on more favourable terms than the transaction contemplated by this document);
- (c) **(change of recommendation)** during the Exclusivity Period, both:
 - (i) any Target Director fails to recommend the Scheme or withdraws their recommendation, adversely changes or qualifies their recommendation or otherwise makes a public statement indicating that he or she no longer supports the Scheme, except where the change of recommendation or statement is made after the Independent Expert concludes that in the opinion of the Independent Expert the Scheme is not fair or not reasonable to

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or not in the best interests of Scheme Shareholders (other than where a Competing Transaction has been proposed or announced before the report is issued which the Independent Expert may reasonably regard to be on more favourable terms than the transaction contemplated by this document); and

- (ii) the Scheme Shareholders' vote is not approved at the Scheme Meeting.
- (d) **(Bidder Parent termination)** Bidder Parent validly terminates this document in accordance with clause 13.1(c); or
- (e) **(Target termination)** the Target terminates this document following the Target Board determining that a Competing Transaction which was not solicited, invited, encouraged or initiated in breach of the exclusivity provisions is a Superior Proposal.

11.3 No amount payable if Scheme becomes Effective

Notwithstanding the occurrence of any event in clause 11.2, if the Scheme becomes Effective:

- (a) no amount is payable by the Target under clause 11.2; and
- (b) if any amount has already been paid under clause 11.2 it must be refunded by Bidder Parent.

11.4 Timing of payment

- (a) A demand by Bidder Parent for payment of the Reimbursement Fee under clause 11.2 must:
 - (i) be in writing;
 - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
 - (iii) state the circumstances which give rise to the demand; and
 - (iv) nominate an account in the name of Bidder Parent into which the Target must pay the Reimbursement Fee.
- (b) The Target must pay the Reimbursement Fee to Bidder Parent under clause 11.2 without withholding or set off within 5 Business Days of receipt by the Target of a valid demand for payment from Bidder Parent under clause 11.4(a).

The demand may only be made after the occurrence of an event referred to in clause 11.2.

11.5 Nature of payment

The Reimbursement Fee is an amount to compensate Bidder Parent for:

- (a) advisory costs;
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses;

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- (d) the distraction of Bidder Group and Consortium's management from conducting Bidder Parent and Consortium's respective business as usual caused by pursuing the Scheme;
 - (e) reasonable opportunity costs incurred by the Bidder Group and Consortium in pursuing the Scheme or in not pursuing alternative acquisitions or strategic initiatives which the Bidder Group and Consortium could have developed to further their business and objectives; and
 - (f) damage to the Bidder Group and Consortium's reputation associated with a failed transaction and the implications of that damage to their respective businesses.

The parties agree that the costs incurred are of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amount payable under clause 11.2.

11.6 Reduction in amount payable

- (a) The Reimbursement Fee is reduced by an amount equal to the amount which is recovered by Bidder Parent as a result of a claim against the Target pursuant to any other remedies available to Bidder Parent under this document including pursuant to clause 12.1.
- (b) Where the Reimbursement Fee has already been paid, Bidder Parent must, within 5 Business Days of the event contemplated by clause 11.6(a) which would have reduced the amount payable, refund an amount to the Target which is equivalent to that calculated under clause 11.6(a).

11.7 Target's limitation of liability

Notwithstanding any other provision of this document but subject to clause 11.8:

- (a) the maximum liability of the Target to Bidder Parent under or in connection with this document including in respect of any breach of this document will be the Reimbursement Fee; and
- (b) the payment by the Target of the Reimbursement Fee represents the sole and absolute amount of liability of the Target under or in connection with this document and no further damages, fees, expenses or reimbursements of any kind will be payable by the Target in connection with this document.

11.8 Compliance with law

If it is determined by the Takeovers Panel or a Court that all or any part of the amount payable under clause 11.2:

- (a) is unlawful or would if performed be, unlawful;
- (b) involves a breach of the duties of the Target Board; or
- (c) constitutes unacceptable circumstances within the meaning of the Corporations Act,

then Target's obligation to pay the applicable amount or part of the amount payable under clause 11.2 does not apply and if Bidder Parent has received any such part of the payment due under clause 11.2 it must refund it within 5 Business Days of such determination.

The parties must not make or cause or permit to be made any application to a Court, arbitral tribunal or the Takeovers Panel for or in relation to a determination referred to in this clause 11.8.

12 Representations and warranties

12.1 Target's representations and warranties

The Target represents and warrants to Bidder Parent (on its own behalf and separately as trustee or nominee for each of Bidder Parent directors and BidCo) that each of the following statements is true and correct in all material respects as at the date of this document and as at 5.00pm on the Business Day immediately prior to the Second Court Date:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:
 - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
 - (ii) any law binding on or applicable to it or its assets;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms;
- (f) **(reliance)** the Target Information contained in the Scheme Booklet will be included in good faith and on the understanding that Bidder Parent and its directors will rely on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and implementing the Scheme;
- (g) **(Target Information)** the Target Information provided in accordance with this document and included in the Scheme Booklet as at the date of the Scheme Booklet will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;
- (h) **(continuous disclosure)** the Target is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any material information from disclosure (other than the transaction contemplated by this document);
- (i) **(information)** the information Disclosed by the Target to the Bidder Group has been provided in good faith;

- (j) **(provision of information to Independent Expert)** all information provided by or on behalf of the Target to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;
- (k) **(securities)** the Target's issued securities as at the date of this document are 9,457,481 Target Shares (and 1 Foundation Share) and 60,000 options, and other than as Disclosed it has not issued or agreed to issue any other securities or instruments which are still outstanding and which may convert into Target Shares;
- (l) **(no Encumbrances)** there are no material Encumbrances over all or any of its assets or revenues; and
- (m) **(Insolvency event)** no member of the Target Group is Insolvent.

12.2 Target's indemnity

The Target indemnifies Bidder Parent Indemnified Parties against all Losses incurred directly or indirectly as a result of any of the representations and warranties in clause 12.1 not being true and correct.

12.3 Bidder representations and warranties

Each of Bidder Parent and BidCo represents and warrants to the Target (on its own behalf and separately as trustee or nominee for each of the Target directors) that each of the following statements is true and correct in all material respects as at the date of this document and as at 5.00pm on the Business Day immediately prior to the Second Court Date:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:
- (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
 - (ii) any law binding on or applicable to it or its assets;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms;
- (f) **(reliance)** the Bidder Information provided to the Target for inclusion in the Scheme Booklet will be provided in good faith and on the understanding that the Target and its directors will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the Corporations Act;

- (g) **(Bidder Information)** the Bidder Information provided in accordance with this document and included in the Scheme Booklet, as at the date of the Scheme Booklet, will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;
- (h) **(provision of information to Independent Expert)** all information provided by or on behalf of the Bidder Group to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;
- (i) **(Equity Commitment Letter)** the Equity Commitment Letter has been duly executed by the parties to that letter and constitutes legally binding obligations of those parties that are enforceable in accordance with its terms and has not been terminated;
- (j) **(no change to the Equity Commitment Letter)** as a continuing obligation, without the prior written consent of the Target, the Bidder Parent will not, and will procure each of Wattle Hill RHC Fund 1 and ROC Capital Pty Limited as trustee for Roc B&Y Investment Trust not to, amend the Equity Commitment Letter in any respect;
- (k) **(unconditional cash reserves on the Second Court Date and the Implementation Date)** by 8.00am on the Second Court Date and on the Implementation Date, the Bidder Group will have available to it on an unconditional basis (other than, on the Second Court Date, conditions relating to the approval of the Court and other conditions within the sole control of the Bidder Group) sufficient cash reserves (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy BidCo's obligations to pay the Scheme Consideration in accordance with its obligations under this document, the Scheme and the Deed Poll;
- (l) **(Insolvency event)** no member of the Bidder Group is Insolvent;
- (m) **(securities)** except as Disclosed:
- (i) Bidder Parent's issued and outstanding securities at the First Court Date will be 4 Bidder Parent Shares;
 - (ii) Bidder Parent will own all of the issued shares in BidCo; and
 - (iii) no member of the Bidder Group has issued or agreed to issue any other securities or instruments that are still outstanding and that may convert into or be exchanged for Bidder Parent Shares; and
- (n) **(capital structure)** except as Disclosed and unless agreed with the Target, Bidder Parent will not issue any Bidder Parent Shares:
- (i) other than for cash or as Scrip Consideration;
 - (ii) at an issue price that is less than \$20.06 per Bidder Parent Share; and

- (iii) other than in connection with the funding of the Scheme Consideration.

12.4 Bidder Parent and BidCo's indemnity

Each of Bidder Parent and BidCo indemnifies the Target Indemnified Parties against all Losses incurred directly or indirectly as a result of any of the representations and warranties in clause 12.3 not being true and correct.

12.5 Bidder Parent Share count

On the Scheme becoming Effective (for clarity, following the issuance of Bidder Parent Shares as Scrip Consideration and under the Bidder Parent Share Offer), Bidder Parent's issued securities will comprise 9,457,481 Bidder Parent Shares, and as at that date Bidder Parent will not have issued or agreed to issue any other securities or instruments which may convert into Bidder Parent Shares without the consent of the Target.

13 Termination

13.1 Termination events

This document may be terminated:

- (a) **(End Date)** by either party, if the Scheme has not become Effective on or before the End Date;
- (b) **(lack of support)** by Bidder Parent at any time prior to 8.00am on the Second Court Date if a majority of the Target Board changes its recommendation or fails to recommend to the Scheme Participants that they vote in favour of the resolution to approve the Scheme;
- (c) **(material breach)** by either Bidder Parent or the Target at any time prior to 8.00am on the Second Court Date, if the other is in material breach of a term of this document (including any representation and warranty not being true and correct), taken in the context of the Scheme as a whole, provided that Bidder Parent or the Target (as the case may be) has, if practicable, given notice to the other setting out the relevant circumstances and the relevant circumstances continue to exist 5 Business Days (or any shorter period ending at 8.00am on the Second Court Date) after the time such notice is given;
- (d) **(Target Prescribed Event or Material Adverse Effect)** by Bidder Parent if at any time prior to 8.00am on the Second Court Date, there is a Target Prescribed Event or Material Adverse Effect;
- (e) **(competing interest)** by Bidder Parent, if a person (other than BidCo, its Associates or an existing Scheme Shareholder) has a Relevant Interest in more than 20% of the Target Shares;
- (f) **(Competing Transaction)** by the Target if the Target Board determines that a Competing Transaction that was not solicited, invited, encouraged or initiated in breach of clause 10.2 is a Superior Proposal;
- (g) **(consultation or appeal failure)** in accordance with and pursuant to:
 - (i) clause 3.6(a);
 - (ii) clause 3.6(b); or
 - (iii) clause 6.8; or

(h) **(agreement)** if agreed to in writing by Bidder Parent and the Target.

13.2 Termination

Where a party has a right to terminate this document, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this document and the grounds on which the party is relying to terminate this document.

13.3 Effect of Termination

If this document is terminated by either party, or if this document otherwise terminates in accordance with its terms, then in either case all further obligations of the parties under this document, other than the obligations set out in this clause and in clause 11, and 15 to 20 (inclusive) will immediately cease to be of further force and effect without further liability of any party to the other, provided that nothing in this clause releases any party from liability for any pre-termination breach of this document.

13.4 Damages

Subject to clause 11, in addition to the right of termination under clause 13.1, the non-defaulting party is entitled to damages for Losses suffered by it and expenses incurred by it as a result of the breach of the terms of this document.

14 Public announcements

14.1 Public announcement of Scheme

Immediately after signing this document, the Target must issue a public announcement of the proposed Scheme in the form contained in Annexure A.

14.2 Required disclosure

Where a party is required by any applicable law or any Listing Rule to make any announcement or make any disclosure in connection with the Scheme, it must use all reasonable endeavours, to the extent practicable and lawful, to consult with the other party prior to making the relevant disclosure.

14.3 Other announcements

Subject to clauses 14.1 and 14.2, no party may make any public announcement or disclosure in connection with the Scheme (including disclosure to a Regulatory Authority) other than in a form approved by each party (acting reasonably). Each party will use all reasonable endeavours to provide such approval as soon as practicable.

15 Confidential Information

15.1 Disclosure of Bidder Confidential Information

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

15.2 Termination

This clause will survive termination (for whatever reason) of this document.

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16 Notices and other communications

16.1 Form

Unless this document expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in connection with this document must be in writing and signed by the sender (if an individual) or an Authorised Officer of the sender.

All communications (other than email communications) must also be marked for the attention of the person referred to in the Details (or, if the recipient has notified otherwise, then marked for attention in the way last notified).

Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

16.2 Delivery

Communications must be:

- (a) left at the address referred to in the Details;
- (b) sent by regular ordinary post (airmail if appropriate) to the address referred to in the Details; or
- (c) sent by email to the address referred to in the Details.

If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

16.3 When effective

Communications take effect from the time they are received or taken to be received under clause 16.4 ("When taken to be received") (whichever happens first) unless a later time is specified in the communication.

16.4 When taken to be received

Communications are taken to be received:

- (a) if sent by post, 6 Business Days after posting (or 10 days after posting if sent from one country to another);
- (b) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) 4 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 delivery failed,

whichever happens first.

16.5 Receipt outside business hours

Despite anything else in this clause 16, if communications are received or taken to be received under clause 16.4 ("When taken to be received") after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

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17 GST

17.1 Definitions and interpretation

For the purposes of this clause:

- (a) “**GST Act**” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (b) a term which has a defined meaning in the GST Act has the same meaning when used in this clause, unless the contrary intention appears; and
- (c) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as if it were a separate supply.

17.2 GST exclusive

Unless this document expressly states otherwise, all consideration to be provided under this document is exclusive of GST.

17.3 Payment of GST

- (a) If GST is payable, or notionally payable, on a supply in connection with this document, the party providing the consideration for the supply agrees to pay to the supplier an additional amount equal to the amount of GST payable on that supply (“**GST Amount**”).
- (b) Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.
- (c) This clause does not apply to the extent that the consideration for the supply is expressly stated to include GST or the supply is subject to a reverse-charge.

17.4 Adjustment events

If an adjustment event arises for a supply made in connection with this document, the GST Amount must be recalculated to reflect that adjustment. The supplier or the recipient (as the case may be) agrees to make any payments necessary to reflect the adjustment and the supplier agrees to issue an adjustment note.

17.5 Reimbursements

Any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this document which is calculated by reference to an amount paid by another party must be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a taxable supply, clause 17.3 will apply to the reduced payment.

18 Costs

18.1 Costs

The parties agree to pay their own Costs in connection with the preparation, negotiation, execution and completion of this document, except for amounts covered by clause 18.2.

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18.2 Costs following Effective Date

The parties acknowledge that subject to:

- (a) the Scheme becoming Effective; and
- (b) any required Target Shareholder and holding company shareholder approvals (and ASIC lodgement preconditions) after the Effective Date,

the Target will pay or reimburse:

- (c) all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this document or any other transaction contemplated by this document (including any fees, fines, penalties and interest in connection with any of those amounts); and
- (d) all of Bidder Parent's external adviser Costs (excluding any costs of advisers which are affiliates of the Consortium) incurred in connection with the Proposed Transaction, estimated at \$5,106,600 plus GST.

19 General

19.1 Variation and waiver

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

19.2 Consents, approvals or waivers

By giving any approval, consent or waiver a party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.

19.3 Discretion in exercising rights

Unless this document expressly states otherwise, a party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this document in its absolute discretion (including by imposing conditions).

19.4 Partial exercising of rights

Unless this document expressly states otherwise, if a party does not exercise a right, power or remedy in connection with this document fully or at a given time, they may still exercise it later.

19.5 Conflict of interest

Each party may exercise their rights, powers and remedies in connection with this document even if this involves a conflict of duty or they have a personal interest in their exercise.

19.6 Remedies cumulative

The rights, powers and remedies in connection with this document are in addition to other rights, powers and remedies given by law independently of this document.

19.7 Indemnities and reimbursement obligations

Any indemnity, reimbursement or similar obligation in this document.

- (a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this document, any settlement or any other thing;

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- (b) is independent of any other obligations under this document; and
- (c) continues after this document, or any obligation arising under it, ends.

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity in connection with this document.

19.8 Inconsistent law

To the extent the law permits, this document prevails to the extent it is inconsistent with any law.

19.9 Supervening law

Any present or future law which operates to vary the obligations of a party in connection with this document with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

19.10 Counterparts

This document may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document and the date on which the last counterpart is executed is the date of the document.

19.11 Entire agreement

This document (including the documents in the Schedules to this document) and the Confidentiality and Exclusivity Agreement constitute the entire agreement of the parties about its subject matter and supersedes all previous discussions, agreements, understandings and negotiations on that subject matter.

19.12 Further steps

Each party agrees to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed), which the other party asks and considers necessary to:

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

19.13 No liability for loss

Unless this document expressly states otherwise, a party is not liable for any loss, liability or costs arising in connection with the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right, power or remedy in connection with this document.

19.14 Severability

If the whole or any part of a provision of this document is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this document has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this document or is contrary to public policy.

19.15 Rules of construction

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

19.16 Assignment

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

19.17 Enforceability

For the purpose of this document:

- (a) the Target is taken to be acting as agent and trustee on behalf of and for the benefit of all Target Indemnified Parties; and
- (b) Bidder Parent is taken to be acting as agent and trustee on behalf of and for the benefit of all Bidder Parent Indemnified Parties,

and all of those persons are to this extent taken to be parties to this document.

19.18 No representation or reliance

Each party acknowledges that:

- (a) no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this document, except for representations or inducements expressly set out in this document and the Equity Commitment Letter;
- (b) it does not enter into this document 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 document and the Equity Commitment Letter; and
- (c) clauses 19.18(a) and 19.18(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX.

20 Governing law

20.1 Governing law and jurisdiction

The law in force in the place specified in the Details governs this document. The parties submit to the non-exclusive jurisdiction of the courts of that place.

20.2 Serving documents

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address for service of notices under clause 16.2 ("Delivery") or with its process agent.

EXECUTED as an agreement

Scheme Implementation Agreement

Schedule 1 Timetable (clause 6.1)

Event	Date
Lodge regulator draft of Scheme Booklet with ASIC and ASX	Wednesday, 12 September 2018
Application in respect of the Court hearing to be held on the First Court Date, filed with the Court, served on ASIC	Thursday, 13 September 2018
First Court Date	Wednesday, 10 October 2018
Printing and despatch of Scheme Booklet	Wednesday, 10 October 2018 – Monday, 15 October 2018
Scheme Consideration and Bidder Parent Share Offer Election	Tuesday, 13 November 2018
Scheme Meeting held	Thursday, 15 November 2018
Suspension of trading and freezing of Register	Friday, 16 November 2018
Payment of Cash Consideration into Target trust account	Thursday, 22 November 2018
Second Court Date	Thursday, 22 November 2018
Lodge Court order with ASIC (Effective Date)	Friday, 23 November 2018
Record Date	Wednesday, 28 November 2018
Implementation Date	Wednesday, 5 December 2018
Request for removal from the official list of ASX	Friday, 7 December 2018

Scheme Implementation Agreement

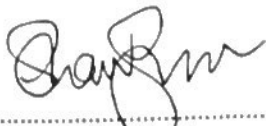
Signing page

DATED: 13 August 2018

EXECUTED by BRAVO HOLDCO PTY LTD in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:


Signature of director

ALBERT TSE
Name of director (block letters)


Signature of director/company secretary*

*delete whichever is not applicable
SHAW NG
Name of director/company secretary* (block letters)
*delete whichever is not applicable

EXECUTED by BRAVO BIDCO PTY LTD in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:


Signature of director

ALBERT TSE
Name of director (block letters)


Signature of director/company secretary*

*delete whichever is not applicable
SHAW NG
Name of director/company secretary* (block letters)
*delete whichever is not applicable

EXECUTED by CAPILANO HONEY LIMITED in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

Signature of director

Name of director (block letters)

Signature of director/company secretary*

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

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Scheme Implementation Agreement

Signing page

DATED: 13 August 2018

EXECUTED by BRAVO HOLDCO PTY LTD in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

.....
Signature of director

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

.....
Signature of director/company secretary*
*delete whichever is not applicable

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

EXECUTED by BRAVO BIDCO PTY LTD in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

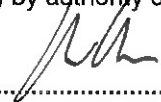
.....
Signature of director

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


.....
Signature of director/company secretary*
*delete whichever is not applicable

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

EXECUTED by CAPILANO HONEY LIMITED in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:


.....
Signature of director

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


.....
Signature of ~~director~~/company secretary*
*delete whichever is not applicable

Annette Zbosnik
.....
Name of ~~director~~/company secretary* (block letters)
*delete whichever is not applicable

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Scheme Implementation Agreement

Annexure A Public announcement

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COMPANY ANNOUNCEMENT

Capilano Honey shareholders to vote on privatisation proposal with attractive premium

Capilano Honey Limited (ASX:CZZ) (“**Capilano**”) announces that it has entered into a Scheme Implementation Agreement with Bravo HoldCo Pty Ltd (“**HoldCo**”), an entity owned by Wattle Hill RHC Fund 1¹ (“**Wattle Hill**”) and ROC Capital Pty Ltd² (“**Roc Partners**”) (together, the “**Consortium**”), and will unanimously recommend it to Capilano shareholders in the absence of a superior offer emerging, subject to the independent expert concluding that the offer is fair and reasonable and in the best interests of Capilano shareholders.

Transaction Highlights

- Capilano has entered into a Scheme Implementation Agreement with HoldCo, an entity owned by the Consortium, under which it is proposed that a subsidiary of HoldCo will acquire 100% of the share capital of Capilano by way of a Scheme of Arrangement.
- If the Scheme is implemented, Capilano shareholders will be entitled to \$20.06 per share cash, which represents a premium of 28.2% to the last close of \$15.65 per share and implies an FY18 P/E multiple of 19.3x and an EV / FY18 EBITDA multiple of 12.5x.
- A scrip alternative provides Capilano shareholders with the potential to participate in the future of Capilano through an all-scrip 1:1 offer.
- Those shareholders electing the scrip alternative can also subscribe at \$20.06 per share for a further 0.5 HoldCo share for every 1 share held in Capilano (“**Subscription Offer**”), subject to rounding and a scale back mechanism.
- Directors of Capilano unanimously recommend to Capilano’s shareholders to vote in favour of the Scheme, subject to the independent expert determining that the Scheme is fair and reasonable and in the best interests of Capilano shareholders and no superior proposal emerging.
- The Scheme is conditional on shareholders representing at least 15.0% electing to receive scrip. If scrip elections and Subscription Offer applications collectively exceed 49.9% of HoldCo shares, scale back arrangements will apply.
- Wroxby Pty Ltd, which currently holds 20.6%³ of total issued shares, has indicated that, in the absence of a superior proposal, it intends to vote in favour of the Scheme and to elect to receive scrip consideration rather than cash consideration, ensuring the minimum scrip consideration condition is met.
- The Scheme vote is proposed to be held in November 2018, with Scheme implementation proposed to occur in December 2018.

¹ Together with its affiliates and funds managed by it, its affiliates or its co-investors.

² Together with its affiliates and funds managed by it, its affiliates or its co-investors.

³ Wroxby Pty Ltd holds 1,948,689 ordinary shares representing 20.6% voting power as disclosed in the FY18 Annual Report.



After careful consideration, the Capilano Board has determined that the HoldCo offer provides an opportunity for shareholders to realise value for their Capilano shares at an attractive premium to the recent trading price of the company, particularly given liquidity of the stock is low.

In addition, the Board believes the Consortium shares its commitment to the Australian honey industry and maintaining strong beekeeper relationships. An important part of the Board's consideration of the Consortium offer was its commitment to ensuring the continuing supply to Australian consumers as well as having strong plans in place to grow exports of premium Australian honey.

For Capilano shareholders, the Cash Consideration of \$20.06 per share values Capilano's equity⁴ at approximately \$189.7m, representing:

- 28.2% premium to Capilano's closing share price of \$15.65 on 10 August 2018;
- 25.3% premium to Capilano's VWAP for the 30-day period (\$16.01) ended 10 August 2018⁵;
- a P / E⁶ multiple of 19.3x (financial year end 30 June 2018); and
- an EV / EBITDA⁷ multiple of 12.5x (financial year ended 30 June 2018).

Scrip Offer and Subscription Election

Shareholders that elect the Scrip Offer will receive 1 HoldCo share for every 1 share held in Capilano, subject to scale back arrangements. Shareholders that elect the Scrip Offer will also have the opportunity to subscribe for additional HoldCo shares at the ratio of 0.5 shares for every 1 share they hold in Capilano, at a price per subscription share equal to the cash offer price of \$20.06.

The Scrip Offer and Subscription Offer may only be accepted in respect of all (but not only some) of a shareholder's entitlement.

It is a condition of the Scheme that holders of at least 15.0% of existing Capilano shares will elect to receive scrip consideration in HoldCo. If scrip elections and Subscription Offer applications collectively exceed 49.9% of HoldCo shares, scale back arrangements will apply.

Capilano's Board Response

The Board, together with its advisers, has carefully considered the proposal as part of its overall and continued focus on maximising value for shareholders. The Board of Capilano unanimously recommends that Capilano shareholders vote in favour of the Scheme, subject to:

- the independent expert concluding that the proposal is fair and reasonable and in the best interests of Capilano shareholders; and
- there being no superior proposal.

Each of the Capilano Directors intends to vote in favour of the Scheme in relation to the Capilano shares directly or indirectly owned or controlled by them.

Capilano Chairman, Mr Trevor Morgan, said: "The Directors have carefully considered the benefits and disadvantages of the Scheme proposal by the Consortium and concluded that the cash option under the Scheme would provide a certain cash outcome for shareholders for their shares at a premium price. Therefore, Directors have recommended shareholders vote in favour of the Scheme in the absence of a superior proposal emerging and subject to the independent expert concluding the offer is fair and reasonable and in the best interests of shareholders."

⁴ Shares on issue is 9,457,481.

⁵ Volume weighted average price for the 30 calendar days prior to 10 August 2018.

⁶ Price is based on the \$20.06 offer price. Earnings per share is based on Net Profit After Tax for the period ended 30 June 2018 of \$9.8m divided by shares on issue.

⁷ Enterprise Value calculated using shares on issue and net debt of \$11.4m as at 30 June 2018. EBITDA is equal to earnings before interest, tax, depreciation and amortisation. EBITDA for the period ended 30 June 2018 is \$16.1m.

“The Board remains confident that Capilano is well positioned to deliver growth across its brand portfolio in both the domestic and export markets,” Mr Morgan said.

“This growth, particularly our investment into our premium and therapeutic brands and marketing into the Asian region, will take time and involve execution risks. Therefore, we believe shareholders should have the opportunity to realise their Capilano shares in cash now.”

Dr Ben McKee, Managing Director of Capilano, said:

“The Consortium will bring added capability necessary to build our brands on a truly global scale. In particular Wattle Hill’s strong relationships in Asian markets provides an opportunity to unlock the potential of Capilano Group’s premium and therapeutic brands. The Consortium understand the importance of our Beekeeper network and outlined its intention to invest further into the industry.”

Capilano Beekeeper Supplier Relationships

Mr Phillip McHugh, who was appointed to the Board by the Capilano Beekeepers Limited, said:

“Maintaining existing relationships with Australian Beekeepers is of the utmost importance. We believe the Consortium recognises the importance of Capilano’s supplier relationships and is committed to continuing to invest in the future of beekeepers and ultimately support growth in the Australian honey market.”

HoldCo Consortium comment

Spokesperson for Roc Partners, Michael Lukin said: “We are pleased that we have reached an agreement with Capilano to put forward this proposal to its shareholders. We believe it is a compelling value proposition that will deliver immediate and significant value to all stakeholders, especially Australian Beekeepers, who will continue to have a strong voice at Capilano as the Consortium confirms beekeeper representation on the board will be maintained. Our equity investment in Capilano Honey will be sourced from our Australian superannuation fund clients meaning this great company will remain majority Australian owned.”

Spokesperson for Wattle Hill, Albert Tse said: “Capilano has a tremendous portfolio of high quality brands and the Consortium intends to retain and further invest in them on a demand-led basis. Our key aim is to enhance the position of Capilano’s brands in key domestic markets as well as drive expansion of brands in offshore growth markets, such as China, as a producer of premium Australian-sourced product. The focus will be on delivering innovative products with therapeutic and digestive health benefits in demand by Asian and Chinese consumers.”

Substantial Shareholder Intentions

Australian Capital Equity Pty Ltd and its wholly owned subsidiary Wroxby Pty Ltd have a relevant interest in 20.6% of issued shares in Capilano. Wroxby has indicated that, in the absence of a Superior Proposal (as defined in the Scheme Implementation Agreement), it intends to vote in favour of the Scheme and to elect to receive scrip consideration rather than cash consideration.

Independent Expert

The Directors of Capilano have appointed BDO to prepare an independent expert report to assist them, and Capilano’s shareholders, in assessing the merits of the Scheme. The report is expected to be sent to shareholders with Capilano’s Scheme Booklet.

Details of the Scheme Implementation Agreement

A scheme of arrangement is a court-approved process which requires Capilano to obtain approval from its shareholders at a Special Meeting. The Scheme requires the approval of both (i) 75% of all votes cast by shareholders; and (ii) 50% of the number of Capilano shareholders who vote.

The conditions to the Proposal are contained in the Scheme Implementation Agreement and include:

- minimum scrip acceptance by Capilano shareholders of 15.0% of the issued share capital in HoldCo;
- Capilano’s shareholder approval;
- obtaining necessary Court approval; and
- no material adverse change.

The Scheme Implementation Agreement also outlines circumstances under which a break fee may be payable by Capilano to the Consortium.

A copy of the Scheme Implementation Agreement is attached to this announcement.

Indicative Timetable

A shareholder meeting to consider the Scheme is expected to be held in November 2018. Subject to shareholder approval and other conditions of the Scheme being satisfied, the Scheme is expected to be implemented in December 2018. Prior to the meeting, shareholders will receive a Notice of Meeting and the Scheme Booklet as well as a copy of the BDO independent expert report.

Mr Morgan said: “The Board strongly encourages shareholders to carefully consider the Scheme documentation and the additional attachments. Shareholders have an opportunity to control the future of their investment in Capilano. We urge Capilano shareholders to exercise their right to vote on the Scheme either in person, or by proxy, however, they should read the Scheme Booklet once it is available and seek independent advice as necessary.”

Capilano is being advised by KPMG Corporate Finance and Herbert Smith Freehills.

For more information contact:

Capilano Representative

Ben McKee
07 3712 8282

KPMG Representative

Brendan Larsen
Partner, Mergers & Acquisitions
07 3233 9373

Media Representative

Domestique
Jim Kelly 0412 549 083
Lauren Thompson 0438 954 729

About Capilano Group Limited

Capilano was founded by apiarists Tim Smith MBE and his brother, Bert, in 1953. The brothers began the business by packing and selling Capilano brand honey to grocery stores around Brisbane, Australia. Capilano has grown to be the market leader for honey in Australia and is one of the world’s largest honey packers. Capilano’s Head Office is located in Brisbane, with operational sites in Brisbane (QLD), Perth (WA) and Maryborough (VIC) and joint-venture beekeeping operations in Evans Heads (NSW) and Perth (WA).

About Wattle Hill

Headquartered in Sydney, with offices in Hong Kong and Beijing, Wattle Hill is a private equity fund focused on investments in quality Australian businesses that offer products and services in demand by Chinese consumers. Wattle Hill identifies leading enterprises that will benefit from China’s economic growth and development then helps them prepare for and navigate Chinese market entry and expansion. Wattle Hill is one of the only investment firms with a defined concurrent focus on the Chinese and Australian markets.

Wattle Hill was founded by Albert Tse and Lisa Fang, both Australian educated and highly regarded cross-border investment professionals between Australia and China, with significant experience across M&A, IPO and principal investments. Wattle Hill combines an experienced team to bridge the business and cultural gap between the two countries.

Wattle Hill established its Australian fund in March 2016 with two of the largest insurance groups from China and Europe, as well as family office investors from China’s leading private e-commerce and FMCG companies. Wattle Hill’s Investment Committee includes one of Australia’s most respected investors, Ashok Jacob of Ellerston Capital, and Sean Huang of Riverhead Capital, the private equity arm of Sunshine Insurance Group, one of China’s largest privately-owned insurance groups with over 35 million direct policy holders.

About ROC Partners

Roc Partners is a leading alternative investment manager specialising in private equity investments across the Asia Pacific region. It was established in June 2014 following a management buy-out of Macquarie Group's private markets business unit that has been in continuous operation since 1996. Roc Partners has over 30 staff members across three offices and has total funds under advice (FUA) of approximately \$6 billion. Roc Partners' equity investment in Capilano Honey will be sourced from its Australian superannuation fund clients. While most of its investment activities are in Australia, Roc Partners has also invested significant capital in other markets across Asia Pacific, including China, India, Japan and South-East Asia. Roc Partners has invested in over 65 direct investments alongside its investment partners across the Asia Pacific region.

Roc Partners has strong capabilities in the agricultural industry. The company invested in Stone Axe Pastoral in May 2017. The company currently owns over 10,000 acres of prime pastoral land and is rapidly expanding its herd through large scale embryo transfer programmes and aims to have an ultra-premium wagyu breeding herd in excess of 10,000 head within five years. Roc Partners also invested in Australia's Oyster Coast (AOC) earlier this year, a NSW headquartered vertically integrated oyster grower, processor and marketer. AOC currently owns in excess of 110 hectares of oyster leases across six NSW south and mid-north coast estuaries allowing consistent year-round supply of Sydney Rock Oysters to Australia's top restaurants and premium seafood distributors.

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Scheme Implementation Agreement

Annexure B Scheme of Arrangement

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Scheme of Arrangement

Dated

Capilano Honey Limited (ABN 55 009 686 435) ("**Target**")

Scheme Participants

King & Wood Mallesons

Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.kwm.com

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Scheme of Arrangement

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Scheme of Arrangement

Details

Parties

Target	Name	Capilano Honey Limited
	ACN	55 009 686 435
	Formed in	Queensland, Australia
	Address	399 Archerfield Rd Richlands QLD 4077
	Email	a.zbasnik@capilano.com.au
	Attention	Annette Zbasnik
Scheme Participants	Each person registered as a holder of fully paid ordinary shares in Target as at 5.00pm on the Record Date.	
Governing law	New South Wales, Australia	

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General terms

1 Definitions and interpretation

1.1 Definitions

Unless the contrary intention appears, these meanings apply:

ASIC means the Australian Securities & Investments Commission.

ASX means ASX Limited or the market operated by it, as the context requires.

Aggregate Bidder Parent Share Elections means the total number of Bidder Parent Shares the subject of all Bidder Parent Share Elections.

Authorised Officer means a director or secretary of a party or any other person nominated by a party to act as an Authorised Officer for the purposes of this document.

Available Bidder Parent Shares means 4,719,283 Bidder Parent Shares.

BidCo means Bravo BidCo Pty Ltd (ACN 628 070 459), a wholly-owned Subsidiary of Bidder Parent which is the transferee of Scheme Shares under the Scheme.

Bidder Parent means Bravo HoldCo Pty Ltd (ACN 628 069 474).

Bidder Parent Constitution means the Constitution of Bidder Parent as in effect at the date of the First Court Date, in substantially the form agreed between the Target and Bidder Parent before entry into the Scheme Implementation Agreement.

Bidder Parent Share means a fully paid ordinary share in the capital of Bidder Parent having the rights specified in the Bidder Parent Constitution and Bidder Parent Shareholders Deed.

Bidder Parent Share Elections means the Elections made by Scheme Participants to receive Scrip Consideration and to subscribe for Bidder Parent Shares pursuant to the Bidder Parent Share Offer.

Bidder Parent Share Offer means the offer by Bidder Parent of Bidder Parent Shares to Scheme Participants who elect to receive Scrip Consideration to subscribe for 0.5 Bidder Parent Shares for each Scheme Share held by the Scheme Participant (rounded down to the nearest whole number) at \$20.06 cash per Bidder Parent Share as provided for in this Scheme, subject to Scaleback Arrangements.

Bidder Parent Shareholder means each person registered in the share register of Bidder Parent as a holder of Bidder Parent Shares.

Bidder Parent Shareholders Deed means the shareholders deed in the form set out in Annexure D of the Scheme Implementation Agreement.

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

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Cash Consideration means \$20.06 cash per Scheme Share held by a Scheme Participant.

Court means the Federal Court of Australia, or such other court of competent jurisdiction under the Corporations Act agreed by the parties.

Deed Poll means the deed poll dated [●] 2018 executed by Bidder Parent and BidCo substantially in the form of Annexure C of the Scheme Implementation Agreement or as otherwise agreed by Bidder Parent and Target under which each of Bidder Parent and BidCo covenants in favour of each Scheme Participant to perform its obligations under this Scheme.

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

Effective means the coming into effect, pursuant to 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 this Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

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

Election means an election that a Scheme Participant may make in accordance with the Scheme:

- (a) to receive Cash Consideration in respect of all (but not less than all) Target Shares held by them on the Record Date;
- (b) to receive Scrip Consideration in respect of all (but not less than all) Target Shares held by them on the Record Date;
- (c) if, and only if, the Scheme Participant elects to receive Scrip Consideration in accordance with paragraph (b), to subscribe for Bidder Parent Shares in accordance with the Bidder Parent Share Offer,

subject to the Scaleback Arrangements (in the case of paragraphs (b) and (c) only).

Election Date means 5.00pm on the date that is at least three Business Days before the date of the Scheme Meeting or such other date as agreed by the Bidder Parent and the Target in writing.

Election and Subscription Form means the election form to be specified by Bidder Parent whereby Scheme Participants can make the Election.

Encumbrance means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or 12(2) of the PPSA or any agreement to create any of them or allow them to exist.

End Date means the date that is 9 months after the date of this document or such other date as is agreed by Bidder Parent and Target.

Foreign Scheme Shareholder means a Scheme Participant who is a citizen of or a resident in, or whose address in the Register as at the Record Date is in, a country other than Australia or New Zealand unless Bidder Parent agrees in writing that it is lawful and not unduly onerous or impracticable to issue Bidder Parent Shares to that Scheme Participant under the Scheme.

First Court Date means the first day on which an application made to the Court, for orders under section 411(1) of the Corporations Act convening the Scheme Meeting is heard.

Immediately Available Funds means a bank cheque or other form of cleared funds acceptable to Target.

Implementation Date means the 5th Business Day following the Record Date.

Listing Rules means the Listing Rules of the ASX.

Record Date means 5.00pm on the third Business Day following the Effective Date or such other date as the Target and Bidder Parent agree.

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

Registered Address means, in relation to a Target Shareholder, the address shown in the Register.

Scaleback Arrangements means the provisions of this Scheme providing for the scaleback of Bidder Parent Shares issued pursuant to this Scheme (including pursuant to the Bidder Parent Share Offer) in accordance with clause 6.6 of this Scheme.

Scheme means this scheme of arrangement between Target and Scheme Participants under which all of the Scheme Shares will be transferred to BidCo under Part 5.1 of the Corporations Act as described in clause 6 of this Scheme, in consideration for the Scheme Consideration, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by Target and Bidder Parent in accordance with clause 8 of this Scheme.

Scheme Consideration means the consideration payable by BidCo or Bidder Parent for the transfer of Scheme Shares held by a Scheme Participant to BidCo under this document.

Scheme Implementation Agreement means the scheme implementation agreement dated 13 August 2018 between Target, BidCo and Bidder Parent under which, amongst other things, Target has agreed to propose this Scheme to Target Shareholders, and each of Bidder Parent, BidCo and Target has agreed to take certain steps to give effect to this Scheme.

Scheme Meeting means the meeting convened by the Court at which Scheme Shareholders vote on the Scheme.

Scheme Participant means each person who is a Scheme Shareholder at the Record Date.

Scheme Share means all Target Shares (excluding the Foundation Share).

Scheme Shareholder means a holder of Scheme Shares.

Scrip Consideration means one Bidder Parent Share for each Scheme Share held on the Record Date by a Scheme Participant who makes a valid Election in accordance with clause 6.2, subject to the Scaleback Arrangements.

Scrip and Offer Participant means a Scheme Participant who has made an Election to receive Scrip Consideration and to subscribe for Bidder Parent Shares in the Bidder Parent Share Offer.

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Scrip Only Participant means a Scheme Participant who has made an Election to receive Scrip Consideration but has not made an Election to subscribe for Bidder Parent Shares in the Bidder Parent Share Offer.

Second Court Date means the day on which the Court makes an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme.

Share Scheme Transfer means, for each Scheme Participant, a duly completed and executed proper instrument of transfer of the Scheme Shares held by that Scheme Participant for the purposes of section 1071B of the Corporations Act, which may be a master transfer of all Scheme Shares.

Subsidiary has the meaning given to it in the Corporations Act.

Target Share means an ordinary fully paid share in the capital of the Target.

Target Shareholder means each person registered in the Register as a holder of Target Shares.

Trust Account means the trust account operated by or on behalf of Target to hold the Cash Consideration on trust for the purpose of paying the Scheme Consideration to the Scheme Participants in accordance with clause 6.4 of this Scheme.

1.2 General interpretation

Headings and labels used for definitions are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this document:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (e) a reference to “**person**” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to Sydney time;
- (h) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (i) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (j) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;

- (k) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (l) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day; and
- (m) if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day.

2 Preliminary

2.1 Target

Target is:

- (a) a public company limited by shares;
- (b) incorporated in Australia and registered in Queensland, Australia; and
- (c) admitted to the official list of the ASX and Target Shares are officially quoted on the stock market conducted by ASX.

As at 13 August 2018, Target's issued securities are:

- (a) Target Shares: 9,457,481;
- (b) Foundation Share: 1; and
- (c) options: 60,000.

2.2 Bidder Parent

Bidder Parent is:

- (a) a proprietary company limited by shares; and
- (b) incorporated in Australia.

2.3 BidCo

BidCo is:

- (a) a proprietary company limited by shares; and
- (b) incorporated in Australia.

2.4 If Scheme becomes Effective

If this Scheme becomes Effective:

- (a) in consideration of the transfer of each Scheme Share to BidCo, the Bidder Parent will procure BidCo to provide, and BidCo will pay the Cash Consideration to Target on behalf of each Scheme Participant in accordance with the terms of this Scheme;
- (b) subject to the Scaleback Arrangements Bidder Parent will issue Bidder Parent Shares to Scheme Participants who have Elected to receive the Scrip Consideration;

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- For personal use only
- (c) subject to the Scaleback Arrangements Bidder Parent will offer and issue Bidder Parent Shares to Scheme Participants pursuant to the Bidder Parent Share Offer;
 - (d) Bidder Parent will enter the names of Scheme Participants that receive Bidder Parent Shares pursuant to clauses 2.4(b) and 2.4(c) in the share register of the Bidder Parent (either directly or through a custodian as contemplated in the Bidder Parent Shareholders Deed);
 - (e) all Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, will be transferred to BidCo on the Implementation Date; and
 - (f) Target will enter the name of BidCo in the Register in respect of all Scheme Shares transferred to BidCo in accordance with the terms of this Scheme.

2.5 Scheme Implementation Agreement

Target, Bidder Parent and BidCo have agreed by executing the Scheme Implementation Agreement to implement the terms of this Scheme.

2.6 Deed Poll

Bidder Parent and BidCo have executed the Deed Poll for the purpose of covenanting in favour of the Scheme Participants to perform (or procure the performance of) their obligations as contemplated by this Scheme, including to provide the Scheme Consideration.

3 Conditions precedent

3.1 Conditions precedent to Scheme

This Scheme is conditional on, 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, the Deed Poll not having been terminated;
- (b) all of the conditions precedent in clause 3.1 of the Scheme Implementation Agreement having been satisfied or waived (other than the conditions precedent which cannot be waived) in accordance with the terms of the Scheme Implementation Agreement by 8.00am on the Second Court Date;
- (c) the Court having approved this Scheme, with or without any modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, Target and Bidder Parent having accepted in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act;
- (d) any other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme and agreed to by the Bidder Parent and the Target having been satisfied or waived; and
- (e) the coming into effect, pursuant to section 411(10) of the Corporations Act, of 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.

3.2 Conditions precedent and operation of clause 5

The satisfaction of each condition of clause 3.1 of this Scheme is a condition precedent to the operation of clause 5 of this Scheme.

3.3 Certificate in relation to conditions precedent

Target and Bidder Parent must provide to the Court on the Second Court Date a certificate confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent set out in clause 3.1 of this Scheme (other than the conditions precedent in clauses 3.1(c), 3.1(d) and 3.1(e) of this Scheme) have been satisfied or waived as at 8.00am on the Second Court Date. The certificate referred to in this clause 3.3 will constitute conclusive evidence of whether the conditions precedent referred to in clause 3.1 of this Scheme (other than the conditions precedent in clauses 3.1(c), 3.1(d) and 3.1(e) of this Scheme) have been satisfied or waived as at 8.00am on the Second Court Date.

4 Scheme

4.1 Effective Date

Subject to clause 4.2 this Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

4.2 End Date

This Scheme will lapse and be of no further force or effect if the Effective Date does not occur on or before the End Date.

5 Implementation of Scheme

5.1 Lodgement of Court orders with ASIC

If the conditions precedent set out in clause 3.1 of this Scheme (other than the condition precedent in clause 3.1(e) of this Scheme) are satisfied, Target must lodge with ASIC in accordance with section 411(10) of the Corporations Act, an office copy of the Court order approving this Scheme as soon as possible, and in any event by no later than 5.00pm on the first Business Day after the day on which the Court approves this Scheme or such later time as Bidder Parent and Target agree in writing.

5.2 Transfer and registration of Target Shares

On the Implementation Date, but subject to the provision of the Scheme Consideration for the Scheme Shares in accordance with clauses 6.1 and 6.3 of this Scheme and Bidder Parent having provided Target with written confirmation of the provision of the Scheme Consideration:

- (a) the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to BidCo without the need for any further act by any Scheme Participant (other than acts performed by Target as attorney and agent for Scheme Participants under clause 8 of this Scheme) by:
 - (i) Target delivering to BidCo a duly completed and executed Share Scheme Transfer executed on behalf of the Scheme Participants; and
 - (ii) BidCo duly executing the Share Scheme Transfer (and subsequently attending to the stamping of the Share Scheme

Transfer if required) and delivering it to Target for registration;
and

- (b) as soon as practicable after receipt of the duly executed Share Scheme Transfer in accordance with clause 5.2(a)(ii), Target must enter the name of BidCo in the Register in respect of all Scheme Shares transferred to BidCo in accordance with the terms of this Scheme.

5.3 Entitlement to Scheme Consideration

On the Implementation Date, in consideration for the transfer to BidCo of the Scheme Shares, each Scheme Participant will be entitled to receive the Scheme Consideration in respect of each of their Scheme Shares in accordance with clause 6 of this Scheme.

5.4 Title and rights in Target Shares

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 6 of this Scheme, on and from the Implementation Date, BidCo will be beneficially entitled to the Scheme Shares transferred to it under the Scheme, pending registration by Target of BidCo in the Register as the holder of the Scheme Shares.

5.5 Scheme Participants' agreements

Under this Scheme, each Scheme Participant agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, in accordance with the terms of this Scheme.

5.6 Warranty by Scheme Participants

Each Scheme Participant warrants to BidCo and is deemed to have authorised Target to warrant to BidCo as agent and attorney for the Scheme Participant by virtue of this clause 5.6, that:

- (a) all their Scheme Shares (including any rights and entitlements attaching to those shares) transferred to BidCo under the Scheme will, as at the date of the transfer under this Scheme, be fully paid and free from all Encumbrances; and
- (b) they have full power and capacity to sell and to transfer their Scheme Shares (including any rights and entitlements attaching to those shares) to BidCo under the Scheme.

5.7 Transfer free of encumbrances

To the extent permitted by law, all Target Shares (including any rights and entitlements attaching to those shares) which are transferred to BidCo under this Scheme will, at the date of the transfer of them to BidCo, vest in BidCo free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind not referred to in this Scheme.

5.8 Appointment of BidCo as sole proxy

- (a) Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clauses 5.3 and 6.3 of this Scheme, on and from the Implementation Date until Target registers BidCo as the holder of all of the Target Shares in the Register, each Scheme Participant:

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- (i) irrevocably appoints Target as attorney and agent (and directs Target in such capacity) to appoint BidCo and each of its directors from time to time (jointly and each of them individually) as its sole proxy, and where applicable corporate representative, to attend shareholders' meetings, exercise the votes attaching to Target Shares registered in its name and sign any shareholders resolution, and no Scheme Participant may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 5.8(a)(i); and
 - (ii) must take all other actions in the capacity of the registered holder of Target Shares as BidCo directs.
- (b) Target undertakes in favour of each Scheme Participant that it will appoint BidCo and each of its directors from time to time (jointly and each of them individually) as that Scheme Participant's proxy or, where applicable, corporate representative in accordance with clause 5.8(a)(i) of this Scheme.

6 Scheme Consideration

6.1 Consideration under the Scheme

Subject to and in accordance with this Scheme, each Scheme Participant is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Participant. In accordance with the Scheme, if a Scheme Participant does not make an Election to receive the Scrip Consideration they will be deemed to have made an Election to receive the Cash Consideration.

6.2 Election procedure

- (a) Subject to clauses 6.2(b), 6.2(c), 6.2(d) and 6.2(e), and clause 6.5(e), each Scheme Participant will be entitled to make an Election. All Elections will take effect in accordance with this Scheme to the extent that any Scheme Participant who makes an Election qualifies as a Scheme Shareholder.
- (b) A Scheme Participant which makes an Election may vary, withdraw or revoke that Election by lodging a replacement Election and Subscription Form so that it is received on or before the Election Date.
- (c) An Election must be made in accordance with terms and conditions of the Election and Subscription Form and this clause 6.2, and an Election not made in accordance with this clause 6.2(c) will not be a valid election for the purpose of this Scheme and will not be recognised for any purpose.
- (d) Subject to clauses 6.5 and 6.6, if a Scheme Participant makes an Election, that Election will be deemed to apply in respect of that Scheme Participant's entire registered holding of Target Shares at the Record Date, regardless of whether the Scheme Participant's holding of Target Shares is greater or less than the Scheme Participant's holding at the time it made its Election, unless the Bidder Parent and the Scheme Participant agree otherwise, in their absolute discretion.
- (e) A Scheme Participant who is noted on the Register as holding one or more parcels of Target Shares as trustee or nominee for, or otherwise on account of, another person, may make separate Elections under this clause 6.2 in relation to each of those parcels of Shares (subject to it

providing to the Target any substantiating information they reasonably require), and if it does so it will be treated as a separate Scheme Participant in respect of each such parcel in respect of which a separate Election is made (and in respect of any balance of its holding), provided that if, at the Record Date, it holds fewer Target Shares than it held at the time it made the Election, then, unless it has at the time of any sale of Target Shares notified the Target whether the Target Shares sold relate to any such separate Election (and if so which separate Election the Shares sold relate to), it will be treated as not having made a valid Election in respect of any of its Target Shares (or will be treated in any other manner that the Target considers is fair to the Scheme Participant in all the circumstances acting reasonably).

6.3 Payment of Scheme Consideration

Subject to this Scheme, each of Bidder Parent and BidCo undertakes to the Target (in the Target's own right and separately as trustee or nominee of each Scheme Participant) that, in consideration of the transfer to BidCo of each Scheme Share held by a Scheme Participant, it will, or will procure (as applicable), the following on the Implementation Date:

- (a) BidCo will accept that transfer; and
- (b) BidCo will pay or procure the payment of the Cash Consideration in accordance with the Scheme; and
- (c) Bidder Parent will issue the Scrip Consideration in accordance with the Scheme.

Where the calculation of the Cash Consideration to be provided to a particular Scheme Participant would result in the Scheme Participant becoming entitled to a fraction of a cent, the fractional entitlement will be rounded up or down (as applicable) to the nearest cent.

6.4 Satisfaction of cash payment obligations

- (a) The obligation of BidCo to pay or to procure payment of the Cash Consideration pursuant to clause 6.1 of this Scheme will be satisfied by BidCo no later than 2 Business Days before the Implementation Date to deposit (or procure the deposit) in Immediately Available Funds, of the aggregate amount of the Cash Consideration payable to all Scheme Participants into the Trust Account (except that the amount of any interest on the amount deposited will be to BidCo's account).
- (b) On the Implementation Date and subject to funds having been deposited in accordance with clause 6.4(a), the Target must pay or procure the payment of the cash component of the Scheme Consideration to each Scheme Participant who is entitled to receive it under clauses 6.5 and 6.6 from the Trust Account by doing any of the following at its election:
 - (i) paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Scheme Participant by an appropriate authority from the Scheme Participant to the Target; or
 - (ii) dispatching, or procuring the dispatch, of a cheque for the relevant amount in Australian currency to the Scheme Participant by prepaid post to their Registered Address (as at the Record Date), such cheque being drawn in the name of the Scheme Participant (or in the case of joint holders in accordance with the procedures set out in clause 6.9).

6.5 Issue of Bidder Parent Shares

- (a) Subject to the Scheme becoming Effective and to the Scaleback Arrangements, Bidder Parent must issue Bidder Parent Shares to the Scheme Participants who have made valid Elections to receive the Scrip Consideration in accordance with the Scheme.
- (b) Subject to the Scheme becoming Effective and to the Scaleback Arrangements, Bidder Parent must issue Bidder Parent Shares to the Scheme Participants who have made valid Elections to apply for Bidder Parent Shares pursuant to the Bidder Parent Share Offer in accordance with the Scheme.
- (c) Each Bidder Parent Share issued as Scrip Consideration or pursuant to the Bidder Parent Share Offer will:
 - (i) rank equally in all respects with each other Bidder Parent Share and will have the rights set out in the Bidder Parent Constitution and the Bidder Parent Shareholders Deed; and
 - (ii) be fully paid and free from any mortgage, charge, lien, encumbrance or other security interest.
- (d) The issue of Bidder Parent Shares as Scrip Consideration and pursuant to the Bidder Parent Share Offer will be subject to the Scaleback Arrangements.
- (e) Bidder Parent will not issue (or procure the issue of) any Bidder Parent Shares to Foreign Scheme Shareholders and any Foreign Scheme Shareholders purporting to accept the Scrip Consideration will be deemed to have elected the Cash Consideration and shall not be entitled to participate in the Bidder Parent Share Offer.
- (f) Any Scheme Participant who becomes a Bidder Parent Shareholder will be taken automatically through this Scheme to have agreed to be bound by the Bidder Parent Constitution and will become a party as a “Non-Investor Party” to the Bidder Parent Shareholders Deed.
- (g) If the Bidder Parent Share Elections would otherwise result in there being more than 50 shareholders in the Bidder Parent, the Bidder Parent may elect that a Scheme Participant who receives Bidder Parent Shares pursuant to this Scheme will have those Bidder Parent Shares registered in the name of a custodian nominated by Bidder Parent in accordance with the terms of a custody agreement as specified by Bidder Parent.
- (h) To facilitate the issue of Bidder Parent Shares to Scheme Participants, the Target must procure the provision to Bidder Parent of, a complete copy of the Register as at the Record Date (which must include the name, address and registered holding of each Scheme Participant as at the Record Date), within two Business Days after the Record Date. The details and information to be provided under this clause must be provided in such form as Bidder Parent may reasonably require.

6.6 Scaleback Arrangements

If the Aggregate Bidder Parent Share Elections exceed the Available Bidder Parent Shares the Scaleback Arrangements under this clause 6.6 will apply.

- (a) If the total number of Bidder Parent Shares the subject of Bidder Parent Share Elections made by Scrip and Offer Participants is less than or equal to the Available Bidder Parent Shares:
- (i) then Scrip and Offer Participants will receive the Bidder Parent Shares the subject of their Bidder Parent Share Elections in full; and
 - (ii) Scrip Only Participants will receive the number of Bidder Parent Shares in respect of the Scheme Shares held by them calculated as "X" in accordance with the following formula (rounded down to the nearest whole number) and the remaining number of Scheme Shares held by that Scrip Only Participant receiving the Cash Consideration:

$$A = B - C$$

and then:

$$X = D \left(\frac{A}{E} \right)$$

where:

B is the Available Bidder Parent Shares.

C is the aggregate number of Bidder Parent Shares the subject of Bidder Parent Share Elections made by Scrip and Offer Participants.

D is the number of Bidder Parent Shares the subject of the Bidder Parent Share Election made by that Scrip Only Participant.

E is the aggregate number of Bidder Parent Shares the subject of Bidder Parent Share Elections made by all Scrip Only Participants.

- (b) If the total number of Bidder Parent Shares the subject of Bidder Parent Share Elections made by all Scrip and Offer Participants equals or exceeds the Available Bidder Parent Shares:
- (i) Scrip Only Participants will not receive any Bidder Parent Shares and will receive the Cash Consideration for each Scheme Share held by them; and
 - (ii) Scrip and Offer Participants will receive the number of Bidder Parent Shares in respect of the Scheme Shares held by them calculated as "X" in accordance with the following formula (rounded down to the nearest whole number) and with the remaining number of Scheme Shares held by that Scrip and Offer Participant receiving the Cash Consideration:

$$X = F \left(\frac{G}{H} \right)$$

where:

F is the number of Bidder Parent Shares the subject of Bidder Parent Share Election made by that Scrip and Offer Participant.

G is the Available Bidder Parent Shares.

H is the aggregate number of Bidder Parent Shares the subject of the Bidder Parent Share Elections made by all Scrip and Offer Participants.

6.7 Orders of a court

In the case of notice having been given to Target (or the Registry) of an order made by a court of competent jurisdiction:

- (a) which requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Participant, which would otherwise be payable to that Scheme Participant in accordance with clause 6.2 of this Scheme, then Target must procure that payment is made in accordance with that order; or
- (b) which would prevent Target from dispatching payment to any particular Scheme Participant in accordance with clause 6.2 of this Scheme, Target will retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Participant multiplied by the Scheme Consideration until such time as payment in accordance with clause 6.2 of this Scheme is permitted by law.

6.8 Unclaimed monies

- (a) The Target may cancel a cheque issued under this clause 6 if the cheque:
 - (i) is returned to the Target; or
 - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder to the Target (or the office of Register) (which request may not be made until the date which is 20 Business Days after the Implementation Date), the Target must reissue a cheque that was previously cancelled under this clause 6.8.
- (c) The *Public Trustee Act 1978* (QLD) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 98 of the *Public Trustee Act 1978* (QLD)).

6.9 Joint holders

In the case of Scheme Shares held in joint names any bank cheque required to be paid to Scheme Participants by BidCo must be payable to the joint holders and be forwarded to the holder whose name appears first in the Register as at 5.00pm on the Record Date

7 Dealings in Scheme Shares

7.1 Determination of Scheme Participants

To establish the identity of the Scheme Participants, dealings in Scheme Shares will only be recognised by Target if:

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

7.2 Register

Target must register any registrable transmission applications or transfers of the Scheme Shares received in accordance with clause 7.1(b) of this Scheme on or before 5.00pm on the Record Date.

7.3 No disposals after Effective Date

If this Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Effective Date in any way except as set out in this Scheme and any such disposal will be void and of no legal effect whatsoever.

Target will not accept for registration or recognise for any purpose any transmission, application or transfer in respect of Scheme Shares received after 5.00pm on the Record Date (except a transfer to BidCo pursuant to this Scheme and any subsequent transfer by BidCo or its successors in title).

7.4 Maintenance of Target Register

For the purpose of determining entitlements to the Scheme Consideration, Target will maintain the Register in accordance with the provisions of this clause 7.4 until the Scheme Consideration has been paid to the Scheme Participants and BidCo has been entered in the Register as the holder of all the Scheme Shares. The Register in this form will solely determine entitlements to the Scheme Consideration.

7.5 Effect of certificates and holding statements

Subject to provision of the Scheme Consideration and registration of the transfer to BidCo contemplated in clauses 5.2 and 7.4 of this Scheme, any statements of holding in favour of Scheme Participants in respect of Scheme Shares will cease to have effect after 5.00pm on the Record Date as documents of title in respect of those shares (other than statements of holding in favour of BidCo and its successors in title). After 5.00pm on the Record Date, each entry current on the Register as at 5.00pm on the Record Date (other than entries in respect of BidCo or its successors in title) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Target Shares relating to that entry.

7.6 Details of Scheme Participants

Within 3 Business Days after the Record Date, Target will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Participant, as shown in the Register at 5.00pm on the Record Date are available to BidCo in such form as BidCo reasonably requires.

7.7 Suspension of trading

Suspension of trading on ASX in Target Shares will occur from the close of trading on ASX on the Business Day after the date of the Scheme Meeting (conditional on the Scheme being approved at the Scheme Meeting).

7.8 Termination of quotation of Target Shares

After the Scheme has been fully implemented, Target will apply:

- (a) for termination of the official quotation of Target Shares on ASX; and
- (b) to have itself removed from the official list of the ASX.

8 Power of attorney

Each Scheme Participant, without the need for any further act by any Scheme Participant, irrevocably appoints Target and each of its directors and secretaries (jointly and each of them individually) as its attorney and agent for the purpose of:

- (a) executing any document necessary or expedient to give effect to this Scheme including the Share Scheme Transfer; and
- (b) enforcing the Deed Poll against Bidder Parent and BidCo,

and Target accepts such appointment.

9 Notices

9.1 No deemed receipt

If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Target, it will not be taken 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 Target's registered office or at the office of the Register.

9.2 Accidental omission

The accidental omission to give notice of the Scheme Meeting or the non-receipt of such a notice by any Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

10 General

10.1 Binding effect of the Scheme

The Scheme binds the Target and all Scheme Shareholders (including those who did not attend the Scheme Meeting to vote on this Scheme, did not vote at the Scheme Meeting or voted against this Scheme at the Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of the Target.

10.2 Variations, alterations and conditions

Target may, with the consent of Bidder Parent (which cannot be unreasonably withheld), by its counsel or solicitor consent on behalf of all persons concerned to

any variations, alterations or conditions to this Scheme which the Court thinks fit to impose.

10.3 Further action by Target

Target will execute all documents and do all things (on its own behalf and on behalf of each Scheme Participant) necessary or expedient to implement, and perform its obligations under, this Scheme.

10.4 Authority and acknowledgement

Each of the Scheme Participants:

- (a) irrevocably consents to Target, Bidder Parent and BidCo doing all things necessary or expedient for or incidental to the implementation of this Scheme;
- (b) agrees to the variation, cancellation or modification of the rights attached to their Target Shares constituted by or resulting from this Scheme;
- (c) who holds their Target Shares in a CHES Holding agrees to the conversion of those Target Shares to an Issuer Sponsored Holding and irrevocably authorises Target to do anything necessary or expedient (whether required by the Settlement Rules or otherwise) to effect or facilitate such conversion; and
- (d) acknowledges that this Scheme binds Target and all Scheme Participants (including those who do not attend the Scheme Meeting or do not vote at that meeting or vote against the Scheme at that Meeting) and, to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of Target.

10.5 No liability when acting in good faith

Neither Target, BidCo nor Bidder Parent, nor any of their respective officers, will be liable for anything done or omitted to be done in the performance of this Scheme in good faith.

10.6 Enforcement of Deed Poll

Target undertakes in favour of each Scheme Participant to enforce the Deed Poll against Bidder Parent and BidCo on behalf of and as agent and attorney for the Scheme Participants.

11 Governing law

11.1 Governing law and jurisdiction

The law in force in the place specified in the Details governs this document. The parties submit to the non-exclusive jurisdiction of the courts of that place.

11.2 Serving documents

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address set out in the Details.

Scheme Implementation Agreement

Annexure C Deed Poll

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Deed Poll

Dated

Given by **Bravo HoldCo Pty Ltd** (ACN 628 069 474) ("**Bidder Parent**")
and **Bravo BidCo Pty Ltd** (ACN 628 070 459) ("**BidCo**")

In favour of each registered holder of fully paid ordinary shares in
Capilano Honey Limited (ABN 55 009 686 435) ("**Target**") as at 5.00 pm
on the Record Date ("**Scheme Participants**")

King & Wood Mallesons

Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.kwm.com

Deed Poll

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Details

Parties

Bidder Parent	Name	Bravo HoldCo Pty Ltd
	ACN	628 069 474
	Formed in	Australia
	Address	C/- King & Wood Mallesons Level 61, Governor Phillip Tower 1 Farrer Place, Sydney NSW 2000
	Email	capilano@wattlehillcap.com
	Attention	Deane Conway
BidCo	Name	Bravo BidCo Pty Ltd
	ACN	628 070 459
	Formed in	Australia
	Address	C/- King & Wood Mallesons Level 61, Governor Phillip Tower 1 Farrer Place, Sydney NSW 2000
	Email	capilano@wattlehillcap.com
	Attention	Deane Conway

In favour of Each registered holder of fully paid ordinary shares in Target as at 5.00 pm on the Record Date.

Governing law New South Wales

- Recitals**
- A** The directors of Target have resolved that Target should propose the Scheme.
 - B** The effect of the Scheme will be that all Scheme Shares will be transferred to BidCo.
 - C** Target, Bidder Parent and BidCo have entered into the Scheme Implementation Agreement.
 - D** In the Scheme Implementation Agreement, Bidder Parent agreed (amongst other things) to provide, or procure the provision of, the Scheme Consideration to Scheme Participants, subject to the satisfaction of certain conditions.

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- E** In the Scheme Implementation Agreement, BidCo agreed (amongst other things) to pay or procure the payment of the Cash Consideration to the Scheme Participants, subject to the satisfaction of certain conditions.
 - F** Bidder Parent and BidCo are entering into this deed poll for the purpose of covenanting in favour of Scheme Participants to perform their respective obligations in relation to the Scheme.
-

Deed Poll

General terms

1 Definitions and interpretation

1.1 Definitions

Unless the contrary intention appears, these meanings apply:

Control has the meaning given in section 50AA of the Corporations Act 2001 (Cth).

Custodian Deed has the meaning given in the Bidder Parent Shareholders Deed.

Equity Commitment Letter means the binding executed commitment letter addressed to Bidder Parent from each of Wattle Hill RHC Fund 1 and Roc Capital Pty Ltd (ABN 37 167 858 764) as trustee for Roc B&Y Investment Trust dated on or about the date of this document.

Liability means a debt, liability or obligation, whether actual, prospective, contingent or otherwise and whether or not ascertained, and whether or not owing or incurred alone, or jointly and severally, with any other person.

Scheme means the proposed scheme of arrangement between Target and Scheme Participants under which all the Scheme Shares will be transferred to BidCo under Part 5.1 of the Corporations Act, substantially in the form of Annexure A to this deed poll, or as otherwise agreed by Bidder Parent and Target, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act, to the extent they are approved in writing by Target and Bidder Parent in accordance with clause 10 of the Scheme.

Scheme Implementation Agreement means the scheme implementation agreement dated 13 August 2018 between Target, Bidder Parent and BidCo under which, amongst other things, Target has agreed to propose the Scheme to Target Shareholders, and each of Bidder Parent, BidCo and Target has agreed to take certain steps to give effect to the Scheme.

All other words and phrases used in this document have the same meaning as given to them in the Scheme.

1.2 General interpretation

Clause 1.2 of the Scheme applies to this document, except that references to "this document" in that clause are to be read as references to this deed poll.

1.3 Nature of deed poll

Each of Bidder Parent and BidCo acknowledges that:

- (a) this document may be relied on and enforced by any Scheme Participant in accordance with its terms even though the Scheme Participants are not a party to it; and

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- (b) under the Scheme, each Scheme Participant irrevocably appoints the Target 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 Parent and BidCo.

2 Conditions precedent and termination

2.1 Conditions precedent

Bidder Parent's and BidCo's obligations under clause 4 are subject to the Scheme becoming Effective.

2.2 Termination

Bidder Parent's and BidCo's obligations under this document will automatically terminate and the terms of this document will be of no further force or effect if:

- (a) the Scheme has not become Effective on or before the End Date; or
- (b) the Scheme Implementation Agreement is terminated in accordance with its terms.

2.3 Consequences of termination

If this document is terminated under clause 2.2, then, in addition and without prejudice to any other rights, powers or remedies available to Scheme Participants:

- (a) each of Bidder Parent and BidCo is released from its obligations to further perform this document, except any obligations which by their nature survive termination; and
- (b) each Scheme Participant retains the rights, powers or remedies they have against Bidder Parent and BidCo in respect of any breach of this document which occurs before it is terminated.

3 Performance of obligations generally

Bidder Parent and BidCo must comply with their obligations under the Scheme Implementation Agreement and do all acts and things necessary or desirable on their respective parts to give full effect to the Scheme.

4 Scheme Consideration

4.1 Compliance with Scheme obligations generally

Subject to clause 2, each of Bidder Parent and BidCo covenants in favour of Scheme Participants to observe and perform the steps attributed to it under, and otherwise to comply with, the Scheme as if named as a party to the Scheme and do all acts and things necessary to give effect to the Scheme.

4.2 Provision of Scrip Scheme Consideration

- (a) Subject to clause 2 and the Scaleback Arrangements under the Scheme, Bidder Parent will on the Implementation Date do the following in accordance with clause 6 of the Scheme:

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- (i) issue Bidder Parent Shares to each Scheme Participant who has made a valid Election to receive Scrip Consideration; and
 - (ii) offer and issue Bidder Parent Shares to each Scheme Participant who has made a valid Election to apply for Bidder Parent Shares pursuant to the Bidder Parent Share Offer.
- (b) The Bidder Parent Shares to be issued under the Scheme will be:
- (i) validly issued and fully paid up and will rank equally in all respects with all other Bidder Parent Shares on issue as at the Implementation Date; and
 - (ii) free from any mortgage, charge, lien, encumbrance or other security interest.

4.3 Payment of Cash Consideration

Subject to clause 2, in consideration of the transfer to BidCo of each Scheme Share held by a Scheme Participant, Bidder Parent undertakes in favour of each Scheme Participant to procure that BidCo, and BidCo undertakes in favour of each Scheme Participant to, do the following on the Implementation Date:

- (a) accept that transfer; and
- (b) pay or procure the payment of the Cash Consideration to the Trust Account on behalf of each relevant Scheme Participant in accordance with the Scheme.

Where the calculation of Cash Consideration to be provided to a particular Scheme Participant would result in the Scheme Participant becoming entitled to a fraction of a cent, the fractional entitlement will be rounded up or down (as applicable) to the nearest cent.

4.4 Manner of payment

Bidder Parent's obligation to procure that BidCo provide the Cash Consideration to Target on behalf of each relevant Scheme Participant, and BidCo's obligation to provide that Consideration, is satisfied by Bidder Parent or BidCo, no later than 2 Business Days before the Implementation Date, depositing in Immediately Available Funds the aggregate amount of the Cash Consideration payable to all relevant Scheme Participants into the Trust Account (except that the amount of any interest on the amount deposited will be to BidCo's account).

4.5 Joint holders

In the case of Scheme Shares held in joint names any bank cheque required to be paid to Scheme Participants by BidCo must be payable to the joint holders and be forwarded to the holder whose name appears first in the Register as at 7.00pm on the Record Date.

4.6 Undertakings

Each of the Bidder Parent and BidCo undertakes in favour of each Scheme Participant to undertake all actions, and give each acknowledgement, representation and warranty (if any), attributed to it under the Scheme.

5 Representations and warranties

5.1 General representations and warranties

Each of Bidder Parent and BidCo represents and warrants to each Scheme Participant that:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation or formation, is validly existing under those laws and has power and authority to own its assets and carry on its business as it is now being conducted;
- (b) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:
 - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded;
 - (ii) any law binding on or applicable to it or its assets; or
 - (iii) any Encumbrance or document binding on or applicable to it;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms; and
- (f) **(solvency)** is not Insolvent.

5.2 Pre-implementation representations and warranties

Each of Bidder Parent and BidCo represents and warrants to each Scheme Participant that, immediately prior to the Implementation Date:

- (a) it does not Control any entity, other than Bidder Parent which Controls BidCo;
- (b) it is not the legal and beneficial owner of any shares or capital in any body corporate (wherever incorporated), other than Bidder Parent being the legal and beneficial owner of the shares in BidCo;
- (c) it is not a member of any incorporated or unincorporated joint venture, partnership or other unincorporated joint venture, partnership or other unincorporated association;
- (d) it has not commenced trading or conducted business other than, as applicable, in connection with the incorporation of itself and BidCo, entry into the Scheme Implementation Agreement and any ancillary documents (as agreed between Target and Bidder Parent for the purposes of this clause), the Equity Commitment Letter, Bidder Parent Shareholders Deed, Custodian Deed and this deed poll and the taking of such other actions as are necessary to facilitate the implementation of the Scheme (including in relation to the incurrence of costs, fees and expenses in connection with the Scheme) (each a "**Relevant Matter**") or

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otherwise disclosed in writing to Target prior to the date of the Scheme Implementation Agreement;

- (e) has not given an guarantee or granted any powers of attorney; and
- (f) it does not own any assets and does not have any Liabilities, other than assets derived, or Liabilities incurred, in connection with, as applicable, a Relevant Matter or otherwise disclosed in writing to Target prior to the date of the Scheme Implementation Agreement,

in each case, other than as expressly contemplated in this deed poll or the Scheme.

5.3 Bidder Parent Share representations and warranties

Bidder Parent warrants to each Scheme Participant that:

- (a) its issued and outstanding securities at the First Court Date will be 4 Bidder Parent Shares;
- (b) it will own all of the issued shares in BidCo;
- (c) no member of the Bidder Group has issued or agreed to issue any other securities or instruments that are still outstanding and that may convert into or be exchanged for Bidder Parent Shares;
- (d) from the date of the Scheme Implementation Agreement until immediately prior to the Implementation Date, it has not issued any Bidder Parent Shares:
 - (i) other than for cash or as Scrip Consideration;
 - (ii) at an issue price that is less than \$20.06 per Bidder Parent Share; and
 - (iii) other than in connection with the funding of the Scheme Consideration;
- (e) on the Scheme becoming Effective (for clarity, following the issuance of Bidder Parent Shares as Scrip Consideration and under the Bidder Parent Share Offer), its issued securities will comprise 9,457,481 Bidder Parent Shares, and as at that date it will not have issued or agreed to issue any other securities or instruments which may convert into Bidder Parent Shares without the consent of the Target,

unless otherwise agreed with Target.

6 Continuing obligations

6.1 Deed Poll irrevocable

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

- (a) Bidder Parent and BidCo have fully performed their respective obligations under this document; or
- (b) the earlier termination of this document under clause 2.2.

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6.2 Capital structure

From the date of this deed poll until immediately prior to the Implementation Date, Bidder Parent will not issue any Bidder Parent Shares:

- (a) other than for cash or as Scrip Consideration;
- (b) at an issue price that is less than \$20.06 per Bidder Parent Share; and
- (c) other than in connection with the funding of the Scheme Consideration, unless otherwise agreed with Target.

7 Notices

Notices and other communications in connection with this document must be in writing. They must be sent to the address or email address referred to in the Details and (except in the case of email) marked for the attention of the person referred to in the Details. If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

8 General

8.1 Variation

A provision of this document or any right created under it may not be varied, altered or otherwise amended unless:

- (a) the variation is agreed to by Target and Bidder Parent in writing; and
- (b) the Court indicates that the variation, alteration or amendment would not itself preclude approval of the Scheme,

in which event Bidder Parent and BidCo must enter into a further deed poll in favour of the Scheme Participants giving effect to the variation, alteration or amendment.

8.2 Partial exercising of rights

Unless this document expressly states otherwise, if each of Bidder Parent and BidCo does not exercise a right, power or remedy in connection with this document fully or at a given time, it may still exercise it later.

8.3 Remedies cumulative

The rights, powers and remedies in connection with this document are in addition to other rights, powers and remedies given by law independently of this document.

8.4 Assignment or other dealings

Each of Bidder Parent, BidCo and each Scheme Participant may not assign or otherwise deal with its rights under this document or allow any interest in them to arise or be varied without the prior written consent of Bidder Parent and Target.

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8.5 Further steps

Each of Bidder Parent and BidCo agrees to do anything including executing all documents and do all things (on its own behalf or on behalf of each Scheme Participant) necessary or expedient to give full effect to this document and the transactions contemplated by it.

8.6 Joint and several obligations

Bidder Parent and BidCo are jointly and severally liable for each obligation imposed on them by the terms of this document.

9 Governing law and jurisdiction

9.1 Governing law and jurisdiction

The law in force in the place specified in the Details governs this document. Each of Bidder Parent and BidCo irrevocably submits to the non-exclusive jurisdiction of the courts of that place.

9.2 Serving documents

Without preventing any other method of service, any document in an action in connection with this document may be served on Bidder Parent and BidCo by being delivered or left at Bidder Parent's or BidCo's address (as applicable) set out in the Details.

EXECUTED as a deed poll

Deed Poll

Signing page

DATED: _____

EXECUTED by BRAVO HOLDCO PTY LTD in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors:

.....
Signature of director

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

.....
Signature of director/company secretary

.....
Name of director/company secretary (block letters)

EXECUTED by BRAVO BIDCO PTY LTD in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors:

.....
Signature of director

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

.....
Signature of director/company secretary

.....
Name of director/company secretary (block letters)

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Annexure A - Scheme

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Scheme of Arrangement

Dated

Capilano Honey Limited (ABN 55 009 686 435) ("**Target**")

Scheme Participants

King & Wood Mallesons

Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.kwm.com

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Scheme of Arrangement

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Scheme of Arrangement

Details

Parties

Target	Name	Capilano Honey Limited
	ACN	55 009 686 435
	Formed in	Queensland, Australia
	Address	399 Archerfield Rd Richlands QLD 4077
	Email	a.zbasnik@capilano.com.au
	Attention	Annette Zbasnik

Scheme Participants	Each person registered as a holder of fully paid ordinary shares in Target as at 5.00pm on the Record Date.
----------------------------	---

Governing law	New South Wales, Australia
----------------------	----------------------------

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General terms

1 Definitions and interpretation

1.1 Definitions

Unless the contrary intention appears, these meanings apply:

ASIC means the Australian Securities & Investments Commission.

ASX means ASX Limited or the market operated by it, as the context requires.

Aggregate Bidder Parent Share Elections means the total number of Bidder Parent Shares the subject of all Bidder Parent Share Elections.

Authorised Officer means a director or secretary of a party or any other person nominated by a party to act as an Authorised Officer for the purposes of this document.

Available Bidder Parent Shares means 4,719,283 Bidder Parent Shares.

BidCo means Bravo BidCo Pty Ltd (ACN 628 070 459), a wholly-owned Subsidiary of Bidder Parent which is the transferee of Scheme Shares under the Scheme.

Bidder Parent means Bravo HoldCo Pty Ltd (ACN 628 069 474).

Bidder Parent Constitution means the Constitution of Bidder Parent as in effect at the date of the First Court Date, in substantially the form agreed between the Target and Bidder Parent before entry into the Scheme Implementation Agreement.

Bidder Parent Share means a fully paid ordinary share in the capital of Bidder Parent having the rights specified in the Bidder Parent Constitution and Bidder Parent Shareholders Deed.

Bidder Parent Share Elections means the Elections made by Scheme Participants to receive Scrip Consideration and to subscribe for Bidder Parent Shares pursuant to the Bidder Parent Share Offer.

Bidder Parent Share Offer means the offer by Bidder Parent of Bidder Parent Shares to Scheme Participants who elect to receive Scrip Consideration to subscribe for 0.5 Bidder Parent Shares for each Scheme Share held by the Scheme Participant (rounded down to the nearest whole number) at \$20.06 cash per Bidder Parent Share as provided for in this Scheme, subject to Scaleback Arrangements.

Bidder Parent Shareholder means each person registered in the share register of Bidder Parent as a holder of Bidder Parent Shares.

Bidder Parent Shareholders Deed means the shareholders deed in the form set out in Annexure D of the Scheme Implementation Agreement.

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

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Cash Consideration means \$20.06 cash per Scheme Share held by a Scheme Participant.

Court means the Federal Court of Australia, or such other court of competent jurisdiction under the Corporations Act agreed by the parties.

Deed Poll means the deed poll dated [●] 2018 executed by Bidder Parent and BidCo substantially in the form of Annexure C of the Scheme Implementation Agreement or as otherwise agreed by Bidder Parent and Target under which each of Bidder Parent and BidCo covenants in favour of each Scheme Participant to perform its obligations under this Scheme.

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

Effective means the coming into effect, pursuant to 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 this Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

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

Election means an election that a Scheme Participant may make in accordance with the Scheme:

- (a) to receive Cash Consideration in respect of all (but not less than all) Target Shares held by them on the Record Date;
- (b) to receive Scrip Consideration in respect of all (but not less than all) Target Shares held by them on the Record Date;
- (c) if, and only if, the Scheme Participant elects to receive Scrip Consideration in accordance with paragraph (b), to subscribe for Bidder Parent Shares in accordance with the Bidder Parent Share Offer,

subject to the Scaleback Arrangements (in the case of paragraphs (b) and (c) only).

Election Date means 5.00pm on the date that is at least three Business Days before the date of the Scheme Meeting or such other date as agreed by the Bidder Parent and the Target in writing.

Election and Subscription Form means the election form to be specified by Bidder Parent whereby Scheme Participants can make the Election.

Encumbrance means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or 12(2) of the PPSA or any agreement to create any of them or allow them to exist.

End Date means the date that is 9 months after the date of this document or such other date as is agreed by Bidder Parent and Target.

Foreign Scheme Shareholder means a Scheme Participant who is a citizen of or a resident in, or whose address in the Register as at the Record Date is in, a country other than Australia or New Zealand unless Bidder Parent agrees in writing that it is lawful and not unduly onerous or impracticable to issue Bidder Parent Shares to that Scheme Participant under the Scheme.

First Court Date means the first day on which an application made to the Court, for orders under section 411(1) of the Corporations Act convening the Scheme Meeting is heard.

Immediately Available Funds means a bank cheque or other form of cleared funds acceptable to Target.

Implementation Date means the 5th Business Day following the Record Date.

Listing Rules means the Listing Rules of the ASX.

Record Date means 5.00pm on the third Business Day following the Effective Date or such other date as the Target and Bidder Parent agree.

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

Registered Address means, in relation to a Target Shareholder, the address shown in the Register.

Scaleback Arrangements means the provisions of this Scheme providing for the scaleback of Bidder Parent Shares issued pursuant to this Scheme (including pursuant to the Bidder Parent Share Offer) in accordance with clause 6.6 of this Scheme.

Scheme means this scheme of arrangement between Target and Scheme Participants under which all of the Scheme Shares will be transferred to BidCo under Part 5.1 of the Corporations Act as described in clause 6 of this Scheme, in consideration for the Scheme Consideration, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by Target and Bidder Parent in accordance with clause 8 of this Scheme.

Scheme Consideration means the consideration payable by BidCo or Bidder Parent for the transfer of Scheme Shares held by a Scheme Participant to BidCo under this document.

Scheme Implementation Agreement means the scheme implementation agreement dated 13 August 2018 between Target, BidCo and Bidder Parent under which, amongst other things, Target has agreed to propose this Scheme to Target Shareholders, and each of Bidder Parent, BidCo and Target has agreed to take certain steps to give effect to this Scheme.

Scheme Meeting means the meeting convened by the Court at which Scheme Shareholders vote on the Scheme.

Scheme Participant means each person who is a Scheme Shareholder at the Record Date.

Scheme Share means all Target Shares (excluding the Foundation Share).

Scheme Shareholder means a holder of Scheme Shares.

Scrip Consideration means one Bidder Parent Share for each Scheme Share held on the Record Date by a Scheme Participant who makes a valid Election in accordance with clause 6.2, subject to the Scaleback Arrangements.

Scrip and Offer Participant means a Scheme Participant who has made an Election to receive Scrip Consideration and to subscribe for Bidder Parent Shares in the Bidder Parent Share Offer.

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Scrip Only Participant means a Scheme Participant who has made an Election to receive Scrip Consideration but has not made an Election to subscribe for Bidder Parent Shares in the Bidder Parent Share Offer.

Second Court Date means the day on which the Court makes an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme.

Share Scheme Transfer means, for each Scheme Participant, a duly completed and executed proper instrument of transfer of the Scheme Shares held by that Scheme Participant for the purposes of section 1071B of the Corporations Act, which may be a master transfer of all Scheme Shares.

Subsidiary has the meaning given to it in the Corporations Act.

Target Share means an ordinary fully paid share in the capital of the Target.

Target Shareholder means each person registered in the Register as a holder of Target Shares.

Trust Account means the trust account operated by or on behalf of Target to hold the Cash Consideration on trust for the purpose of paying the Scheme Consideration to the Scheme Participants in accordance with clause 6.4 of this Scheme.

1.2 General interpretation

Headings and labels used for definitions are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this document:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (e) a reference to “**person**” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to Sydney time;
- (h) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (i) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (j) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;

- (k) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (l) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day; and
- (m) if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day.

2 Preliminary

2.1 Target

Target is:

- (a) a public company limited by shares;
- (b) incorporated in Australia and registered in Queensland, Australia; and
- (c) admitted to the official list of the ASX and Target Shares are officially quoted on the stock market conducted by ASX.

As at 13 August 2018, Target's issued securities are:

- (a) Target Shares: 9,457,481;
- (b) Foundation Share: 1; and
- (c) options: 60,000.

2.2 Bidder Parent

Bidder Parent is:

- (a) a proprietary company limited by shares; and
- (b) incorporated in Australia.

2.3 BidCo

BidCo is:

- (a) a proprietary company limited by shares; and
- (b) incorporated in Australia.

2.4 If Scheme becomes Effective

If this Scheme becomes Effective:

- (a) in consideration of the transfer of each Scheme Share to BidCo, the Bidder Parent will procure BidCo to provide, and BidCo will pay the Cash Consideration to Target on behalf of each Scheme Participant in accordance with the terms of this Scheme;
- (b) subject to the Scaleback Arrangements Bidder Parent will issue Bidder Parent Shares to Scheme Participants who have Elected to receive the Scrip Consideration;

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- For personal use only
- (c) subject to the Scaleback Arrangements Bidder Parent will offer and issue Bidder Parent Shares to Scheme Participants pursuant to the Bidder Parent Share Offer;
 - (d) Bidder Parent will enter the names of Scheme Participants that receive Bidder Parent Shares pursuant to clauses 2.4(b) and 2.4(c) in the share register of the Bidder Parent (either directly or through a custodian as contemplated in the Bidder Parent Shareholders Deed);
 - (e) all Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, will be transferred to BidCo on the Implementation Date; and
 - (f) Target will enter the name of BidCo in the Register in respect of all Scheme Shares transferred to BidCo in accordance with the terms of this Scheme.

2.5 Scheme Implementation Agreement

Target, Bidder Parent and BidCo have agreed by executing the Scheme Implementation Agreement to implement the terms of this Scheme.

2.6 Deed Poll

Bidder Parent and BidCo have executed the Deed Poll for the purpose of covenanting in favour of the Scheme Participants to perform (or procure the performance of) their obligations as contemplated by this Scheme, including to provide the Scheme Consideration.

3 Conditions precedent

3.1 Conditions precedent to Scheme

This Scheme is conditional on, 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, the Deed Poll not having been terminated;
- (b) all of the conditions precedent in clause 3.1 of the Scheme Implementation Agreement having been satisfied or waived (other than the conditions precedent which cannot be waived) in accordance with the terms of the Scheme Implementation Agreement by 8.00am on the Second Court Date;
- (c) the Court having approved this Scheme, with or without any modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, Target and Bidder Parent having accepted in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act;
- (d) any other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme and agreed to by the Bidder Parent and the Target having been satisfied or waived; and
- (e) the coming into effect, pursuant to section 411(10) of the Corporations Act, of 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.

3.2 Conditions precedent and operation of clause 5

The satisfaction of each condition of clause 3.1 of this Scheme is a condition precedent to the operation of clause 5 of this Scheme.

3.3 Certificate in relation to conditions precedent

Target and Bidder Parent must provide to the Court on the Second Court Date a certificate confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent set out in clause 3.1 of this Scheme (other than the conditions precedent in clauses 3.1(c), 3.1(d) and 3.1(e) of this Scheme) have been satisfied or waived as at 8.00am on the Second Court Date. The certificate referred to in this clause 3.3 will constitute conclusive evidence of whether the conditions precedent referred to in clause 3.1 of this Scheme (other than the conditions precedent in clauses 3.1(c), 3.1(d) and 3.1(e) of this Scheme) have been satisfied or waived as at 8.00am on the Second Court Date.

4 Scheme

4.1 Effective Date

Subject to clause 4.2 this Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

4.2 End Date

This Scheme will lapse and be of no further force or effect if the Effective Date does not occur on or before the End Date.

5 Implementation of Scheme

5.1 Lodgement of Court orders with ASIC

If the conditions precedent set out in clause 3.1 of this Scheme (other than the condition precedent in clause 3.1(e) of this Scheme) are satisfied, Target must lodge with ASIC in accordance with section 411(10) of the Corporations Act, an office copy of the Court order approving this Scheme as soon as possible, and in any event by no later than 5.00pm on the first Business Day after the day on which the Court approves this Scheme or such later time as Bidder Parent and Target agree in writing.

5.2 Transfer and registration of Target Shares

On the Implementation Date, but subject to the provision of the Scheme Consideration for the Scheme Shares in accordance with clauses 6.1 and 6.3 of this Scheme and Bidder Parent having provided Target with written confirmation of the provision of the Scheme Consideration:

- (a) the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to BidCo without the need for any further act by any Scheme Participant (other than acts performed by Target as attorney and agent for Scheme Participants under clause 8 of this Scheme) by:
 - (i) Target delivering to BidCo a duly completed and executed Share Scheme Transfer executed on behalf of the Scheme Participants; and
 - (ii) BidCo duly executing the Share Scheme Transfer (and subsequently attending to the stamping of the Share Scheme

Transfer if required) and delivering it to Target for registration;
and

- (b) as soon as practicable after receipt of the duly executed Share Scheme Transfer in accordance with clause 5.2(a)(ii), Target must enter the name of BidCo in the Register in respect of all Scheme Shares transferred to BidCo in accordance with the terms of this Scheme.

5.3 Entitlement to Scheme Consideration

On the Implementation Date, in consideration for the transfer to BidCo of the Scheme Shares, each Scheme Participant will be entitled to receive the Scheme Consideration in respect of each of their Scheme Shares in accordance with clause 6 of this Scheme.

5.4 Title and rights in Target Shares

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 6 of this Scheme, on and from the Implementation Date, BidCo will be beneficially entitled to the Scheme Shares transferred to it under the Scheme, pending registration by Target of BidCo in the Register as the holder of the Scheme Shares.

5.5 Scheme Participants' agreements

Under this Scheme, each Scheme Participant agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, in accordance with the terms of this Scheme.

5.6 Warranty by Scheme Participants

Each Scheme Participant warrants to BidCo and is deemed to have authorised Target to warrant to BidCo as agent and attorney for the Scheme Participant by virtue of this clause 5.6, that:

- (a) all their Scheme Shares (including any rights and entitlements attaching to those shares) transferred to BidCo under the Scheme will, as at the date of the transfer under this Scheme, be fully paid and free from all Encumbrances; and
- (b) they have full power and capacity to sell and to transfer their Scheme Shares (including any rights and entitlements attaching to those shares) to BidCo under the Scheme.

5.7 Transfer free of encumbrances

To the extent permitted by law, all Target Shares (including any rights and entitlements attaching to those shares) which are transferred to BidCo under this Scheme will, at the date of the transfer of them to BidCo, vest in BidCo free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind not referred to in this Scheme.

5.8 Appointment of BidCo as sole proxy

- (a) Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clauses 5.3 and 6.3 of this Scheme, on and from the Implementation Date until Target registers BidCo as the holder of all of the Target Shares in the Register, each Scheme Participant:

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- (i) irrevocably appoints Target as attorney and agent (and directs Target in such capacity) to appoint BidCo and each of its directors from time to time (jointly and each of them individually) as its sole proxy, and where applicable corporate representative, to attend shareholders' meetings, exercise the votes attaching to Target Shares registered in its name and sign any shareholders resolution, and no Scheme Participant may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 5.8(a)(i); and
 - (ii) must take all other actions in the capacity of the registered holder of Target Shares as BidCo directs.
- (b) Target undertakes in favour of each Scheme Participant that it will appoint BidCo and each of its directors from time to time (jointly and each of them individually) as that Scheme Participant's proxy or, where applicable, corporate representative in accordance with clause 5.8(a)(i) of this Scheme.

6 Scheme Consideration

6.1 Consideration under the Scheme

Subject to and in accordance with this Scheme, each Scheme Participant is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Participant. In accordance with the Scheme, if a Scheme Participant does not make an Election to receive the Scrip Consideration they will be deemed to have made an Election to receive the Cash Consideration.

6.2 Election procedure

- (a) Subject to clauses 6.2(b), 6.2(c), 6.2(d) and 6.2(e), and clause 6.5(e), each Scheme Participant will be entitled to make an Election. All Elections will take effect in accordance with this Scheme to the extent that any Scheme Participant who makes an Election qualifies as a Scheme Shareholder.
- (b) A Scheme Participant which makes an Election may vary, withdraw or revoke that Election by lodging a replacement Election and Subscription Form so that it is received on or before the Election Date.
- (c) An Election must be made in accordance with terms and conditions of the Election and Subscription Form and this clause 6.2, and an Election not made in accordance with this clause 6.2(c) will not be a valid election for the purpose of this Scheme and will not be recognised for any purpose.
- (d) Subject to clauses 6.5 and 6.6, if a Scheme Participant makes an Election, that Election will be deemed to apply in respect of that Scheme Participant's entire registered holding of Target Shares at the Record Date, regardless of whether the Scheme Participant's holding of Target Shares is greater or less than the Scheme Participant's holding at the time it made its Election, unless the Bidder Parent and the Scheme Participant agree otherwise, in their absolute discretion.
- (e) A Scheme Participant who is noted on the Register as holding one or more parcels of Target Shares as trustee or nominee for, or otherwise on account of, another person, may make separate Elections under this clause 6.2 in relation to each of those parcels of Shares (subject to it

providing to the Target any substantiating information they reasonably require), and if it does so it will be treated as a separate Scheme Participant in respect of each such parcel in respect of which a separate Election is made (and in respect of any balance of its holding), provided that if, at the Record Date, it holds fewer Target Shares than it held at the time it made the Election, then, unless it has at the time of any sale of Target Shares notified the Target whether the Target Shares sold relate to any such separate Election (and if so which separate Election the Shares sold relate to), it will be treated as not having made a valid Election in respect of any of its Target Shares (or will be treated in any other manner that the Target considers is fair to the Scheme Participant in all the circumstances acting reasonably).

6.3 Payment of Scheme Consideration

Subject to this Scheme, each of Bidder Parent and BidCo undertakes to the Target (in the Target's own right and separately as trustee or nominee of each Scheme Participant) that, in consideration of the transfer to BidCo of each Scheme Share held by a Scheme Participant, it will, or will procure (as applicable), the following on the Implementation Date:

- (a) BidCo will accept that transfer; and
- (b) BidCo will pay or procure the payment of the Cash Consideration in accordance with the Scheme; and
- (c) Bidder Parent will issue the Scrip Consideration in accordance with the Scheme.

Where the calculation of the Cash Consideration to be provided to a particular Scheme Participant would result in the Scheme Participant becoming entitled to a fraction of a cent, the fractional entitlement will be rounded up or down (as applicable) to the nearest cent.

6.4 Satisfaction of cash payment obligations

- (a) The obligation of BidCo to pay or to procure payment of the Cash Consideration pursuant to clause 6.1 of this Scheme will be satisfied by BidCo no later than 2 Business Days before the Implementation Date to deposit (or procure the deposit) in Immediately Available Funds, of the aggregate amount of the Cash Consideration payable to all Scheme Participants into the Trust Account (except that the amount of any interest on the amount deposited will be to BidCo's account).
- (b) On the Implementation Date and subject to funds having been deposited in accordance with clause 6.4(a), the Target must pay or procure the payment of the cash component of the Scheme Consideration to each Scheme Participant who is entitled to receive it under clauses 6.5 and 6.6 from the Trust Account by doing any of the following at its election:
 - (i) paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Scheme Participant by an appropriate authority from the Scheme Participant to the Target; or
 - (ii) dispatching, or procuring the dispatch, of a cheque for the relevant amount in Australian currency to the Scheme Participant by prepaid post to their Registered Address (as at the Record Date), such cheque being drawn in the name of the Scheme Participant (or in the case of joint holders in accordance with the procedures set out in clause 6.9).

6.5 Issue of Bidder Parent Shares

- (a) Subject to the Scheme becoming Effective and to the Scaleback Arrangements, Bidder Parent must issue Bidder Parent Shares to the Scheme Participants who have made valid Elections to receive the Scrip Consideration in accordance with the Scheme.
- (b) Subject to the Scheme becoming Effective and to the Scaleback Arrangements, Bidder Parent must issue Bidder Parent Shares to the Scheme Participants who have made valid Elections to apply for Bidder Parent Shares pursuant to the Bidder Parent Share Offer in accordance with the Scheme.
- (c) Each Bidder Parent Share issued as Scrip Consideration or pursuant to the Bidder Parent Share Offer will:
 - (i) rank equally in all respects with each other Bidder Parent Share and will have the rights set out in the Bidder Parent Constitution and the Bidder Parent Shareholders Deed; and
 - (ii) be fully paid and free from any mortgage, charge, lien, encumbrance or other security interest.
- (d) The issue of Bidder Parent Shares as Scrip Consideration and pursuant to the Bidder Parent Share Offer will be subject to the Scaleback Arrangements.
- (e) Bidder Parent will not issue (or procure the issue of) any Bidder Parent Shares to Foreign Scheme Shareholders and any Foreign Scheme Shareholders purporting to accept the Scrip Consideration will be deemed to have elected the Cash Consideration and shall not be entitled to participate in the Bidder Parent Share Offer.
- (f) Any Scheme Participant who becomes a Bidder Parent Shareholder will be taken automatically through this Scheme to have agreed to be bound by the Bidder Parent Constitution and will become a party as a "Non-Investor Party" to the Bidder Parent Shareholders Deed.
- (g) If the Bidder Parent Share Elections would otherwise result in there being more than 50 shareholders in the Bidder Parent, the Bidder Parent may elect that a Scheme Participant who receives Bidder Parent Shares pursuant to this Scheme will have those Bidder Parent Shares registered in the name of a custodian nominated by Bidder Parent in accordance with the terms of a custody agreement as specified by Bidder Parent.
- (h) To facilitate the issue of Bidder Parent Shares to Scheme Participants, the Target must procure the provision to Bidder Parent of, a complete copy of the Register as at the Record Date (which must include the name, address and registered holding of each Scheme Participant as at the Record Date), within two Business Days after the Record Date. The details and information to be provided under this clause must be provided in such form as Bidder Parent may reasonably require.

6.6 Scaleback Arrangements

If the Aggregate Bidder Parent Share Elections exceed the Available Bidder Parent Shares the Scaleback Arrangements under this clause 6.6 will apply.

- (a) If the total number of Bidder Parent Shares the subject of Bidder Parent Share Elections made by Scrip and Offer Participants is less than or equal to the Available Bidder Parent Shares:
- (i) then Scrip and Offer Participants will receive the Bidder Parent Shares the subject of their Bidder Parent Share Elections in full; and
 - (ii) Scrip Only Participants will receive the number of Bidder Parent Shares in respect of the Scheme Shares held by them calculated as “X” in accordance with the following formula (rounded down to the nearest whole number) and the remaining number of Scheme Shares held by that Scrip Only Participant receiving the Cash Consideration:

$$A = B - C$$

and then:

$$X = D \left(\frac{A}{E} \right)$$

where:

B is the Available Bidder Parent Shares.

C is the aggregate number of Bidder Parent Shares the subject of Bidder Parent Share Elections made by Scrip and Offer Participants.

D is the number of Bidder Parent Shares the subject of the Bidder Parent Share Election made by that Scrip Only Participant.

E is the aggregate number of Bidder Parent Shares the subject of Bidder Parent Share Elections made by all Scrip Only Participants.

- (b) If the total number of Bidder Parent Shares the subject of Bidder Parent Share Elections made by all Scrip and Offer Participants equals or exceeds the Available Bidder Parent Shares:
- (i) Scrip Only Participants will not receive any Bidder Parent Shares and will receive the Cash Consideration for each Scheme Share held by them; and
 - (ii) Scrip and Offer Participants will receive the number of Bidder Parent Shares in respect of the Scheme Shares held by them calculated as “X” in accordance with the following formula (rounded down to the nearest whole number) and with the remaining number of Scheme Shares held by that Scrip and Offer Participant receiving the Cash Consideration:

$$X = F \left(\frac{G}{H} \right)$$

where:

F is the number of Bidder Parent Shares the subject of Bidder Parent Share Election made by that Scrip and Offer Participant.

G is the Available Bidder Parent Shares.

H is the aggregate number of Bidder Parent Shares the subject of the Bidder Parent Share Elections made by all Scrip and Offer Participants.

6.7 Orders of a court

In the case of notice having been given to Target (or the Registry) of an order made by a court of competent jurisdiction:

- (a) which requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Participant, which would otherwise be payable to that Scheme Participant in accordance with clause 6.2 of this Scheme, then Target must procure that payment is made in accordance with that order; or
- (b) which would prevent Target from dispatching payment to any particular Scheme Participant in accordance with clause 6.2 of this Scheme, Target will retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Participant multiplied by the Scheme Consideration until such time as payment in accordance with clause 6.2 of this Scheme is permitted by law.

6.8 Unclaimed monies

- (a) The Target may cancel a cheque issued under this clause 6 if the cheque:
 - (i) is returned to the Target; or
 - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder to the Target (or the office of Register) (which request may not be made until the date which is 20 Business Days after the Implementation Date), the Target must reissue a cheque that was previously cancelled under this clause 6.8.
- (c) The *Public Trustee Act 1978* (QLD) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 98 of the *Public Trustee Act 1978* (QLD)).

6.9 Joint holders

In the case of Scheme Shares held in joint names any bank cheque required to be paid to Scheme Participants by BidCo must be payable to the joint holders and be forwarded to the holder whose name appears first in the Register as at 5.00pm on the Record Date

7 Dealings in Scheme Shares

7.1 Determination of Scheme Participants

To establish the identity of the Scheme Participants, dealings in Scheme Shares will only be recognised by Target if:

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

7.2 Register

Target must register any registrable transmission applications or transfers of the Scheme Shares received in accordance with clause 7.1(b) of this Scheme on or before 5.00pm on the Record Date.

7.3 No disposals after Effective Date

If this Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Effective Date in any way except as set out in this Scheme and any such disposal will be void and of no legal effect whatsoever.

Target will not accept for registration or recognise for any purpose any transmission, application or transfer in respect of Scheme Shares received after 5.00pm on the Record Date (except a transfer to BidCo pursuant to this Scheme and any subsequent transfer by BidCo or its successors in title).

7.4 Maintenance of Target Register

For the purpose of determining entitlements to the Scheme Consideration, Target will maintain the Register in accordance with the provisions of this clause 7.4 until the Scheme Consideration has been paid to the Scheme Participants and BidCo has been entered in the Register as the holder of all the Scheme Shares. The Register in this form will solely determine entitlements to the Scheme Consideration.

7.5 Effect of certificates and holding statements

Subject to provision of the Scheme Consideration and registration of the transfer to BidCo contemplated in clauses 5.2 and 7.4 of this Scheme, any statements of holding in favour of Scheme Participants in respect of Scheme Shares will cease to have effect after 5.00pm on the Record Date as documents of title in respect of those shares (other than statements of holding in favour of BidCo and its successors in title). After 5.00pm on the Record Date, each entry current on the Register as at 5.00pm on the Record Date (other than entries in respect of BidCo or its successors in title) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Target Shares relating to that entry.

7.6 Details of Scheme Participants

Within 3 Business Days after the Record Date, Target will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Participant, as shown in the Register at 5.00pm on the Record Date are available to BidCo in such form as BidCo reasonably requires.

7.7 Suspension of trading

Suspension of trading on ASX in Target Shares will occur from the close of trading on ASX on the Business Day after the date of the Scheme Meeting (conditional on the Scheme being approved at the Scheme Meeting).

7.8 Termination of quotation of Target Shares

After the Scheme has been fully implemented, Target will apply:

- (a) for termination of the official quotation of Target Shares on ASX; and
- (b) to have itself removed from the official list of the ASX.

8 Power of attorney

Each Scheme Participant, without the need for any further act by any Scheme Participant, irrevocably appoints Target and each of its directors and secretaries (jointly and each of them individually) as its attorney and agent for the purpose of:

- (a) executing any document necessary or expedient to give effect to this Scheme including the Share Scheme Transfer; and
- (b) enforcing the Deed Poll against Bidder Parent and BidCo,

and Target accepts such appointment.

9 Notices

9.1 No deemed receipt

If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Target, it will not be taken 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 Target's registered office or at the office of the Register.

9.2 Accidental omission

The accidental omission to give notice of the Scheme Meeting or the non-receipt of such a notice by any Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

10 General

10.1 Binding effect of the Scheme

The Scheme binds the Target and all Scheme Shareholders (including those who did not attend the Scheme Meeting to vote on this Scheme, did not vote at the Scheme Meeting or voted against this Scheme at the Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of the Target.

10.2 Variations, alterations and conditions

Target may, with the consent of Bidder Parent (which cannot be unreasonably withheld), by its counsel or solicitor consent on behalf of all persons concerned to

any variations, alterations or conditions to this Scheme which the Court thinks fit to impose.

10.3 Further action by Target

Target will execute all documents and do all things (on its own behalf and on behalf of each Scheme Participant) necessary or expedient to implement, and perform its obligations under, this Scheme.

10.4 Authority and acknowledgement

Each of the Scheme Participants:

- (a) irrevocably consents to Target, Bidder Parent and BidCo doing all things necessary or expedient for or incidental to the implementation of this Scheme;
- (b) agrees to the variation, cancellation or modification of the rights attached to their Target Shares constituted by or resulting from this Scheme;
- (c) who holds their Target Shares in a CHES Holding agrees to the conversion of those Target Shares to an Issuer Sponsored Holding and irrevocably authorises Target to do anything necessary or expedient (whether required by the Settlement Rules or otherwise) to effect or facilitate such conversion; and
- (d) acknowledges that this Scheme binds Target and all Scheme Participants (including those who do not attend the Scheme Meeting or do not vote at that meeting or vote against the Scheme at that Meeting) and, to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of Target.

10.5 No liability when acting in good faith

Neither Target, BidCo nor Bidder Parent, nor any of their respective officers, will be liable for anything done or omitted to be done in the performance of this Scheme in good faith.

10.6 Enforcement of Deed Poll

Target undertakes in favour of each Scheme Participant to enforce the Deed Poll against Bidder Parent and BidCo on behalf of and as agent and attorney for the Scheme Participants.

11 Governing law

11.1 Governing law and jurisdiction

The law in force in the place specified in the Details governs this document. The parties submit to the non-exclusive jurisdiction of the courts of that place.

11.2 Serving documents

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address set out in the Details.

Scheme Implementation Agreement

Annexure D Bidder Parent Shareholders Deed

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Shareholders Deed

Dated 2018.

Bravo HoldCo Pty Ltd (ACN 628 069 474) (**Company**)

The Consortium Investors

The Original Capilano Shareholders

[Capilano Beekeepers Ltd]

The other Non-Investor Parties

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Shareholders Deed

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Shareholders Deed

Details

Parties	Company , the Consortium Investors , the Original Capilano Shareholders [, CBL] and the other Non-Investor Parties (if any from time to time)	
Company	Name	Bravo HoldCo Pty Ltd
	ACN	628 069 474
	Address	c/- King & Wood Mallesons Level 61, Governor Phillip Tower 1 Farrer Place Sydney NSW 2000 Australia
	Email	capilano@wattlehillcap.com
	Attention	Deane Conway
Consortium Investors	As defined in this document and with the notice details specified in Schedule 5 or as otherwise notified in an Accession Deed.	
Original Capilano Shareholders	As defined in this document and with the notice details recorded in the register of members of the Company as at the Implementation Date or as otherwise notified to the Company.	
[CBL]	Name	Capilano Beekeepers Ltd
	ACN	108 568 672
	Address	399 Archerfield Road Richlands QLD 4077
	Email	[•]
	Attention	Company Secretary]
The other Non-Investor Parties	As defined in this document and with the notice details notified in an Accession Deed.	
Governing law	New South Wales, Australia	
Date of deed	See Signing page	
Recitals	A	Subject to the Implementation Date occurring, the Company will own the Business directly or through other Group Members.

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- B** The parties have agreed that the Group should be managed, controlled and financed on the terms set out in this document.
-

General terms

1 Interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

Accession Deed means:

- (a) a deed substantially in the form set out in Schedule 3 or such other form approved in writing by an Ordinary Directors' Resolution;
- (b) in respect of any Original Capilano Shareholder that acquires Shares as a result of the Scheme:
 - (i) the form of election used by that person under the Scheme to receive those Shares; and/or
 - (ii) any provision of the Scheme which provides that by making an election to receive Shares as consideration under the Scheme, that person will be taken to have agreed to become a party to, and bound by, this document as an Original Capilano Shareholder and/or appointed any person as its attorney or agent to enter into this document on its behalf.

Affiliate means in respect of a person (**Primary Person**), a person:

- (a) Controlled directly or indirectly by the Primary Person;
- (b) Controlling directly or indirectly the Primary Person;
- (c) directly or indirectly Controlled by a person who Controls the Primary Person (whether alone or with another person or persons); or
- (d) directly or indirectly under the common Control of the Primary Person and another person or persons,

and, if the Primary Person is a Consortium Investor, includes:

- (e) any account, fund, vehicle or investment portfolio established and Controlled by any person referred to in any of paragraphs (a) to (d) of this definition or an Affiliate of that person; and
- (f) any account, fund, vehicle, entity or investment portfolio for which such person or its Affiliate acts as sponsor, investment adviser or manager or with respect to which such person or its Affiliate exercises discretionary control or otherwise has ability to direct or control investment decisions, vote on behalf of or take any other action on behalf of, including where such rights are contractual by nature.

Alternate Director has the meaning given in paragraph 3.1 of Schedule 1.

Appointing Beneficiary means a Non-Investor Party who has appointed the Custodian to hold Shares on bare trust for it in accordance with clause 25 and the Custodian Deed.

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Assets means the assets from time to time of the Group.

Asset Sale means the sale of all or substantially all of the business and assets of the Group on arms' length terms to 1 or more Unrelated Buyers as part of a single transaction.

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

Auditor means the Group's auditor from time to time.

Authorised Officer means a director or a secretary of a party or any other person appointed by a party to act as an Authorised Officer for the purposes of this document.

Bare Trust means a trust established under the Custodian Deed under which the Custodian holds Beneficial Shares for an Appointing Beneficiary.

Beekeeper Supplier means a person who is a party to an agreement with a Group Member for the supply by that person, and the purchase by that Group Member, of honey.

Beneficial Shares means in relation to an Appointing Beneficiary, the Shares held by the Custodian as bare trustee for that Appointing Beneficiary.

BidCo means Bravo BidCo Pty Ltd (ACN 628 070 459) (being a wholly-owned subsidiary of the Company).

Board means the board of Directors from time to time.

Business means:

- (a) the business presently carried on by the Group as at the date of this document, being the business of packaging, marketing and selling honey and related products; and
- (b) any other activity the Board decides will be carried on by the Group.

Business Day means a day other than a Saturday, Sunday or a public holiday in Sydney, Australia.

Business Plan means the plan for a period of time from time to time for the conduct of the Group and the Business comprising such details as the Board reasonably requires and stating the key assumptions on which it has been based, including an annual budget giving a reasonably based estimate of the income to be received, and the expenses to be incurred, in the Business for the relevant Financial Year, prepared and approved under clause 6.

Capilano means Capilano Honey Limited (ACN 009 686 435).

Catch-up Offeree has the meaning given in clause 9.20(a)(iii).

CBL Director means a Director appointed under paragraph 1(c) of Schedule 1.

Change of Control means, in respect of a Non-Investor Party which is not an individual, if a change occurs after the date of this document such that a new person or persons (other than a Permitted Holder) directly or indirectly have the power to:

- (a) direct the management or policies of the Non-Investor Party; or

- (b) control the membership of the board of the Non-Investor Party,

other than as a result of a Disposal of Shares which is a Permitted Disposal of any Shares to a Permitted Holder.

Chairperson means the person appointed as Chairperson under paragraph 1(e) of Schedule 1.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Confidential Information means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, exchanged between the parties before, on or after the date of this document relating to the business, technology or other affairs of the Group or the Shareholders including:

- (a) the terms of this document; and
- (b) all trade secrets, business plans, financial, marketing, systems, technology, ideas, concepts, know how, techniques, designs, specifications, blueprints, tracings, diagrams, models, functions, capabilities and designs (including without limitation, computer software, manufacturing processes or other information embodied in drawings or specifications), intellectual property or any other information which is indicated to be subject to an obligation of confidence, owned or used by or licensed to a Group Member.

Consortium Investors means the Initial Consortium Investors and a transferee of Shares from a Consortium Investor who executes an Accession Deed as a Consortium Investor in accordance with clause 9.14 (in each case, for so long as the Initial Consortium Investor or transferee holds any Shares) and **Consortium Investor** means any one of them.

Consortium Investor Affiliate Transfer means a Disposal of Shares by a Consortium Investor:

- (a) to another Initial Consortium Investor;
- (b) to one or more Affiliates of an Initial Consortium Investor;
- (c) to any one or more of the entities, limited partnerships, accounts and/or trusts which comprise a fund of which a Consortium Investor forms part;
- (d) to a nominee, trustee, general partner or custodian of a Consortium Investor or any fund or account in each case of which a Consortium Investor or an Affiliate of a Consortium Investor is the sole manager or the sole investment adviser;
- (e) on a distribution in kind required under the Consortium Investor's relevant partnership agreement, trust deed, account agreement or other applicable constitutional document, to the partners of the partnership, the holders of units or other beneficiaries in the trust, the relevant account holder or the investors in any other fund; or
- (f) to another person as bare trustee provided there is no change in the underlying beneficial interest in the Shares.

Consortium Investor Director means:

- (a) each WH Director; and
- (b) each Director appointed by ROC in accordance with paragraph 1(b) of Schedule 1.

Constitution means the constitution of the Company from time to time which, as at the date of this document, is as contained in Annexure A.

Control has the meaning given in section 50AA of the Corporations Act except that in addition:

- (a) an entity controls a second entity if:
 - (i) the first entity would be taken to control the second entity, but for section 50AA(4);
 - (ii) the first entity has voting power (as defined in section 610 of the Corporations Act) of at least 50% in the second entity; or
 - (iii) where the second entity is a partnership, the first entity has at least 50% interest in the second entity;
- (b) for the avoidance of doubt, the general partner in a limited partnership Controls the limited partnership;
- (c) the references to "entity" in section 50AA and this definition includes individuals, trusts and partnerships; and
- (d) this definition has repeated application such that an entity (**first entity**) Controls another entity which is Controlled by an entity the first entity Controls and so forth.

Controller has the meaning given in the Corporations Act.

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

Custodian means the independent third party trustee company appointed from time to time by the Company under clause 25 and the Custodian Deed to hold Shares on bare trust in accordance with clause 25 and the Custodian Deed.

Custodian Deed means any custodian deed entered into on or about the date of this document between the Company, the Custodian and the Appointing Beneficiaries.

Custodian Shares means Shares in respect of which the Custodian is the registered holder pursuant to clause 25 and the Custodian Deed.

Custodian Transfer means a transfer of legal title to Shares:

- (a) by a Shareholder to the Custodian to be held under a Bare Trust, either at the request of the Board or with the prior written consent of the Board;
- (b) in connection with the replacement of the Custodian in accordance with the Custodian Deed; or
- (c) by the Custodian to an Appointing Beneficiary as contemplated by this document or otherwise with approval by an Ordinary Directors' Resolution.

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D&O Insurance Policy means a directors and officers insurance policy taken out by the Company from time to time with a reputable insurer.

Deadlocked Matter means an action or transaction which is subject to approval in accordance with:

- (a) Part B of Schedule 2 and which is not approved in accordance with clause 5.1(b) following a proposal at a Board meeting or by written resolution to approve the action or transaction; or
- (b) Part C of Schedule 2 and which is not approved in accordance with clause 5.1(c) following a proposal to the Shareholders to approve the action or transaction.

Deed of Access, Insurance and Indemnity means a deed of that name in the form approved by the Board (including by at least one Consortium Investor Director and one Non-Investor Party Director, in each case, for so long as there is at least one of such category of Director appointed in accordance with this document).

Defaulting Shareholder is a Shareholder who comes within clause 19.

Details means the section of this document headed "Details".

Directed Breach has the meaning given in clause 25.9.

Directors means all or some of the directors of the Company from time to time.

Dispose means, in respect of any Share or IPO Vehicle Security, any dealing with the Share or IPO Vehicle Security, including a sale, assignment, transfer, conveyance, grant of an option over, grant of, creation of, or allowing a swap or other synthetic instrument or a Security Interest over, and any other disposal, alienation, economic monetisation or realisation of the Share or IPO Vehicle Security or of a legal or beneficial interest in the Share or IPO Vehicle Security, and includes taking any steps or attempting to do any of the foregoing and **Disposal** has a corresponding meaning.

Drag Buyer has the meaning given in clause 13.1.

Drag Notice means a notice given by a Drag Seller to the Dragged Shareholders under clause 13.

Drag Sale Price has the meaning given in clause 13.2(d)(ii).

Drag Seller has the meaning given in clause 13.1.

Drag Transaction means a Disposal of Shares in accordance with clause 13.

Dragged Shareholder has the meaning given in clause 13.1.

Dragged Shares has the meaning given in clause 13.2(d)(iii).

Emergency Funding Notice has the meaning given in clause 9.20(a)(iii).

Emergency Matter means any event or circumstance that results in, or the Board determines, acting reasonably, is likely to result in:

- (a) a default by a Group Member of any term or covenant under the Financing Documents (including any matter that would constitute a "review event" under the facilities);

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- (b) any Group Member becoming Insolvent; or
- (c) a change in the financial or operational affairs of any Group Member which would have a material adverse effect on the Group as a whole or any Group Member,

and which can be addressed through the payment of money.

A person is **Engaged By A Group Member** if the person:

- (a) is employed or engaged by a Group Member;
- (b) is a consultant or contractor who provides services to a Group Member; or
- (c) is a director or other officer of a Group Member.

Entitlement Shares has the meaning given in clause 9.3(f).

Entry Valuation means the equity value of the Company at the Implementation Date, as implied by the Scheme Price.

Excluded Information means Confidential Information which:

- (a) is in, or becomes part of, the public domain other than through breach of this document or an obligation of confidence owed to the Group; or
- (b) a party can prove by contemporaneous written documentation was already known to it at the time of disclosure by the Group or a Shareholder (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (c) a party acquires from a source other than a Group Member or a Shareholder where the source is entitled to disclose it.

Exit means an Asset Sale, a Trade Sale or an IPO.

Exit Instigator has the meaning it is given in clause 14.1.

Exit Notice means a notice from the Exit Instigator to the Company that it wishes to commence preparations for a Trade Sale, an Asset Sale or an IPO, or one or more of the options concurrently, and requiring the Company and the other parties to assist with that Exit in accordance with clause 14 and the other applicable provisions of this document.

Exit Valuation means the equity value of the Company at Exit calculated with reference to:

- (a) in relation to an Asset Sale, the total consideration payable for all of the Assets and the Business proposed to be sold;
- (b) in relation to a Trade Sale, the total consideration payable under the Trade Sale; and
- (c) in relation to an IPO, the total consideration payable in connection with the IPO (including scrip consideration),

applied to all Shares on issue immediately before Exit, in each case aggregated with the value of all dividends and capital returns which have been made on each Share since the Implementation Date.

Fair Market Value means an amount determined under clause 15.

FATA means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

Financial Adviser means a nominated investment bank, corporate advisor or other comparable professional adviser.

Financial Year means:

- (a) the period commencing on the Implementation Date and ending on 30 June 2019; and then
- (b) the 12 months starting on the day after the prior Financial Year and ending on 30 June in the following calendar year (or such other dates as the Board approves from time to time).

Financing Documents means each:

- (a) document under which any Group Member is provided with debt financing by any bank or other third party institutional financier; and
- (b) other agreement, deed, debenture, guarantee or Security Interest given or made under or in connection with any document referred to in paragraph (a) of this definition.

Government Agency means any governmental, semi-governmental, administrative, fiscal, legislative, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

Group means all of the Group Members.

Group CEO means the chief executive officer of the Group from time to time.

Group CFO means the chief financial officer of the Group from time to time.

Group Member means:

- (a) the Company;
- (b) any Subsidiary or other Related Body Corporate of the Company; or
- (c) any IPO Vehicle,

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

Implementation Date means the date on which the Scheme is implemented according to its terms.

Incentive Scheme means a share or option scheme or other equity incentive arrangements of the Group providing eligible employees, directors or consultants of the Group with an opportunity to acquire an ownership interest in the Company approved by Ordinary Directors' Resolution.

Incentive Shares means any Shares issued under any management or staff equity plan or comparable incentive arrangement established after the Implementation Date by a Group Member which is separately documented to this document, provided that once such Shares have fully vested (including that the Shares have ceased to be subject to, or calculated by reference to, any performance, financial, time or employment or other engagement based criteria) in accordance with their terms, they will no longer be regarded as Incentive Shares.

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Independent Expert means:

- (a) an independent firm of chartered accountants agreed between the Company and the Consortium Investors;
- (b) failing agreement between the Company and the Consortium Investors within 5 Business Days of one party requesting appointment, the person as nominated at the request of either of them by the President or New South Wales Chapter Chairman of the Resolution Institute in accordance with the Expert Determination Rules of the Resolution Institute; or
- (c) if:
 - (i) the Company and the Consortium Investors do not agree on the person to be appointed within 5 Business Days after the expiry of the 5 Business Day period referred to in paragraph (b); and
 - (ii) a person is not nominated for any reason in accordance with paragraph (b) within 20 Business Days after the President or New South Wales Chapter Chairman of the Resolution Institute has received a request from any of the Company or the Consortium Investors,

a person nominated by a Judge of the Supreme Court of New South Wales, Australia at the request of any of the Company or the Consortium Investors; and
- (d) for the purposes of this definition, "Company" means the Company acting by Special Majority Directors' Resolution.

Individual Costs means:

- (a) advisory costs incurred by a party (other than the Company) for tax, legal or other professional advice given to that party in connection with an IPO or Trade Sale, as applicable and not for the benefit of other parties;
- (b) any Tax incurred by a party (other than the Company) in connection with an IPO or Trade Sale, as applicable; and
- (c) any Liability suffered or incurred by a party (other than the Company) arising out of any claim, action or proceeding of any nature in connection with an IPO or Trade Sale, as applicable,

unless otherwise approved by the Board.

Initial Acceptance Period has the meaning given in clause 9.3.

Initial Consortium Investors means each party specified in Schedule 5.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this document); or

- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this document reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

Instruction has the meaning given to that term (or an equivalent term) in the Custodian Deed.

Invitation to Tag has the meaning given in clause 12.1.

IPO means:

- (a) an initial public offering of all or substantially all of the Business by way of an offer of shares in the Company or an IPO Vehicle; and/or
- (b) a sell-down by one or more Shareholders of Shares in the Company or in an IPO Vehicle by way of public offering of all or substantially all of the business,

in conjunction with an application for the quotation of those Securities on a recognised stock exchange (including ASX).

IPO Costs means all costs and expenses of an IPO, including advisory fees, expenses of due diligence investigations, stock exchange fees, fees of any relevant regulatory authority, legal fees, experts' fees, roadshow expenses, printing, advertising expenses and all other disbursement costs (in each case, of the parties) including the brokerage or commission payable to any underwriter, sub-underwriter, lead manager or co-lead manager, but excluding any Individual Costs.

IPO Vehicle means the Company, any Related Body Corporate (actual or proposed) of the Company which securities are being quoted or any special purpose vehicle established, for the purpose of an IPO.

Issue Notice has the meaning given in clause 9.3.

Issue Price means the issue price of any New Shares agreed and approved by the Directors by a Special Majority Directors' Resolution.

Liability means any liability, obligation, damage, loss, cost or expense (including legal costs and expenses of whatsoever nature or description and Tax), whether actual, contingent or prospective, and irrespective of when the act, event or thing giving rise to the liability, obligation, damage, loss, cost or expense occurs.

New Shares has the meaning given in clause 9.2.

Non-Controlled Group Member means a Group Member which is not Controlled by the Company or a Subsidiary of the Company.

Non-Investor Party means each party other than the Company and the Consortium Investors, and which includes:

- (a) each Original Capilano Shareholder; and
- (b) each Permitted Holder in respect of an Original Capilano Shareholder.

Non-Investor Party Director means each Director appointed under paragraph 1(d) of Schedule 1.

Offer Period means the period during which an offer made in a Transfer Notice under clause 10.2 or 19 (as the context requires) is open.

Ordinary Directors' Resolution means a resolution of the Directors which is approved by the Directors present and voting (who are not disqualified from voting on that resolution) who between them hold more than one half of the total number of votes that may be exercised by all of the Directors who are not disqualified from voting on that resolution and who are present and voting on that resolution.

Original Capilano Shareholder means each Shareholder who makes an election to receive Shares as consideration for its shares in Capilano Group under the Scheme.

Permitted Disposal means a Disposal referred to in clause 10.1.

Permitted Holder means in respect of a Non-Investor Party:

- (a) an Affiliate of the Non-Investor Party;
- (b) a Special Relative of the Non-Investor Party (if applicable);
- (c) a self-managed superannuation fund for the relevant Non-Investor Party, the trustee of which is, or is Controlled by, the Non-Investor Party or a Special Relative of the Non-Investor Party; or
- (d) any other person consented to in writing by the Consortium Investors.

Permitted Security Interest means:

- (a) a charge or lien arising in favour of a Government Agency by operation of statute in the ordinary course of the Business;
- (b) any mechanics', workmen's or other like lien arising in the ordinary course of the Business;
- (c) any retention of title arrangement or purchase money security interest arising from any lease of goods or consignment arrangement, in each case, arising in favour of a trade supplier to the Business in the ordinary course of the Business; and
- (d) a PPS Lease (as defined in the PPSA).

PPSA means the *Personal Property Securities Act 2009* (Cth).

Proceeds means:

- (a) in relation to an Asset Sale, the total amount available for payment or distribution to all Shareholders (including in their capacity as lenders, if applicable) by way of a winding up, a return of capital, a share buy-back, a dividend or other distribution or a repayment of loan; and

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- (b) in relation to a Disposal of Shares, the total consideration payable for the relevant Shares being Disposed of by all Shareholders, including any earn-out or other amounts contingent on future performance and any amounts which are escrowed as security for any future or contingent obligations and excluding any payments of costs, expenses, indemnity payments or similar amounts to or on behalf of any Shareholder,

and in each case:

- (c) includes the market value of any non-cash consideration (as determined by the Board);
- (d) includes any dividend or distribution in connection with the Asset Sale or Disposal of Shares; and
- (e) is determined before deduction or withholding for any applicable Tax.

Purchaser Vehicle means the relevant buyer or a holding company or other Affiliate of the buyer, as determined by the Exit Instigator.

Receiver includes a receiver or receiver and manager.

Records means:

- (a) originals and copies, in machine readable or printed form, of all books, files, reports, records, correspondence, documents and other material of or relating to or used in connection with the Group including minute books, statutory books and registers, books of account and copies of taxation returns;
- (b) sales literature, market research reports, brochures and other promotional material;
- (c) all sales and purchasing records;
- (d) all trading and financial records; and
- (e) lists of all regular suppliers and customers.

Related Body Corporate has the meaning given in the Corporations Act, but on the basis that “subsidiary” has the meaning given to it in this document and “body corporate” includes any entity (including, without limitation, a trust or partnership).

Where a Shareholder is an individual, its Related Bodies Corporate will include each Special Relative of the Shareholder.

Related Party Proposal means any proposal by the Company or another Group Member to enter into or vary any agreement, arrangement or understanding with a Shareholder or a Related Body Corporate of a Shareholder, or to exercise or not exercise, enforce or not enforce, waive rights in relation to, or not comply with, such agreement, arrangement or understanding.

Relevant Time is defined in clause 16.3.

Relevant Valuation is defined in clause 15.1.

Reorganisation Event means:

- (a) a bonus issue of Shares;
- (b) a sub-division or consolidation of Shares; or

- (c) any other reorganisation or reconstruction of the Shares where the Company neither pays nor receives cash or any other form of consideration.

Representative means in respect of a party, an employee, agent, officer, director, auditor, adviser, partner, shareholder, Affiliate, consultant, joint venturer or sub-contractor of that party or of an Affiliate of that party provided that no party or person Engaged By A Group Member will, for the purposes of this document, be considered to be a Representative of a Group Member or any Consortium Investor.

Restructuring Event means any event which involves the Disposal or other form of realisation of Shares by any of the Shareholders and which the Board determines, by Special Majority Directors' Resolution, is part of a genuine corporate restructuring or transaction that will not result in, nor has resulted in any actual final realisation of, or change to, the Shareholders' economic interest in the Group, including any corporate restructuring or other comparable transaction required in connection with amending or refinancing any of the Group's debt financing facilities.

Retained Amount has the meaning given in clause 14.7(i).

ROC means ROC Capital Pty Limited (ACN 167 858 764) (in its capacity as trustee of ROC B&Y Investment Trust), or any purchaser of all of the Shares held by it and its Affiliates.

Sale Price means the price of Shares offered for sale under clause 11 or 19.

Sale Shares means Shares being transferred by a Seller or a Defaulting Shareholder under clause 11, or 19, respectively.

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act under which BidCo acquires all of the issued shares in Capilano.

Scheme Implementation Agreement means the deed entitled "Scheme Implementation Agreement" dated on or about 10 August 2018 relating to the Scheme.

Scheme Price means \$20.06 (being the price per share under the Scheme in respect of the cash consideration option), appropriately adjusted for any Reorganisation Event of the Shares after the Implementation Date.

Security has the meaning given to that term in section 92(3) of the Corporations Act.

Security Interest means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or 12(2) of the PPSA, or any agreement to create any of them or allow them to exist.

Seller means a Shareholder who proposes to transfer Shares under clause 11.

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

Shareholder means (subject to clause 25) a holder from time to time of any Shares who is a party to this document.

Shareholders' Special Resolution means a resolution of the Shareholders which is approved by at least 75% of the votes cast by Shareholders who vote in person or by proxy;

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Share means an issued share of any class in the capital of the Company.

Share Ownership Percentage means, when calculated with respect to any person from time to time:

- (a) (when used in relation to all Shareholders) the aggregate number of all Shares held by that Shareholder (or those Shareholders) or by a Permitted Holder on behalf of that person (or those persons), as applicable, expressed as a percentage of the aggregate number of all Shares on issue at that time; and
- (b) (when used in relation to less than all the Shareholders) the aggregate number of all Shares held by that Shareholder (or those Shareholders) or by a Permitted Holder on behalf of that person (or those persons), as applicable, expressed as a percentage of their aggregate Shareholdings,

in each case, excluding all Incentive Shares then on issue. A Permitted Holder which is not a Shareholder will not be considered a holder of Shares for the purposes of this definition.

Shareholders means the holders of Shares from time to time.

Shareholding means the Shares held by a Shareholder.

Special Majority Directors' Resolution means approval by more than half of the Board including (for so long as there is at least one Non-Investor Party Director or one CBL Director appointed in accordance with this document):

- (a) at least 1 vote in favour of the resolution by a Non-Investor Party Director; or
- (b) at least 1 vote in favour of the resolution by the CBL Director.

Special Relative means, with respect to an individual, any spouse, de-facto spouse, mother, father, sister, brother or child (in the case of a child only, whether natural, step or adopted) of the individual or another relative of the individual approved in writing by the Ordinary Directors' Resolution.

Subsidiary has the meaning given to that term in the Corporations Act, and, in addition:

- (a) a trust may be a Subsidiary of an entity where that entity holds more than 50% of the units or other beneficial interests in the trust or has the ability to control the appointment or removal of the trustee;
- (b) a corporation may be a Subsidiary of a trust if it would have been a Subsidiary if the trust were a body corporate;
- (c) a trust may be a Subsidiary of another trust if it would have been a Subsidiary if both trusts were bodies corporate; and
- (d) a limited partnership may be a Subsidiary of an entity if the entity or any of its Subsidiaries are the general partner of that limited partnership, the entity has the ability to control the appointment of the general partner, or the entity directly or indirectly holds more than 50% of the partner interests in the limited partnership.

Substantial Shareholder means a Shareholder who has a Share Ownership Percentage of 5% or greater.

Tag Buyer has the meaning given in clause 12.1.

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Tag Option has the meaning given in clause 12.2(f).

Tag Proportions has the meaning given in clause 12.2(d).

Tag Shareholder has the meaning given in clause 12.1.

Tag Shares has the meaning given in clause 12.2(f).

Tag Transaction means a Disposal of Shares in accordance with clause 12.

Taxes means taxes, levies, imposts, charges and duties (including stamp and transaction duties) paid, payable or accessed as being payable by any authority together with any fines, penalties and interest in connection with them.

Third Party means a person dealing at arm's length.

Trade Sale means a sale or series of related sales of all or substantially all of the Shares (other than in connection with an IPO).

Trade Sale Costs means all unpaid costs and expenses of the Company and the Shareholders in connection with preparing, negotiating and completing a Trade Sale including all corporate advisory fees and commissions, expenses of due diligence investigations, fees of any relevant regulatory authorities, professional advisers engaged for the purpose of the Trade Sale, roadshow and management presentation expenses, any advisory or transaction fees payable to a Consortium Investor or an Affiliate of a Consortium Investor in connection with the Trade Sale and printing, travel and advertising expenses incurred in relation to the Trade Sale (but does not include any Individual Costs).

Transaction Documents means:

- (a) the Scheme Implementation Agreement;
- (b) the Scheme of Arrangement; and
- (c) the deed poll entered into by the Company and BidCo in connection with the Scheme.

Transfer Notice means the written notice given by a Seller to the other Shareholders offering to sell them its Share ownership Percentage of the Transfer Shares under clause 11 or taken to have been given under clause 19.2.

Transfer Provision means each of clauses 10.2, 11, 12, 13, 14, and 19.

Transferee means a person who accepts or is required to accept (as applicable) a Disposal of Shares under clauses 11 or 19.

Transferor means a Shareholder who Transfers Shares, a Seller or a Defaulting Shareholder under clauses 11 or 19, respectively.

Trust Termination Notice has the meaning given in clause 14.10.

Unaccepted Shares means the balance of Sale Shares not accepted by Shareholders in receipt of a Transfer Notice within the Offer Period, under clause 10.2 or 19.

Unrelated Buyer means an actual or proposed (as the context requires) third party buyer who is neither a Shareholder nor a Related Body Corporate of any Shareholder but does not include an IPO Vehicle.

Unrelated Substantial Shareholders has the meaning given in clause 19.2.

WH means Wattle Hill RHC Fund 1, of Level 13, 179 Elizabeth Street, Sydney, NSW, Australia, 2000, or any purchaser of all of the Shares held by it and its Affiliates.

WH Director means a Director appointed by WH.

1.2 General interpretation

Unless the contrary intention appears a reference in this document to:

- (a) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document;
- (b) **(variations or replacement)** a document (including this document) includes any variation or replacement of it;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law means common law, principles of equity, and laws made by a Government Agency and other instruments under them, and considerations, amendments, re-enactments or replacements of any of them;
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any Government Agency;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) **(two or more persons)** an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (i) **(jointly and individually)** an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (j) **(calculation of time)** a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (k) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) **(from time to time)** a power, an authority, or a discretion given to the Board, the Directors, the Shareholders or any other person may be exercised at any time and from time to time;
- (m) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (n) **(meaning not limited)** the words “include”, “including”, “for example” or “such as”, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;

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- (o) **(time of day)** time is a reference to Sydney time;
- (p) **(reference to any thing)** any thing (including any amount) is a reference to the whole and each part of it; and
- (q) **(dollars)** Australian dollars, dollars, \$, A\$ or AUD is a reference to the lawful currency of **Australia**.

1.3 Liability of Shareholders

Unless expressly stated in this document (which to avoid doubt, does not include clause 1.2(m)), the obligations of the Shareholders, Consortium Investors and Non-Investor Parties under this document bind each of the Shareholders, Consortium Investors and Non-Investor Parties (as applicable) individually and not jointly.

1.4 Meaning of Procure

If under this document, a party (other than the Company) has undertaken to another party to procure that any Group Member or any IPO Vehicle will do any act or thing or refrain from doing any act or thing, the party in question will not be in breach of that undertaking if:

- (a) in the case of any party who is a director of a Group Member or any IPO Vehicle, the party has exercised the party's votes as a director in favour of the act or thing the Group Member or IPO Vehicle is obliged to do or against the act or thing the Group Member or IPO Vehicle is obliged to refrain from doing (or abstained from voting in relation to the act or thing) as applicable (provided that nothing in this document requires a director of a Group Member or any IPO Vehicle to act in a manner which would breach his or her duties as a director);
- (b) in the case of any Shareholder (or any Affiliate of a Shareholder), the Shareholder has exercised its votes as a Shareholder in favour of the act or thing the Group Member or IPO Vehicle is obliged to do or against the act or thing the Group Member or IPO Vehicle is obliged to refrain from doing (or abstained from voting in relation to the act or thing) as applicable;
- (c) in the case of any party who has appointed a director of a Group Member or any IPO Vehicle or has the right to appoint a director of any Group Member or any IPO Vehicle, that director has exercised his or her votes as a director in favour of the act or thing the Group Member or IPO Vehicle is obliged to do or against the act or thing the Group Member or IPO Vehicle is obliged to refrain from doing (or abstained from voting in relation to the act or thing) as applicable (provided that nothing in this document requires a director of a Group Member or any IPO Vehicle to act in a manner which would breach his or her duties as a director);
- (d) in the case of any individual party who is Engaged By A Group Member, the individual party has carried out all actions which are appropriate (but not in conflict with any determination of the Board) within the scope of its role and responsibilities as a result of being Engaged By A Group Member to facilitate the Group Member or IPO Vehicle doing the act or thing it is obliged to do, or to prevent the Group Member or IPO Vehicle from doing the act or thing it is obliged to refrain from doing, as applicable; and
- (e) it has taken all other actions within the scope of its power and authority to facilitate the Group Member or IPO Vehicle doing the act or thing it is obliged to do, or to prevent the Group Member or IPO Vehicle from doing the act or thing it is obliged to refrain from doing, as applicable, and has

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not taken any action or omitted to take any action within the scope of its power and authority which would prevent or inhibit the Group Member or IPO Vehicle doing the act or thing it is obliged to do, or facilitate the Group Member or IPO Vehicle doing the act or thing it is obliged to refrain from doing, as applicable.

1.5 Consortium Investors

- (a) A right, power, discretion or consent conferred or granted by this document on the Consortium Investors may only (unless the context otherwise requires) be exercised or granted:
- (i) while WH is a Shareholder, or at least one of WH's Affiliates is a Shareholder, by WH on behalf of all Consortium Investors. For clarity and without limitation, this applies to the rights of the Consortium Investors in relation to:
 - (A) the Drag Transaction regime under clause 13; and
 - (B) implementing Exits; or
 - (ii) while neither WH, nor any WH Affiliate is a Shareholder, by all Consortium Investors.
- (b) To the extent that the rights of ROC under this document results in any one of the trusts comprising ROC (including upstream trusts) being covered by section 275-10(4) of the *Income Tax Assessment Act 1997* (Cth) (or equivalent provisions in any successor legislation) at any time including from a change in legislation, the issuance of a public ruling, a new interpretation by the Australian Taxation Office or any other government agency or a change in extra-statutory concession by the Australian Taxation Office or any government agency, ROC may by notice, unilaterally, unequivocally and permanently disclaim fully or partially any such rights as they see fit and such a disclaimer will be taken to be an amendment to this document ab initio. For the avoidance of doubt, such a disclaimer does not affect any rights which ROC would ordinarily have as Shareholders including the right to appoint Directors under the law.

Should ROC disclaim rights under this document, any such rights may taken up at the discretion of WH and by giving notice, as if it held those rights ab initio.

1.6 Next day

If an act under this document to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day.

1.7 Next Business Day

If an event under this document must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.

1.8 Headings

Headings are inserted for convenience and do not affect the interpretation of this document.

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2 Operation of this deed

2.1 Effect

- (a) This document comes into effect on and from the Implementation Date, except for this clause 2, and clauses 22 and 24 to 33 (inclusive) which each come into effect on the date of this document.
- (b) Subject to clause 22.2, this document remains in effect until it is terminated in accordance with clause 2.2 or clause 22.1.

2.2 Failure to implement Scheme

Unless the Consortium Investors agree in writing to the contrary, this document terminates if the Scheme Implementation Agreement is terminated in accordance with its terms without the Scheme being implemented.

2.3 Transfer of Shares

Subject to clause 22.2, this document ceases to apply to a Shareholder that has transferred all of its Shares under this document.

3 Objectives

3.1 Objectives

The primary objectives of the Group are to:

- (a) operate, carry on and grow the Business; and
- (b) maximise the sustainable value of the Group in line with the direction and strategy of the Group as determined by the Board from time to time in accordance with this document.

3.2 Shareholders' commitments

Subject to and in accordance with this document (including, but not limited to, each Shareholder's capacity to influence decision making in respect of the Company and the Business), each Shareholder agrees and undertakes:

- (a) to use all reasonable endeavours to promote and develop the Business to the best advantage of the Group; and
- (b) to cooperate and use all reasonable endeavours to ensure that the Group successfully carries on the Business.

3.3 Relationship of Shareholders

This document does not create a relationship of employment, trust, agency or partnership between the Shareholders. Each Shareholder is responsible for its own obligations arising under this document and is not liable for any other Shareholder's obligations.

3.4 Related Party

Each party must, to the extent within its power and control, do all things reasonably necessary to ensure that its Related Bodies Corporate and each Group Member comply with the terms of this document.

4 Boards

4.1 Role of the Board

Subject to any matters requiring Shareholder approval under this document or the Corporations Act, the Board is responsible for the overall direction and management of the Company and each Subsidiary and the formulation of the policies to be applied to the Group and the Business.

4.2 Composition

Each party must at all relevant times Procure that the matters and things contemplated by Schedule 1, including the composition of the Board and the boards of directors of the other Group Members and the procedures for meetings of the Board and the boards of directors of the other Group Members, are carried out in accordance with Schedule 1.

4.3 Delegation

The Board may, on any terms it determines, delegate (or revoke a prior delegation) to one or more members of management (including the Group CEO) or a sub-committee of the Board, the authority to cause a Group Member to do or commit anything (with or without further Board approval), except that, notwithstanding any other provision of this document, no matter or thing listed in:

- (a) Part A of Schedule 2 may be undertaken without the approval of an Ordinary Directors' Resolution.
- (b) Part B of Schedule 2 may be undertaken without the approval of a Special Majority Directors' Resolution; and
- (c) Part C of Schedule 2 may be undertaken without the approval of a Shareholders' Special Resolution.

4.4 Performance of Directors' duties

Subject at all times to the duties of each Director at law, a Director may, to the maximum extent permitted by law, in performing any of his or her duties or exercising any power, right or discretion as a Director:

- (a) have regard to and represent the interests of the Shareholders who appointed the Director under this document; and
- (b) act on the wishes of the Shareholders who appointed the Director under this document.

5 Group undertakings

5.1 Board matters

The Company must not do, commit or approve, and must Procure that no other Group Member does, commits or approves, anything listed in:

- (a) Part A of Schedule 2 without an Ordinary Directors' Resolution;
- (b) Part B of Schedule 2 without a Special Majority Directors' Resolution; and
- (c) Part C of Schedule 2 without a Shareholders' Special Resolution.

5.2 Other matters

Except as waived or otherwise approved by Ordinary Directors' Resolution or as otherwise provided in this document, the Company must comply, and Procure that each Group Member complies, with Schedule 4.

6 Company management

6.1 Compliance by parties

- (a) Each of the parties (other than the Company) undertakes to each of the other parties that it will comply with, and Procure that the Company complies with, this document and the Constitution.
- (b) Each party agrees to take all actions within the scope of its power and authority to facilitate each Non-Controlled Group Member complying with this document as if it were a Subsidiary of the Company. Notwithstanding anything to the contrary in this document, a party will not be in breach of this document if a Non-Controlled Group Member does, or omits to do, a thing that would breach this document if undertaken or omitted (as applicable) by the Company or a Subsidiary of the Company but it has, and each director appointed by it to a Group Member, has:
 - (i) taken all other actions within the scope of its power and authority which are permissible in accordance with the governing documents of that Non-Controlled Group Member to facilitate the Non-Controlled Group Member doing the act or thing it is obliged to do, or to prevent the Non-Controlled Group Member from doing the act or thing it is obliged to refrain from doing, as applicable; and
 - (ii) not taken any action or omitted to take any action within the scope of its power and authority which is permissible in accordance with the governing documents which would prevent or inhibit the Non-Controlled Group Member doing the act or thing it is obliged to do, or facilitate the Non-Controlled Group Member doing the act or thing it is obliged to refrain from doing, as applicable.

6.2 Responsibilities of the Board

The Board is responsible for:

- (a) the overall direction and management of the Group and formulation of the policies to be applied to the Business; and
- (b) ensuring that the Business is managed in accordance with this document.

6.3 Conduct of Business in accordance with the Business Plan

Unless otherwise approved by an Ordinary Directors' Resolution:

- (a) the Company agrees to conduct, and must Procure that each Group Member conducts, the Business in each Financial Year in accordance with the Business Plan approved and adopted by the Board for that Financial Year or any amended version of that Business Plan approved by the Board; and
- (b) the Business Plan must be consistent with clause 5.1 and the objectives set out in clause 3.1.

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6.4 Submissions of draft Business Plan

At least 6 weeks before the end of each Financial Year (or at such other time as reasonably determined by the Board), the parties must use reasonable endeavours to cause the Group CEO and Group CFO to submit to the Board a draft Business Plan for the next Financial Year. The Shareholders must Procure that the Board considers the draft Business Plan at least 15 Business Days before the beginning of the relevant Financial Year (or at such other time as determined by the Board). The draft Business Plan (with such amendments as are considered appropriate) may only be adopted by an Ordinary Directors' Resolution.

6.5 Conduct until new Business Plan adopted

If the Board does not adopt the Business Plan in accordance with clause 6.4 before the start of the relevant Financial Year, the Company must continue to conduct the Business on the basis of the previous Financial Year's Business Plan until a new Business Plan is adopted, provided that the Group Members may continue to operate and incur expenditures and Liabilities in amounts up to 105% of those in the previous Financial Year's Business Plan. Once a new Business Plan is adopted by an Ordinary Directors' Resolution, the previous authority to incur expenditures and Liabilities in amounts up to 105% of those in the previous Financial Year's Business Plan will cease to apply.

6.6 Review of Business Plan

The Board may at any time review the Business Plan or any budget previously approved by the Board and resolve to amend it provided that any material amendments to the Business Plan must be approved by an Ordinary Directors' Resolution.

7 Reporting obligations

7.1 Access and provision of information

The Company must comply with, and Procure that each Group Member complies with, Schedule 4 in relation to access by the Consortium Investors to the premises and the Records of the Business and the provision of information to the Shareholders.

7.2 Information received by Directors

- (a) Subject to clause 7.2(b), a Director will be entitled to provide to its appointing Shareholder, all information he or she comes into possession of in the course of his or her role as Director.
- (b) Subject to the Corporations Act, and any information already in the public domain, no Director may provide any Confidential Information of the Group to any entity or person who is involved in any capacity in any business or activity which is:
 - (i) the same as or similar to the Business or any material part of it; or
 - (ii) the same as or similar to any business of any customer or any supplier of the Business.

8 Distributions to Shareholders

Subject to the Corporations Act, the amount of any dividend or other distribution payable to the Shareholders is at the absolute discretion of the Board and must be determined or declared by Ordinary Directors' Resolution. A dividend or other distribution must not be paid unless approved by Ordinary Directors' Resolution.

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9 New Shares

9.1 Funding decisions

The Board has responsibility for determining how to fund the activities of the Group and the Business as contemplated in the Business Plan subject to Schedule 2. The proceeds of any funding, whether raised by debt or additional capital from Shareholders whether in the form of debt, equity (including New Shares) or otherwise, must be for use in the Business. Nothing in this clause 9 shall limit or otherwise affect the provisions of clause 5.1 and Schedule 2.

9.2 Issue of New Shares

Subject to clauses 9.13, 9.14 and 9.20 to 9.22 (inclusive) and compliance with all applicable laws, if the Company proposes to issue new Shares (or any rights to be allotted, issued or to subscribe for Shares) (**New Shares**) to any person after the Implementation Date, it must first comply with this clause 9.

9.3 Contents of Issue Notice

If the Company proposes to issue New Shares, it must serve a notice (**Issue Notice**) on each Substantial Shareholder specifying:

- (a) (**issue price**) the issue price per New Share or the manner in which the issue price is proposed to be calculated or determined. Unless otherwise agreed by a Special Majority Directors' Resolution, if the New Shares will be Shares issued:
 - (i) prior to the 12 month anniversary of the Implementation Date, the issue price must be the Scheme Price; or
 - (ii) on or following the 12 month anniversary of the Implementation Date, the issue price must be determined by reference to the Fair Market Value of the Group at the time that the Issue Notice is served and the number(s) and classes of Shares then on issue;
- (b) (**total number**) the total number of New Shares to be issued and the number(s) of each class of New Shares to be issued;
- (c) (**acceptance period**) the date by which a Substantial Shareholder must give the Company written notice exercising its right to make an offer to subscribe for New Shares, which date must not be less than 10 Business Days after the date of the Issue Notice (**Initial Acceptance Period**) (or any longer period which a Special Majority Directors' Resolution approves for a Substantial Shareholder or Substantial Shareholders);
- (d) (**completion timing**) the date on which subscription funds for the New Shares must be paid to the Company, which date must not be less than 10 Business Days (or any longer period which an Ordinary Directors' Resolution agrees to for a Substantial Shareholder or Substantial Shareholders) after the end of the Initial Acceptance Period (or any longer period which an Ordinary Directors' Resolution approves for a Substantial Shareholder or Substantial Shareholders under clause 9.3(c)) plus such additional period as may reasonably be required by any Substantial Shareholder to obtain any necessary approvals or consents of any Government Agency for the Substantial Shareholder to lawfully accept the offer of New Shares (such additional period being determined by the Board acting reasonably after consultation with the relevant Substantial Shareholder);
- (e) (**other terms**) the other terms of issue of the New Shares; and

- (f) **(relevant proportion)** the number of New Shares which constitutes the Substantial Shareholder's Share Ownership Percentage of those Shares (**Entitlement Shares**).

9.4 Notice by Substantial Shareholder

A Substantial Shareholder may exercise its right to make an offer to subscribe for New Shares by giving notice to the Company no later than the end of the Initial Acceptance Period of the number of New Shares which it offers to subscribe for or more or less than its number of Entitlement Shares.

9.5 Failure to give notice

If a Substantial Shareholder fails to give the notice referred to in clause 9.4 by the end of the Initial Acceptance Period, the Substantial Shareholder will cease to have any right to offer to subscribe for the New Shares, unless the Company (with Board approval) otherwise agrees.

9.6 Issue

If a Substantial Shareholder (or other person under clause 9.7) exercises its right to offer to subscribe for New Shares under this clause 9, the Company must, subject to receipt of the relevant subscription amount, issue to that Substantial Shareholder (or its Nominated Affiliate) the number of New Shares allocated to that Substantial Shareholder (or its Nominated Affiliate) in accordance with clauses 9.8 and 9.9.

9.7 Nominated Affiliate

Subject to compliance with clause 9.14:

- (a) a Consortium Investor may nominate an Affiliate; and
- (b) another Substantial Shareholder may nominate a Permitted Holder;

to exercise its right to make an offer to subscribe for New Shares under this clause 9 (in each case, the **Nominated Affiliate**), and the Company must, subject to receipt of the relevant subscription amount, issue to the Nominated Affiliate the number of New Shares allocated to the Substantial Shareholder in accordance with clauses 9.8 and 9.9.

9.8 Allocation

If the Company receives offers under clause 9.4 to subscribe for:

- (a) equal to or less than the total number of New Shares referred to in the Issue Notice, the Company must issue to each Substantial Shareholder who has made an offer under clause 9.4, the number of New Shares for which the Substantial Shareholder has offered to subscribe; or
- (b) more New Shares than the total number of New Shares referred to in the Issue Notice then, subject to clause 9.9, each Substantial Shareholder who has made an offer under clause 9.4 is entitled to subscribe for the lesser of the number(s) of its Entitlement Shares and the number of New Shares for which it has offered to subscribe.

9.9 Remaining New Shares

Any remaining New Shares that have not been allocated after the application of clause 9.8(b) must be allocated on a pro rata basis among those Substantial Shareholders (by reference to their relative Share Ownership Percentages) that offered to subscribe for a greater number of New Shares than their Entitlement Shares under clause 9.4, provided that no allocation under this clause 9.9 may

exceed the number of New Shares for which the Substantial Shareholder has offered to subscribe under clause 9.4 (and the Company must reapply this clause 9.9 in respect of the then remaining New Shares until all the New Shares that the Substantial Shareholders offered to subscribe for under clause 9.4 are allocated).

9.10 Notice of allocation of New Shares

As soon as reasonably practicable after the determination of the entitlements of each Substantial Shareholder, the Company must send to each Substantial Shareholder who has made an offer under clause 9.4 a notice setting out the number of New Shares that the Substantial Shareholder has been allocated in accordance with this clause 9 and then:

- (a) each Substantial Shareholder must pay to the Company the subscription funds for the New Shares which the Substantial Shareholder has been allocated on or before the date set out in the Issue Notice or such later date as is agreed between the Substantial Shareholder and the Company (with Board approval); and
- (b) subject to the receipt of the subscription funds referred to in clause 9.10(a), the Company must issue the relevant New Shares and certificates evidencing title to the New Shares to the Shareholder (or its Nominated Affiliate, as applicable) and update all relevant registers.

9.11 Failure to complete subscription for New Shares

If:

- (a) any New Shares are not subscribed for by the Shareholders in accordance with this clause 9; or
- (b) New Shares are allocated to a Substantial Shareholder or its Nominated Affiliate under this clause 9 but:
 - (i) the Substantial Shareholder or its Nominated Affiliate, as applicable, breaches any of its material obligations in connection with its subscription for the relevant New Shares; or
 - (ii) the relevant New Shares cannot be issued to the Substantial Shareholder or their Nominated Affiliate, as applicable, due to the application of clause 9.18 or clause 9.19,

the Company must offer those New Shares to each Shareholder which is not a Substantial Shareholder, complying again with clauses 9.2 to 9.10 (inclusive) in respect of those Shareholders.

9.12 Issue to Third Party

The Company may issue any New Shares that are not subscribed for by the Shareholders in accordance with this clause 9 to any Third Party determined by a Special Majority Directors' Resolution within 80 Business Days of the date on which the Company sends notices to the Substantial Shareholders under clause 9.10 (or if no such notices will be sent as none of the Substantial Shareholders have offered to subscribe for any New Shares, 120 days from the Initial Acceptance Date) for an issue price per New Share not less than the price specified in the Issue Notice (or as would have been calculated in accordance with the method of calculation specified in the Issue Notice) and on terms materially no more favourable (taken as a whole) than those contained in the Issue Notice. If the Company does not issue the New Shares within that period, the Company may not issue the New Shares without first complying again with clauses 9.2 to 9.11 (inclusive).

9.13 Exceptions

Without limiting clause 5, clauses 9.2 to 9.12 (inclusive) do not apply to an issue of Shares:

- (a) **(Transaction Documents)** pursuant to the Transaction Documents;
- (b) **(convertible Securities)** pursuant to the conversion of any form of convertible Securities issued by the Company which were previously offered to the Shareholders under clause 9.2 or issued in accordance with another exception in this clause 9.13;
- (c) **(Exit)** pursuant to an Exit;
- (d) **(Incentive Scheme)** if the Shares will be Incentive Shares or the issue is pursuant to any Incentive Scheme or comparable incentive arrangement and the Shares will be subject to the terms of this document, and in each case the issue of Shares has been approved by the Board;
- (e) **(acquisition consideration)** as non-cash consideration for an acquisition of a company, business or assets by a Group Member approved in accordance with this document;
- (f) **(emergency funding)** pursuant to clause 9.20;
- (g) **(debt financiers)** to a provider of debt finance (or any agent, trustee or nominee of or for the provider) which is not a Shareholder or an Affiliate of a Shareholder as part of any genuine debt finance provided to the Group or any Group Member; or
- (h) **(corporate reorganisation)** pursuant to a Reorganisation Event or Restructuring Event provided the Reorganisation Event or Restructuring Event does not dilute the Share Ownership Percentage of any Shareholder (for this purpose only, if the Reorganisation Event or Restructuring Event involves an exchange of Shares for shares in a new parent company of the Group, the Share Ownership Percentage will be calculated based on the Shareholders' holdings of shares in that new parent company) and subject to compliance with clause 10.5.

9.14 Accession Deed

No person can become a holder of Shares (whether as a result of an issue or Disposal of Shares to the person) unless:

- (a) that person first executes and delivers to the Company an Accession Deed under which the person agrees to be bound by this document as if named as a party and in the capacity of a Consortium Investor or a Non-Investor Party (as applicable under this document); or
- (b) the issue or transfer is an issue or transfer of Incentive Shares (provided that the holder of those Incentive Shares must execute a Accession Deed if those Shares cease to be Incentive Shares for the purpose of this document).

9.15 Inclusion of new holder

If a person executes an Accession Deed in a specified capacity in accordance with clause 9.14 from the date of the Accession Deed each reference in this document to that category of party will be taken to include the new holder of Shares and the new holder of Shares will have the rights and obligations accorded to that category of party under this document.

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9.16 Bound by Accession Deed

The parties agree that any person who executes an Accession Deed will be bound by, and acquire the rights under, this document in accordance with clause 9.14 to this clause 9.16 (inclusive).

9.17 Affiliates of Consortium Investors and Permitted Holders

Without prejudice to the requirements of clause 9.14:

- (a) if an Affiliate of a Consortium Investor acquires any Shares it will be taken to be a Consortium Investor and will have the rights and obligations of a Consortium Investor under this document unless otherwise agreed by the Consortium Investors; and
- (b) if a Permitted Holder of a Non-Investor Party acquires any Shares it will be taken to be a Non-Investor Party and will have the rights and obligations of a Non-Investor Party under this document unless otherwise agreed by the Company and the Non-Investor Party.

9.18 No more than 50 Shareholders

Despite any other provision of this document, except with the written approval of the Consortium Investors, the Company must not issue Shares to a person who is not a Shareholder if the issue of those Shares would result in there being more than 50 Shareholders (calculated assuming that prior to that issue of Shares all Securities convertible into Shares or another class of shares have been converted into Shares by their holders), provided that this will not prevent the person from acquiring a beneficial interest in Shares by nominating the Custodian to hold the Shares on its behalf and entering into a Custodian Deed.

9.19 No requirement to prepare disclosure document

- (a) Any person's rights to be offered Shares and/or to subscribe for Shares (whether under this clause 9 or otherwise) are subject to those rights not requiring the Company to issue a disclosure document (including a prospectus or offering memorandum) or a product disclosure statement, undertake any registration or filing with any Government Agency or take any comparable action, whether under Chapter 6D or Chapter 7 of the Corporations Act or any comparable legislation in any other jurisdiction, unless the Board determines otherwise.
- (b) Neither the Company nor any other party will be in breach of this document if it fails to offer or issue any Shares to any person, or give any notice which would constitute an offer of any Shares to any person, in circumstances where such offer or issue of Shares would require the taking of any action described in clause 9.19(a).

9.20 Emergency Matter funding

- (a) If an Emergency Matter occurs:
 - (i) a Consortium Investor may elect by notice in writing to the Company to subscribe for new Shares at an issue price per Share determined by the Consortium Investors acting reasonably in consultation with the Board, having regard to the earnings, assets, liabilities and prospects of the Group and the previous issue prices of Shares (without limiting the Consortium Investors' right to reasonably determine a different issue price on account of changes in the Group's financial position, the issue of additional Shares and other relevant intervening factors);

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- (ii) subject to receiving the Consortium Investor's election, the Company must issue the Shares subscribed for by the Consortium Investor immediately on receipt of the issue price from the Consortium Investor; and
- (iii) promptly following any issue of Shares in accordance with clause 9.20(a)(ii), the Company will give a written notice (**Emergency Funding Notice**) to each Substantial Shareholder who is not a Consortium Investor who elected to subscribe for Shares under clause 9.20(a)(i) (**Catch-up Offeree**) offering the Catch-up Offeree the opportunity to subscribe, or acquire from the Consortium Investor (as the Consortium Investor elects in its discretion), Shares:
 - (A) at the same price per Share as the price paid by the Consortium Investor, and otherwise at the same price and on the same terms per Share as the price and terms on which the Consortium Investor(s) subscribed for the Shares, including compliance with all applicable laws) as the Catch-up Offeree would have been entitled to subscribe for in accordance with clauses 9.2 to 9.13 (inclusive) if the issue in accordance with clause 9.20(a)(i) had instead been made in accordance with clauses 9.2 to 9.13 (inclusive); and
 - (B) in the number(s) which would result in the Catch-up Offeree (if it chose to accept the offer in full) having the same Share Ownership Percentage as it would have had if the issue in accordance with clause 9.20(a)(i) had instead been made in accordance with clauses 9.2 to 9.13 (inclusive).
- (b) The required payment date for Shares offered under an Emergency Funding Notice must not be less than 15 Business Days after the date of the Emergency Funding Notice (unless a particular Catch-up Offeree agrees to pay sooner).
- (c) Notwithstanding anything to the contrary in this clause 9, if a Catch-up Offeree is offered an opportunity to participate in an Emergency Matter funding at or around the same time as the Consortium Investor under clause 9.20(a)(i) on substantially equivalent terms to which it would be offered Shares under clauses 9.2 to 9.13 (inclusive) (including at least 15 Business Days' (or any shorter period agreed by the Catch-up Offeree) before being required to make payment for any Shares issued to it), then the Company will have no further obligation to offer Shares to the Catch-up Offeree under clause 9.20(a)(iii), irrespective of whether the Catch-up Offeree accepted the Company's offer at that time.
- (d) If an Emergency Matter occurs, prior to the Consortium Investors being issued with Shares under clause 9.20(a)(i), the Board will use commercially reasonable endeavours, in light of the nature of the Emergency Matter and the time available to respond to it, to consider debt and other funding alternatives which do not require the issue of Shares to cure the Emergency Matter.

9.21 Acquisition by Catch-up Offeree

Within 15 Business Days of the issue of a valid Emergency Funding Notice, each Catch-up Offeree may exercise its right to subscribe for, or acquire from the Consortium Investors, as applicable, the Shares offered by the Company in the Emergency Funding Notice by giving written notice to the Company of the number of Shares offered which it wishes to subscribe for or acquire (as

applicable). If a Catch-up Offeree has not given such written notice to the Company at the end of the 15 Business Day period, then the Catch-up Offeree has no further right to subscribe for, or acquire from any Consortium Investor, the Shares offered by the Company under clause 9.20(a)(iii), unless otherwise approved in writing by the Board.

9.22 Issue or transfer after receipt of issue price

- (a) If one or more Catch-up Offerees exercises its right to subscribe for, or acquire from the Consortium Investors, Shares under clause 9.20(a)(iii), the Company must issue and/or the Consortium Investors must transfer the Shares to be acquired by the relevant Catch-up Offerees as soon as reasonably practicable following receipt of the issue or transfer price from those Catch-up Offerees.
- (b) In the event of a transfer of Shares by the Consortium Investors to any Catch-up Offerees:
 - (i) the Consortium Investors will be deemed to warrant in favour of those Catch-up Offerees that the Consortium Investor:
 - (A) has full power and authority, and has obtained all necessary consents from third parties, to sell the Shares to those Catch-up Offerees;
 - (B) is not Insolvent; and
 - (C) transfers to those Catch-up Offerees clear and unencumbered legal title to the Shares being sold, free of any Security Interests or third party rights other than any such Security Interests or rights arising under this document; and
 - (ii) each of those Catch-up Offerees will be deemed to warrant in favour the Consortium Investor that the Catch-up Offeree:
 - (A) has full power and authority, and has obtained all necessary consents from third parties (including Government Agencies), to acquire the Shares; and
 - (B) is not Insolvent.

Each party consents for all purposes to a transfer and acquisition of Shares in accordance with clauses 9.20 to 9.22 inclusive.

9.23 Refusal to register new issues

The Company must not register any issue of New Shares in any books or registers maintained by it if this clause 9 has not been observed.

10 Disposal of Shares

10.1 Disposal of Shares

A Shareholder may not Dispose of any Shares, except pursuant to:

- (a) a Disposal of Shares to a Catch-up Offeree under clauses 9.20 to 9.22 (inclusive);
- (b) clause 11 or clause 14;

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- (c) a Consortium Investor Affiliate Transfer, or a Non-Investor Party Disposal of any Shares to a Permitted Holder of the Non-Investor Party in accordance with clause 10.2, at any time;
 - (d) a Custodian Transfer at any time; or
 - (e) pursuant to a transaction which has been approved in advance by a Special Majority Directors' Resolution,

and, in each case, also in accordance with clauses 9.14 and 10.6 (other than in connection with an IPO in accordance with clause 14 or in connection with a Trade Sale if this document will be terminated on or before completion of the Trade Sale).

10.2 Permitted Holders

Subject to compliance with the other expressly applicable provisions of this document, including clauses 9.14, 10.3 and 10.6, a Non-Investor Party may Dispose of any Shares to a Permitted Holder of the Non-Investor Party.

10.3 Ceasing to be a Permitted Holder and re-transfer

If Shares are Disposed of in accordance with, or purportedly in accordance with, clause 10.2 and at any time after that Disposal:

- (a) it becomes known that the transferee was not a Permitted Holder; or
- (b) the transferee ceases to be a Permitted Holder,

of the relevant transferor, that purported Permitted Holder or transferee (as applicable) must, unless otherwise approved by the Board, promptly transfer all Shares which it holds to the original transferor or to a Permitted Holder of the relevant original transferor (and if no such Permitted Holder is willing to accept a transfer of the Shares, then the relevant original transferor must accept a transfer of the Shares in accordance with this document). Nothing in this clause 10.3 limits the operation of clause 19.

10.4 Permitted Security Interests

Neither a Non-Investor Party nor a Consortium Investor may grant a Security Interest over any of their Shares to a person with prior approval by the Board and on such terms as the Board determines.

10.5 Restructuring Event

In connection with a Restructuring Event, each Shareholder must:

- (a) Dispose of any Shares promptly if requested by the Board for the consideration approved by the Board by a Special Majority Directors' Resolution (with the Board acting in good faith in light of the economic impact of the Restructuring Event on the Shares and provided that the consideration payable for Shares Disposed of pursuant to this clause 10.5(a) must be the same for all Shares); and
- (b) agree to such rights and obligations in respect of the Group as are substantially the same in all material respects with the rights and obligations under this document and the Constitution and approved by the Board by a Special Majority Directors' Resolution.

10.6 No more than 50 Shareholders

Despite any other provision of this document, except with the written approval of the Consortium Investors, no party may Dispose of any Shares to a person who

is not a Shareholder (other than in connection with an IPO) if that Disposal would result in there being more than 50 Shareholders (calculated assuming that prior to such Disposal all shares convertible into Shares or another class of shares had been converted into Shares by their holders, provided that this will not prevent a transfer to the Custodian to hold the Share on behalf of a person to whom the shares could have been Disposed of but for this clause 10.6)

10.7 Refusal to register transfer

The Company must not register any transfer of Shares in any books or registers maintained by it unless this clause 10 has been observed.

10.8 Terms of transfer

In respect of the sale of any Shares by a Shareholder pursuant to clauses 11, 12 or 13:

- (a) the Shares must be Disposed of, together with all rights attaching to them and free from all Security Interests; and
- (b) at completion of the sale of the Shares the seller must deliver the certificates (if any) for the Shares or a customary indemnity in respect of any lost or destroyed certificate(s) and duly executed transfers in respect of the Shares.

10.9 Party remains liable

If any Non-Investor Party Disposes of any Shares to a Permitted Holder or any Shareholder purports to Dispose of any Shares other than in compliance with this document, that party remains liable in respect of all covenants, warranties, undertakings and obligations given by it under this document.

11 Pre-emptive rights and other Disposals of Shares

11.1 Right of first refusal

If a Shareholder proposes to Dispose of any Sale Shares held by it, it must first give a Transfer Notice to each Substantial Shareholder.

11.2 Transfer Notice

A Transfer Notice must state:

- (a) the total number of Sale Shares;
- (b) the Sale Price and any other terms of the proposed Disposal;
- (c) the number of Sale Shares which constitutes the Substantial Shareholder's Share Ownership Percentage of those Sale Shares;
- (d) that the Offer Period is 30 days;
- (e) the settlement date for completion of the sale, which (unless otherwise agreed) may not be more than 30 days after the Offer Period expires; and
- (f) if applicable, the name of any proposed Transferee of the Sale Shares who is not an existing Shareholder.

11.3 Notice of acceptance

On or before the end of the Offer Period stated in the Transfer Notice, if a Substantial Shareholder wants to take up all or part of its entitlement to the Sale

Shares, it must give a notice of acceptance to the Seller specifying the number of Sale Shares that the Substantial Shareholder wants to take up.

11.4 Failure to give notice of acceptance

If a Substantial Shareholder fails to give a notice of acceptance prior to the end of the Offer Period stated in the Transfer Notice, it is taken to have waived its right to participate in that purchase of Sale Shares.

11.5 Allocation of Unaccepted Shares

If any Substantial Shareholder does not take up all of its entitlement to Sale Shares offered under clause 11.2, then the Unaccepted Shares must be offered (on the same terms as specified in the relevant Transfer Notice), to each other remaining Substantial Shareholder (being a Substantial Shareholder other than the Transferor or the Substantial Shareholder that has not taken up all of its entitlement to Sale Shares) in the proportions equal to their respective Share Ownership Percentages. The process is to be repeated in respect of any remaining Unaccepted Shares in respect of each Substantial Shareholder, complying again with clause 11.2.

11.6 Transfer to a third party

If:

- (a) the procedures in clauses 11.1 to 11.5 are followed; and
- (b) there are Unaccepted Shares 30 days after the giving of the Transfer Notice,

then no Sale Shares will be transferred under clauses 11.1 to 11.5 and the Seller may, within the following 60 days, transfer all of the Sale Shares to any person, on terms no more favourable to the transferee than those offered in the Transfer Notice.

11.7 Transfer of other Securities

This clause 11 applies equally to a proposed transfer of other Securities (which are not Shares) issued by the Company.

12 Tag along rights

12.1 Tag Along Option

If, having complied with clause 11, one or more Consortium Investor (**Selling Investor**) wish to Dispose of 10% or more, by number of the Shares on issue (calculated on the same basis as Shareholder Ownership Percentage is calculated) to an Unrelated Buyer or Unrelated Buyers (**Tag Buyer**), the Selling Investor must serve a notice (**Invitation to Tag**) on each other Shareholder (**Tag Shareholder**) no fewer than 15 Business Days before entering into a binding agreement to Dispose of those Shares.

12.2 Contents of Invitation to Tag

An Invitation to Tag must state:

- (a) (**Selling Investor**) the identity of the Selling Investor;
- (b) (**Tag Buyer**) the identity of the Tag Buyer;
- (c) (**number**) the number of Shares proposed to be Disposed of by the Selling Investor;

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- (d) **(Tag Proportions)** the percentage of the total number of Shares held by the Selling Investor and proposed to be Disposed of in the Tag Transaction (that percentage in respect of the Shares, a **Tag Proportion**);
- (e) **(sale price)** the proposed consideration for the Shares proposed to be Disposed of by the Selling Investor (which need not be payable all in cash) or the manner in which the sale price is proposed to be calculated or determined and any material terms of the proposed sale known to the Selling Investor at the time of giving the Invitation to Tag;
- (f) **(Tag Option)** that each Tag Shareholder has an option (**Tag Option**) to participate in the Tag Transaction on the basis set out in clause 12.4, in respect of the relevant Tag Proportion of the Tag Shareholder's Shares being Disposed of by the Selling Investor (such proportion of the Tag Shareholder's Shares being the **Tag Shares**) at the same price and otherwise on terms which are no less favourable to the Tag Shareholder (taken as a whole) than the terms on which the Selling Investor is proposing to sell Shares to the Tag Buyer; and
- (g) **(exercise period)** the period during which the Tag Option may be exercised which, unless otherwise agreed in writing between the Selling Investor and the Tag Shareholders, must not be less than 10 Business Days from the date of the Invitation to Tag.

12.3 Exercise of a Tag Option

A Tag Option may be exercised by notice in writing to the Selling Investor with a copy to the Company within the exercise period stated in the Invitation to Tag. Any exercise of the Tag Option:

- (a) must be for all Tag Shares of the relevant Tag Shareholder;
- (b) is irrevocable, unless otherwise agreed in writing between the Selling Investor and the relevant Tag Shareholder;
- (c) must include wire transfer instructions for payment of any cash portion of the purchase price payable to the Tag Shareholder; and
- (d) if required by the Selling Investor, must be accompanied by all documents required to be executed in connection with the Tag Transaction, including the certificate or other documents representing the Tag Shares, together with a power of attorney authorising the Selling Investor or its nominee to act as its attorney to Dispose of the Tag Shares to the Tag Buyer.

If at the end of the exercise period stated in the Invitation to Tag, any Tag Shareholder has not exercised its Tag Option by notice in writing to the Selling Investor, that Tag Shareholder will be deemed to have waived all of its rights under this clause 12 to participate in the relevant Tag Transaction.

12.4 Effect of exercise of Tag Option

- (a) If a Tag Shareholder validly exercises its Tag Option in accordance with clause 12.3 (**Participating Tag Shareholder**):
- (i) the Participating Tag Shareholder must Dispose of its Tag Shares in the Tag Transaction on the terms stated in the Invitation to Tag; and
- (ii) the Selling Investor must not complete the proposed Disposal of its Shares to the Tag Buyer unless the Tag Buyer has offered to

buy the Tag Shares of each Participating Shareholder or clause 12.4(b) applies, provided that if the Tag Buyer is not willing to purchase all of the Tag Shares and the Shares offered for Disposal by the Selling Investor and the Participating Tag Shares, the number of Shares Disposed of by the Selling Investor and the Participating Tag Shareholders must (unless the Selling Investor decides not to proceed with the Tag Transaction) be reduced pro rata between the Selling Investor and the Participating Tag Shareholders based on the number of such Shares the Tag Buyer is willing to purchase and the number of such Shares offered for sale by the Selling Investor and all Participating Tag Shareholders.

- (b) Notwithstanding anything to the contrary in this document, a Selling Investor will not have any obligation to include a Participating Tag Shareholders' Tag Shares in a Tag Transaction, and will be permitted to complete the proposed Disposal of its Shares to the Tag Buyer without the Tag Buyer buying those Tag Shares, if:
 - (i) the Participating Tag Shareholder defaults in its obligations to Dispose of its Tag Shares in the Tag Transaction, including failing to execute any document which the Participating Tag Shareholder is required to execute under clause 12.5; or
 - (ii) the Participating Tag Shareholder breaches its obligations under clause 12.5.

12.5 Conditions to participating in Tag Transaction

Despite anything contained in this clause 12, the rights and obligations of the Participating Tag Shareholders to participate in a Tag Transaction are subject to the following conditions (each of which must be satisfied within the time periods specified by the Selling Investor):

- (a) **(substantially identical agreements)** Participating Tag Shareholders must enter into and execute substantially identical documents as the Selling Investor enters into and executes in connection with the Tag Transaction and any other documents reasonably requested by the Selling Investor;
- (b) **(pro rata expenses)** except as otherwise expressly provided in this Deed, each Participating Tag Shareholder must pay its pro rata share of all expenses properly incurred by the Selling Investor, the Participating Tag Shareholders and the Group Members (based on the amount of Proceeds received by the Selling Investor and each Participating Tag Shareholder or which they are or would have been entitled to receive before any deductions or withholdings in accordance with this Deed or applicable law, as the case may be) in connection with the Tag Transaction (which is consummated or which is not consummated other than due to a decision by the Selling Investor not to proceed as contemplated by clause 12.4(a)(ii)), but only to the extent such expenses are incurred for the benefit of all Participating Tag Shareholders and are not otherwise paid by the Company or another person;
- (c) **(title representations and warranties)** if required by the Selling Investor, each Participating Tag Shareholder must give unqualified representations, warranties and indemnities relating to such Participating Tag Shareholder's title to its Tag Shares and its authority and capacity to execute and deliver the definitive documentation for the Tag Transaction; and

- (d) **(business representations and warranties)** if required by the Selling Investor, each Participating Tag Shareholder must give for the benefit of the Tag Buyer representations, warranties and indemnities that relate to the Company and its operations (and which are the same or substantially the same as those provided by the Selling Investor) provided that liability under such warranties, representations and indemnities is:
- (i) individual and not joint;
 - (ii) allocated pro rata between the Participating Tag Shareholder and any other relevant persons (including the Selling Investor, if applicable), based on the amount of Proceeds received by them (or which they are or would have been entitled to receive before any deductions or withholdings in accordance with this document or applicable law, as the case may be); and
 - (iii) capped at 100% of the Proceeds received by the Participating Tag Shareholder (or which they are or would have been entitled to receive before any deductions or withholdings in accordance with this document or applicable law),

and to the extent that the Selling Investor's legal exposure for those warranties, representations and indemnities is addressed by a warranty and indemnity insurance policy or there is an escrow amount or comparable arrangement in respect of the Selling Investor's liability under such warranties, representations and indemnities, the Selling Investor ensures that the legal exposure of the Participating Tag Shareholders for those warranties, representations and indemnities is also addressed under that insurance policy or by those escrow or other arrangements, as applicable (subject to each Participating Tag Shareholder bearing its pro rata proportion (determined on the same basis as expenses are borne in accordance with clause 12.5(b)) of the aggregate cost of the warranty and indemnity insurance policy or the amount of the escrow or other arrangement, as applicable).

12.6 Co-operation

The Consortium Investors and the Non-Investor Parties must cooperate with the Company, the Selling Investor and each actual or prospective Tag Buyer, and their respective Representatives, to facilitate and give effect to any Tag Transaction, including by facilitating and supporting any due diligence process required and in connection with obtaining all Government Agency and third-party approvals and consents reasonably necessary or desirable to consummate the Tag Transaction.

12.7 No obligation to complete

Notwithstanding anything contained in this clause 12, neither a Selling Investor nor the Company is liable to any Consortium Investor or Non-Investor Party if any Tag Transaction is not consummated for any reason or if the number of Tag Shares Disposed of in a Tag Transaction is scaled back under clause 12.4. Subject to compliance with the express provisions of this clause 12, a Selling Investor may decide to Dispose of any Shares in a Tag Transaction or complete a Tag Transaction in its discretion.

12.8 Return of documents

The Selling Investor will return to each Tag Shareholder all documents in the possession of the Selling Investor executed by the Tag Shareholders in connection with the proposed Tag Transaction if the Selling Investor has not completed the Disposal of its relevant Shares to the Tag Buyer by the earlier of:

- (a) the date on which it reasonably determines that the proposed Tag Transaction will not complete; and
- (b) the date 12 months after delivery of the Invitation to Tag (which date will be extended if any of the transactions contemplated by the Invitation to Tag are subject to regulatory approval until the date 10 Business Days after the earlier of the date on which all such approvals have been received or the requirements to obtain them waived and the date on which any of such regulatory approvals are denied and not able to be appealed to any other forum or waived).

13 Drag rights

13.1 Right to give Drag Notice

If, having complied with clause 11, a Consortium Investor receives a bona fide offer in respect of a Trade Sale or Asset Sale in accordance with clause 14 from an Unrelated Buyer (**Drag Buyer**) and the Consortium Investors, subject to clause 1.5(a)(i), (**Drag Seller**) wish to accept the offer itself or through the Company then the Drag Seller may give a Drag Notice to each other Shareholder (**Dragged Shareholder**) with a copy to the Company.

13.2 Contents of Drag Notice

A Drag Notice must state:

- (a) (**Drag Seller**) the identity of the Drag Seller;
- (b) (**Drag Buyer**) the identity of the Drag Buyer;
- (c) (**completion date**) the Drag Seller's reasonable best estimate of the date for completion of the sale to the Drag Buyer.
- (d) if the offer is in respect of a Trade Sale:
- (i) (**Shares being sold**) the number of Shares proposed to be sold by the Drag Seller, being all of the Drag Seller's Shares;
 - (ii) (**sale price**) the sale price for each Share which must be the same price for the same class of Shares sold by the Drag Seller (**Drag Sale Price**) and any other terms of the proposed sale by the Drag Seller to the Drag Buyer; and
 - (iii) (**sale required**) that each Dragged Shareholder is required to sell all of the Dragged Shareholder's Shares (**Dragged Shares**) to the Drag Buyer at the Drag Sale Price and on the other terms set out in the Drag Notice, which terms must be no less favourable to the Dragged Shareholder than the terms on which the Drag Seller is proposing to sell its Shares to the Drag Buyer; and
- (e) if the offer is in respect of an Asset Sale:
- (i) (**Assets being sold**) the Assets proposed to be sold by the Company;
 - (ii) (**sale price**) the total sale price for all of the Assets proposed to be sold by the Company to the Drag Buyer and any other terms of the proposed sale by the Company to the Drag Buyer; and
 - (iii) (**sale required**) that each Dragged Shareholder is required to procure that any Director appointed by that Dragged

Shareholder is required to approve by Ordinary Directors' resolution the Asset Sale to the Drag Buyer on the terms and conditions of the Drag Notice.

13.3 Effect of Drag Notice

If a Drag Notice is given then:

- (a) each Dragged Shareholder must:
 - (i) in respect of a Trade Sale, sell its Dragged Shares to the Drag Buyer on the terms stated in the Drag Notice; or
 - (ii) in respect of an Asset Sale, procure that any Director appointed by that Dragged Shareholder approve by Directors' Resolution the Asset Sale; and
- (b) in respect of a Trade Sale, the Drag Seller must not complete the proposed sale to the Drag Buyer unless, at the same time, the Drag Buyer buys all the Dragged Shares of each Dragged Shareholder at the Drag Sale Price and on the other terms stated in the Drag Notice.

13.4 Conditions to participating in Drag Transaction

Notwithstanding anything contained in this clause 13:

- (a) **(execute documents)** Dragged Shareholders must enter into and execute substantially identical documents as the Drag Seller enters into and executes in connection with the Drag Transaction and any other documents reasonably requested by the Drag Seller in connection with completion of the Drag Transaction;
- (b) **(title representations and warranties)** if required by the Drag Seller, each Dragged Shareholder must give unqualified representations, warranties and indemnities relating to such Dragged Shareholder's title to its Dragged Securities and its authority and capacity to execute and deliver the definitive documentation for the Drag Transaction;
- (c) **(business representations and warranties)** if required by the Drag Seller, each Dragged Shareholder must give for the benefit of the Drag Buyer representations, warranties and indemnities that relate to the Group and its operations (and which are the same or substantially the same as those provided by the Drag Seller), provided that liability under such warranties, representations and indemnities:
 - (i) for the Drag Seller and each Dragged Shareholder, is individual and not joint;
 - (ii) is allocated pro rata between the Drag Seller and all Dragged Shareholders (based on the amount of Proceeds received (or which they are or would have been entitled to receive before any deductions or withholdings in accordance with this document or applicable law), as the case may be, by the Drag Seller and all Dragged Shareholders);
 - (iii) for each Dragged Shareholder, is not in excess of:
 - (A) the Proceeds received (or which they are or would have been entitled to receive before any deductions or withholdings in accordance with this document or applicable law) by that Dragged Shareholder, with respect to representations, warranties and indemnities

relating to formation, authorisation, title, capitalisation, and Tax matters; or

- (B) such lesser amount that is reasonable and customary with respect to representations, warranties and indemnities relating to other matters,

and to the extent that the Drag Seller's legal exposure for those warranties, representations and indemnities is addressed by a warranty and indemnity insurance policy or an escrow amount or comparable arrangement in respect of the Drag Seller's liability under such warranties, representations and indemnities, the Drag Seller ensures that the legal exposure of the Dragged Shareholders for those warranties, representations and indemnities is also addressed under that insurance policy or by those escrow or other arrangements, as applicable (subject to each Dragged Shareholder bearing its pro rata proportion (determined on the same basis as expenses are borne in accordance with clause 13.4(c)(ii)) of the aggregate cost of the warranty and indemnity insurance policy or the amount of the escrow or other arrangement, as applicable).

13.5 Withdrawal of Drag Notice

A Drag Notice may be revoked by the Drag Seller at any time by written notice to the Company. The Company must notify each Shareholder promptly if any Drag Notice is revoked.

13.6 Dragged Shareholders liability

In respect of a Trade Sale, Dragged Shareholders can be required to give to the Drag Buyer several representations, warranties and/or several indemnities relating to the Company and its Business substantially equivalent to those given by the Drag Seller, provided that any liability for any such representations, warranties or indemnities given to the Drag Buyer in any documentation to effect the sale is allocated between the Drag Seller and the Dragged Shareholders severally and in proportion to and capped at the amount of consideration payable for the relevant Shares sold to the Drag Buyer.

13.7 Dragged Shareholders must co-operate

Each Dragged Shareholder must co-operate in any way that the Drag Seller or the Company (as applicable) may reasonably request in order to permit the sale, on the terms set out in the Drag Notice, of Dragged Shares from each Dragged Shareholder to the Unrelated Buyer or the Assets from the Company to the Unrelated Buyer, including providing due diligence. The Drag Seller or the Company (as applicable) must consult with each Dragged Shareholder in relation to the sale to the extent reasonably practical.

13.8 No obligation to complete

Notwithstanding anything contained in this clause 13, neither a Drag Seller nor the Company is liable to any Dragged Shareholder if any Drag Transaction is not consummated for any reason.

14 Exit

14.1 Exit timing

The Consortium Investors, subject to clause 1.5(a)(i), (**Exit Instigator**) may require that the Company implement an Exit at an Exit Valuation (which, in the case of an Exit Valuation that is less than the Entry Valuation, must be approved by a Special Majority Directors' Resolution) at any time or to commence preparations for an Exit.

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14.2 Assistance for Exit

Without limiting any specific obligation which a party may have under this document in connection with an Exit, if an Exit Instigator issues an Exit Notice:

- (a) each party must (and the Company must ensure that the other Group Members), use their best endeavours to ensure that the Exit occurs in accordance with the Exit Notice and the Exit Instigator's other requirements;
- (b) each Shareholder must exercise all rights it has in relation to the Company and any Shares to ensure that an Exit is achieved in accordance with the Exit Notice and the Exit Instigator's other requirements and no party will raise any objection to the Exit or the process by which the Exit is implemented in accordance with the Exit Notice;
- (c) each party must and must Procure that each Director appointed by it (if applicable), approve all matters appropriate to ensure that the Exit occurs in accordance with the Exit Notice and the Exit Instigator's requirements with respect to the process by which the Exit is implemented and must not withhold, deny or delay any consent or approval right it has in connection with an Exit;
- (d) each party must (and the Company must ensure that the other Group Members) do all things, execute all documents and provide all such information and assistance as may be required by the Company or the Exit Instigator (including the preparation of any necessary material for, and the giving of presentations to, Third Parties and potential financiers and undertaking any action described in clause 14.3 if the Exit is not an IPO but the Board determines that the action is necessary or desirable in connection with the Exit) to facilitate the Exit; and
- (e) the Company must appoint any Financial Adviser requested in writing by the Exit Instigator, or the Exit Instigator may appoint any Financial Adviser on behalf of the Company, in each case, to advise on, and assist with, the Exit.

14.3 Preparation for an IPO

If the Exit Instigator proposes that an IPO is implemented and the Board resolves to undertake an IPO or to take any other action which would facilitate an IPO (including re-organising the outstanding Shares of any Group Member or amalgamating or reconstructing any or all of the Group Members), to the extent permitted by law:

- (a) each party must (and the Company must ensure that the other Group Members and each Shareholder must Procure that each director of a Group Member) co-operate and use its best endeavours to do all acts, matters and things within its power to effect the IPO, including:
 - (i) **(application for admission)** applying to the ASX (or other recognised stock exchange) for admission of the Company or IPO Vehicle, as applicable, to the official list of the ASX (or other recognised stock exchange) and official quotation of the relevant shares on the ASX (or other recognised stock exchange);
 - (ii) **(resolutions)** procuring the unanimous passing of any resolutions of any Group Member in general meeting (including any class meeting) or by its directors subject to their fiduciary obligations (acting reasonably) to effect any transactions, steps or other matters;

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- (iii) **(exchange of Shares)** exchanging its Shares for shares in the relevant IPO Vehicle or any other company which is proposed by the Board to become (and following such exchange will become) the ultimate holding company of the Group;
- (iv) **(advisers)** appointing appropriately qualified professional advisers;
- (v) **(redemptions, buy backs, purchases and cancellations)** allowing the redemption, buy back, purchase or cancellation (as applicable) by the Company of all or some of its Shares, including doing all things reasonably required by the Board to give effect to the redemption, buy back, purchase or cancellation (as applicable) and all things required under the Corporations Act to approve or otherwise give effect to the redemption, buy back, purchase or cancellation (as applicable), provided that the price per Share (net of costs, if applicable) on any such redemption, buy back, purchase or cancellation (as applicable) is the same for all Shares of the same class issued on the same terms;
- (vi) **(Disposals of Shares)** Disposing of some or all of its Shares (to a newly incorporated sale vehicle or otherwise) and surrendering the certificates (if any) for its Shares as permitted or required by the Board, provided that the price per Share (net of costs, if applicable) on such Disposal is the same for all Shares of the same class issued on the same terms (which price may comprise or include Securities in the Company and/or the IPO Vehicle);
- (vii) **(prospectus assistance)** assisting in preparing a prospectus or other IPO disclosure document;
- (viii) **(appointing board)** appointing an appropriate board of directors to the Company or IPO Vehicle having regard to any advice from the Financial Adviser, including an appropriate number of independent non-executive directors for the Company's or the IPO Vehicle's listed state;
- (ix) **(obtaining approvals)** obtaining any necessary ASX (or other recognised stock exchange) or other regulatory approvals;
- (x) **(underwriting)** Procuring that the Company or IPO Vehicle enters into an underwriting or offer management agreement or similar agreement consistent with market practice;
- (xi) **(financial assistance)** approving any financial assistance arising from any reorganisation or any other steps taken by any Group Member in connection with the IPO;
- (xii) **(financial reporting requirements)** meeting the financial reporting requirements of the relevant stock exchange or trading system (including as to trading history, extracts from audited accounts of prior years, cash flow and profit forecasts, working capital report and indebtedness statement);
- (xiii) **(marketing assistance)** providing assistance for marketing activities, including road shows; and

- (xiv) (**constitutional amendments**) agreeing to amendments to the Constitution and/or the constitutional documents of any other Group Member;
- (b) this document must be either terminated or amended in order to comply with applicable laws and stock exchange rules in connection with the IPO;
- (c) each Consortium Investor and Non-Investor Party must Procure that the management of the Group, to the extent requested by the Board, applies adequate time, resources and commitment to the IPO process to enable it to be successfully completed, including for the purposes of:
 - (i) (**due diligence**) due diligence and membership of the due diligence committee;
 - (ii) (**due diligence committee meetings**) attendance at meetings of the due diligence committee;
 - (iii) (**due diligence committee sign off**) sign off to the due diligence committee in connection with the preparation and verification of the IPO disclosure document;
 - (iv) (**road shows**) attending management presentations and investor road shows; and
 - (v) (**listing conditions**) satisfying all terms and conditions of admission to listing imposed by the relevant stock exchange;
- (d) each Consortium Investor and Non-Investor Party must Procure that the directors appointed to the board of the Company or IPO Vehicle use their best endeavours to approve an earnings forecast for up to an 24 month period (as recommended by the appointed lead manager or underwriter), commencing on or shortly after the date of the IPO for inclusion in the IPO disclosure document; and
- (e) the parties must, and the Company must ensure that the other Group Members, take such actions as are appropriate to ensure that the capital structure, debt financing and leverage of the Group is appropriate for a public company listed on a stock exchange, including negotiating and entering into, new debt finance facilities, if appropriate.

Before requiring a party to take any action under this clause 14.3 which could reasonably be expected to lead to a Tax liability for Shareholders, the Board will, so far as practicable, have regard to those expected Tax liabilities, including any differential impact on different groups of Shareholders, and take appropriate Tax advice.

14.4 Participation in IPO

Subject to clauses 14.5 and 14.6, any Shareholder may participate as a selling shareholder in any IPO and the Company must (or must ensure that each relevant offering entity will), allow the Shareholder to Dispose of its Securities in the IPO Vehicle, as applicable, in the IPO.

14.5 Sell-down restrictions

Each Non-Investor Party agrees to such restrictions on the number of Securities in the Company or IPO Vehicle, as applicable, it is permitted to realise for cash as part of an IPO as the Company (with approval by the Board) may reasonably require, having regard to the advice of the Financial Adviser on what is reasonably required or desirable for a successful IPO provided that, subject to

clause 14.6, each Non-Investor Party will be entitled to realise for cash the same proportion of their Shares as the proportion of the Consortium Investors' Shares which the Consortium Investors realise for cash in the IPO.

14.6 Escrow

- (a) Each Shareholder agrees to such escrow arrangements for its Securities in the Company or IPO Vehicle, as applicable, on completion of the IPO as the Company (with the approval of an Ordinary Directors' Resolution) may reasonably require, having regard to the advice of the Financial Adviser on what is reasonably required or desirable for a successful IPO. To avoid doubt, nothing in this clause 14.6(a) requires a Director appointed by a Shareholder to vote in favour of any particular proposed escrow arrangement.
- (b) Each Non-Investor Party acknowledges and agrees that the legal holder of Securities in the Company or the IPO Vehicle, as applicable, and any ultimate controller of that legal holder will be required to enter into an escrow agreement in accordance with clauses 14.5 and 14.6.

14.7 Asset disposals

- (a) If an Exit is implemented by way of Asset Sale then, if required by the Exit Instigator, the Shareholders must do all things and execute all documents necessary to Procure that:
 - (i) the Company distributes the Proceeds of the Asset Sale to the Shareholders in accordance with their entitlements under this document, the Constitution and the terms of the Shares (net of any Tax or other costs and expenses to be paid on behalf of the Group Members or the Shareholders and net of all amounts which the Board determines should be retained by the Company or any third party escrow agent on account of any future contingent payments, including in support of any indemnity or post-completion adjustment (**Retained Amounts**)) as soon as reasonably practicable after completion of the Asset Sale;
 - (ii) as soon as reasonably practicable (which may be at multiple times), the Company distributes so much of the Retained Amounts as are no longer required to be retained on account of any future contingent payments (net of any Tax or other costs and expenses to be paid on behalf of the Shareholders); and
 - (iii) if required by the Exit Instigator, the Company is wound up.
- (b) If there is an Asset Sale and it is required as part of a transfer of assets, each Non-Investor Party irrevocably consents to the novation or assignment, as applicable, to the Purchaser Vehicle or its Affiliate of each existing employment, service and other comparable arrangement to which the Non-Investor Party is a party, in each case without substantive amendment.
- (c) Each Non-Investor Party will enter into all documents required to give effect to this clause 14.7.

14.8 Exit and drag rights

- (a) If an Exit is to be by way of a Trade Sale and clause 13.1 applies, a Drag Notice may be given to effect a Trade Sale, in which case clause 13 applies with any required modifications to reflect the Exit process and subject to the express obligations of the Non-Investor Parties in this clause 14 prevailing to the extent of any inconsistency with clause 13.

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- (b) Clause 13 does not apply to an IPO.

14.9 Exit and consent rights

- (a) Without limiting any other provision of this document, no party may use, and must procure that each director of a Group Member appointed or nominated by it does not use, any consent or approval rights that the party has under this document or by virtue of holding Shares or being a director of a Group Member to prevent, hinder or delay the performance by any party of any of its obligations, or exercise of any of its rights, under any of clauses 9.20, 12, 13, 14 or 19.
- (b) If a party or director referred to in clause 14.9(a) fails to give a consent or approval referred to in that clause within 3 Business Days of a written request to do so by any Director or the Consortium Investors and the failure to give that consent or approval would be reasonably likely to prevent, hinder or delay the performance by any party of any of its obligations, or exercise of any of its rights, under any of clauses 9.20, 12, 13, 14 or 19:
- (i) if the consent or approval is the consent or approval of a party under this document or in its capacity as a Shareholder, the consent or approval will be deemed to have been given at 5.00pm on the 4th Business Day following the request being made; or
- (ii) if the consent or approval is the consent or approval of a director of a Group Member appointed or nominated by the party, the party must immediately remove, or Procure that the relevant Group Member removes, the relevant director and replaces him or her with a person willing and able to give the relevant consent or approval.

14.10 Bare Trust termination

The Board may, at any time prior to an Exit, give notice to an Appointing Beneficiary requiring its Bare Trust to be revoked (**Trust Termination Notice**). On receipt of a Trust Termination Notice, the Appointing Beneficiary must direct the Custodian to transfer the legal title to all of the Appointing Beneficiary's Beneficial Securities to the Appointing Beneficiary or to another transferee nominated by the Board who is appropriate in consideration of the nature of the Exit. The Appointing Beneficiary must procure (to the extent they are able to do so) compliance with the Trust Termination Notice on a date on or prior to consummation of the Exit specified by the Board in the Trust Termination Notice.

14.11 Shares in connection with an IPO

If there is an intervening period between the time at which Shareholders exchange their Shares for Securities in an IPO Vehicle and settlement under the IPO, and in that intervening period no substitute document for this document is separately agreed for the IPO Vehicle, the Securities in the IPO Vehicle will be taken to be Shares for the purposes of this document.

14.12 Transfer of other Securities

This clause 14 applies equally to Securities (which are not Shares) issued by the Company.

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15 Fair Market Value of Sale Shares

15.1 Appointment of valuer

If this document requires the valuation of the Fair Market Value of a Sale Share and, if applicable, any debt owed by a Group Member under clause 19.2 (**Relevant Valuation**), unless the Shareholders have agreed on the Relevant Valuation:

- (a) any of them may refer the Relevant Valuation to an Independent Expert with a request that the Independent Expert make a decision on the valuation within 30 days;
- (b) subject to clause 15.2, the Independent Expert will determine the procedures for the Relevant Valuation;
- (c) the Independent Expert is appointed as an expert and not as an arbitrator; and
- (d) the Independent Expert is to be instructed to determine a specific value rather than a range of values.

15.2 Process for valuation

In determining the Relevant Valuation the Independent Expert is to be instructed to conduct the valuation:

- (a) in accordance with valuation standards, practices and principles generally accepted in Australia;
- (b) with regard to the profit, cash flows, balance sheet and undertaking of the Group and the Business;
- (c) on the basis of an arm's length transaction between an informed and willing seller and an informed and willing buyer under no compulsion to sell or buy, respectively, and without taking into account any restriction on the transfer of the Shares or Assets (as applicable) under this document;
- (d) if the Shareholder whose stake is being valued is an Existing Shareholder, having regard to the fact that the Shareholder will cease to be a member of the Company;
- (e) on the basis that the value of the Shares is not to be discounted or enhanced by reference to the number of Shares and whether they represent a minority or majority stake in the Company;
- (f) assuming that a reasonable time is available in which to obtain a sale of the Shares in the open market; and
- (g) subject to the above, on any basis that it considers appropriate.

For clarity, a Shareholder (including a Shareholder whose stake is being valued) may make submissions to the Independent Expert at any time during the valuation process.

15.3 Valuation binding

The valuation conducted by the Independent Expert is conclusive and binding on the Shareholders in the absence of manifest error.

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15.4 Costs of Independent Expert

- (a) The parties agree that, subject to paragraph (b), the costs of the Independent Expert in connection with the valuation are to be borne by the Company to the extent permitted by the Corporations Act or, to the extent not so permitted, by the Shareholders in the proportions equal to their respective Share Ownership Percentages.
- (b) If the valuation determined by the Independent Expert is more than 10% lower than the Relevant Valuation, the costs of the Independent Expert in connection with the valuation are to be borne by the Shareholder or Shareholders who referred the Relevant Valuation to the Independent Expert pursuant to clause 15.1(a) (if more than one Shareholder referred the Relevant Valuation to the Independent Expert, the costs of the Independent Expert are to be borne by those Shareholders in equal proportions).

15.5 Valuation of other Securities

This clause 15 applies equally to a proposed valuation of other Securities (which are not Shares) issued by the Company.

16 Completion of Share or other Securities transfers

16.1 Application of this clause

This clause 16 applies in relation to any Disposal of Shares or other Securities to a Shareholder under a Transfer Provision other than a transfer pursuant to clause 10.2.

16.2 Binding agreement

Where this clause 16 applies in respect of Shares or other Securities, at the Relevant Time an unconditional, irrevocable, valid and binding agreement for the sale and purchase of those Shares or other Securities (as applicable) and a binding agreement to transfer, free of any Security Interest, the legal and beneficial ownership of the Shares or other Securities (as applicable) arise between the Transferor and the Transferee, subject only to the satisfaction of any conditions (including any relevant conditions necessary for compliance with applicable requirements of Australia's foreign investment laws or policy) relating to the relevant offer or transfer of the Shares or other Securities (as applicable).

16.3 Relevant Time

The "Relevant Time" for the purposes of clause 16.2 is the date on which an Offer is accepted by:

- (a) accepting a pre-emptive rights offer under clause 11.3;
- (b) exercising a Tag Option under clause ;12.3
- (c) giving a Drag Notice under clause 13.1; and
- (d) an Unrelated Shareholder accepting an offer under clause 19.2(e).

16.4 Consent to transfer

Each party consents to the completion of each Disposal of Shares or other Securities (as applicable) to which this clause 16 applies, in the manner contemplated by this clause.

16.5 Procedure for completion

At the time of completion of a Disposal of Shares or other Securities (as applicable) to which this clause 16 applies:

- (a) the Transferor must give to the Transferee:
 - (i) a transfer in favour of the Transferee of all Shares or other Securities (as applicable) sold, executed by the Transferor or an attorney appointed under clause 17;
 - (ii) certificates for those Shares or other Securities (as applicable) or a statutory declaration in the case of a lost certificate; and
- (b) the Transferee must pay in cleared funds or give to the Transferor a bank cheque for the sale price for those Shares or other Securities (as applicable).

16.6 Company agent to receive sale price

- (a) In consideration of each other Shareholder entering into this document, each Shareholder irrevocably appoints the Company to be its agent to receive the sale price from the Transferee under clause 16.5(b).
- (b) When the Company receives the sale price it must account to the Transferor for the sale price. The Company must enter the name of the Transferee in the register of Shareholders only after it receives the sale price from the Transferee. The validity of the proceedings may not then be challenged by any person.

16.7 Registration of transfer

The Company must register each transfer of Shares or other Securities (as applicable) to which this clause 16 applies.

17 Power of attorney

17.1 Appointment for Non-Investor Party

Each of the Non-Investor Parties appoints the Company and each WH Director from time to time, with power to act individually or jointly, as its attorney to:

- (a) take any action on behalf of the Non-Investor Party to remedy a breach of any of clauses 10, 11, 13, 14, 19 or 25.1 by the Non-Investor Party which has not been remedied by the Non-Investor Party within 2 Business Days of written notice from the Company or, if the breach arises in connection with a Drag Transaction or an Exit, a Consortium Investor (or any longer period specified in this document for remedy of the breach) or which is not capable of remedy, including, but only to the extent reasonably required to remedy such a breach:
 - (i) complete and execute (under hand or under seal) such documents for and on its behalf as are necessary or otherwise appropriate to cure the relevant breach by the Non-Investor Party including as is necessary or otherwise appropriate to give effect to any transactions in accordance with this document (including clauses 10, 11, 13, 14, 19 or 25.1) if the Non-Investor Party has failed to take the relevant actions required in accordance with this document (including any consideration election required);

- (ii) call for, agree to short notice being provided in respect of, speak at and attend general meetings of, the Company (including any class meeting);
- (iii) if the Non-Investor Party is a Shareholder, vote or grant a proxy in favour of any person to vote (or appoint an authorised representative to vote) on behalf of the Non-Investor Party (to the exclusion of the Non-Investor Party) at any meeting or class meeting of holders of Shares (or any class of them);
- (iv) instruct and direct the Custodian or any Permitted Holder that is a trustee holding Shares on trust for the Non-Investor Party, to take all actions appropriate to implement any transaction or carry out any other matter, under or contemplated by any this document, including to instruct such person to execute, under hand or under seal and deliver (conditionally or unconditionally) any appropriate documents and to Dispose of any Shares; and
- (v) execute circulating shareholder resolutions on behalf of the Non-Investor Party,

in each case, on the Non-Investor Party's behalf;

- (b) take all actions appropriate to negotiate any offer or contract in respect of any Disposal of any Shares held by the Non-Investor Party that is, or will on implementation be, in accordance with this document, and all actions necessary or appropriate to initiate, facilitate and negotiate any Drag Transaction and/or Exit, but (in either case) not the power to enter into any agreement providing for, or execute any document completing, such a Disposal of the Non-Investor Party's Shares unless clause 17.1(a) applies; and
- (c) take any action necessary or appropriate to implement a Custodian Transfer, including executing transfer forms and a deed of adherence to the Custodian Deed on behalf of the Non-Investor Party.

17.2 Validity

Each Non-Investor Party:

- (a) declares that all acts and things done by an attorney appointed under clause 17.1 in exercising powers under the power of attorney in clause 17.1 will be as good and valid as if they had been done by that Non-Investor Party and ratifies and confirms whatever the attorney lawfully does, or causes to be done, under the appointment in clause 17.1;
- (b) agrees that it will not, for so long as the power of attorney in this clause 17 is in effect:
 - (i) grant any power of attorney or other instrument conferring on persons other than the attorneys appointed under clause 17.1 rights which contradict or are otherwise inconsistent with some or all of the rights granted under the power of attorney in this clause 17; or
 - (ii) personally take any action which would result in the suspension of the power of attorney in this clause 17 or otherwise contradict or be inconsistent with the power of attorney in this clause 17, including attending any meeting and voting at that meeting if an attorney appointed under clause 17.1 is present and intends to vote at the meeting pursuant to a lawful exercise of the attorney's powers; and

- (c) without prejudice to the other provisions of this clause 17, must deliver to the Company and to each WH Director on demand any power of attorney, instrument of transfer or other document which the Company or a WH Director requires for the purposes of any transaction or action contemplated by clause 17.1.

17.3 Waiver and release

Each party:

- (a) releases and discharges each attorney appointed under clause 17.1 from any and all claims and Liabilities, in law or equity, that it ever had, now has, would but for this clause have had or may have in the future (whether known at the date of this document or not) in respect of, or in any way in connection with, the exercise by the attorney of its powers under this clause 17;
- (b) agrees that this clause 17.3 may be pleaded as a complete bar to any claim or action brought by it against an attorney appointed under clause 17.1 in respect of, or in any way in connection with, the exercise by the attorney of its powers under this clause 17; and
- (c) covenants never to sue or assert any claim or cause of action against any attorney appointed under clause 17.1 with respect to, or in any way in connection with, the exercise by the attorney of its powers under this clause 17.

17.4 Application of Non-Investor Party's moneys

If a Non-Investor Party defaults in completing the Disposal of any Shares pursuant to any provision of this document:

- (a) subject to clause 17.4(b), the Company (or an independent person nominated by the Company) may hold any proceeds which are payable to the defaulting Non-Investor Party for the benefit of the Non-Investor Party (and any interest earned on such proceeds belongs to the Company unless the Company otherwise agrees);
- (b) the Company may deduct any costs of performing its rights and obligations under this clause 17.4 (including legal fees and disbursements on a full indemnity basis), which are incurred by or on behalf of the Company or the Directors from the defaulting Non-Investor Party's proceeds;
- (c) subject to clause 17.4(b), receipt by the Company of the defaulting Non-Investor Party's proceeds will be good discharge of the relevant buyer's obligation to the defaulting Non-Investor Party and the buyer will not be bound to see to the application of any such proceeds; and
- (d) subject to clause 17.4(b), the Company must pay the defaulting Non-Investor Party's proceeds to the defaulting Non-Investor Party as soon as practicable after the defaulting Non-Investor Party has observed the applicable requirements for the Disposal.

17.5 Irrevocable

Each Non-Investor Party declares that the power of attorney in clause 17.1 is given for valuable consideration (including the mutual promises in this document) and is irrevocable while the relevant Non-Investor Party holds any Shares. For the avoidance of doubt, each Non-Investor Party agrees that if some or all of the Non-Investor Party's Shares are Disposed of in accordance with this document (or a Non-Investor Party directs the Custodian to do so), the appointment by the

Non-Investor Party of the attorneys remains effective in respect of the Non-Investor Party and the remaining Shares held by the Non-Investor Party.

17.6 Conflict of interest

Each attorney may exercise a power under the power of attorney in this clause 17 even if:

- (a) it involves a conflict of duty; or
- (b) any attorney, appointee of the attorney as a director of any Group Member, any Group Member, party and/or Representative of a party has a personal interest in the doing of that act.

17.7 Benefits

Each attorney is expressly authorised to do any act as a result of which a benefit is conferred on it, any appointee of the attorney, a director of a Group Member, any Group Member, any party and/or Representative of a party.

17.8 Survival

Clauses 17.2, 17.3, 17.4, 17.6 and 17.7 survive termination of this document (for all parties or for any specific party) indefinitely.

18 Foreign Acquisitions and Takeovers Act and other regulatory requirements

18.1 Condition

Any rights or obligations of a Shareholder to subscribe for or acquire Shares under a Transfer Provision are subject to any consents or approvals which must be obtained by the Shareholder or an acquirer under the provisions of FATA, the Australian Government's foreign investment policy and any other regulatory requirements.

18.2 Timing

If any subscription or acquisition contemplated by a Transfer Provision requires a Shareholder or an acquirer to obtain a consent or approval under FATA, the Australian Government's foreign investment policy or any other regulatory requirements, the time period for completion of the relevant subscription or acquisition must be postponed to the extent necessary (as determined by the Company (with Board approval)) to obtain the required consents or approvals under FATA, the Australian Government's foreign investment policy and any other regulatory requirements, subject to a maximum postponement of 6 months (unless otherwise agreed).

18.3 General

Any Shareholder requiring a consent or approval under this clause 18 must:

- (a) use its reasonable endeavours to obtain such consent or approval as soon as reasonably practicable; and
- (b) keep the Company and the relevant Shareholders fully informed in relation to the consent or approval process.

19 Shareholder default

19.1 Defaulting Shareholder

A Shareholder becomes a Defaulting Shareholder if:

- (a) **(insolvency)** it or any of its Related Bodies Corporate becomes Insolvent; or
- (b) **(breach)** the Shareholder commits a breach of any of its obligations under clause 10 of this document:
- (i) in respect of a breach that is capable of remedy, which remains unremedied for 30 days after notice of the breach has been given by the Company or another Shareholder to the Defaulting Shareholder; or
 - (ii) in respect of a breach that cannot be remedied, for which the Shareholder has not adequately compensated the Company or the other Shareholder within 30 days after notice of the breach has been given by the Company or another Shareholder to the Defaulting Shareholder;
- (c) **(change of control)** a Change of Control occurs with respect to it which has the effect of circumventing the intent of clause 11,

unless otherwise agreed by Special Majority Directors' Resolution.

19.2 Defaulting Shareholder Transfer Notice

A Defaulting Shareholder is taken to have given a Transfer Notice to the Substantial Shareholders who are not Related Bodies Corporate of the Defaulting Shareholder (**Unrelated Substantial Shareholders**) on the date it becomes a Defaulting Shareholder on the following terms:

- (a) the number of Sale Shares is all of the Defaulting Shareholder's Shares;
- (b) the transfer includes debt (if any) owed by any Group Member to the Defaulting Shareholder;
- (c) the Sale Price is 80% of the sum of the Fair Market Value of the Sale Shares and any debt owed by any Group Member to the Defaulting Shareholder (other than in the case of a Shareholder becoming a Defaulting Shareholder pursuant to clause 19.1(c), in which case the Sale Price is 100% of the sum of the Fair Market Value of the Sale Shares and any debt owed by any Group Member to the Defaulting Shareholder);
- (d) the Offer Period is 90 days from the date of becoming a Defaulting Shareholder (or, if the Fair Market Value of the Sale Shares and any applicable debt must be determined under clause 15, 60 days after it is so determined, if later);
- (e) the Unrelated Substantial Shareholders may exercise the option to take up the Sale Shares and any applicable debt (in the Substantial Shareholders' respective Share Ownership Percentage) by giving notice to the Defaulting Shareholder; and
- (f) the settlement date for completion of the sale is 10 days after the last day of the Offer Period at which time all accepted Sale Shares will be sold.

19.3 Allocation of Unaccepted Shares

If any Substantial Shareholder does not take up all of its entitlement to Sale Shares offered under clause 19.2, then the Unaccepted Shares must be offered (on the same terms as specified in the relevant Transfer Notice), to each other remaining Substantial Shareholder (being a Substantial Shareholder other than

the Transferor or the Substantial Shareholder that has not taken up all of its entitlement to Sale Shares) in the proportions equal to their respective Share Ownership Percentages. The process is to be repeated in respect of any remaining Unaccepted Shares with each respect to each Substantial Shareholder, complying again with clause 19.2.

19.4 Sale of remaining Unaccepted Shares to third parties

If the Unrelated Substantial Shareholders do not take up all of the Unaccepted Shares, the Defaulting Shareholder may, during the period of 30 days following completion of the Sale Shares under this clause 19, sell the remaining Unaccepted Shares to any third parties the Directors determine, on terms no more favourable than those offered in the Transfer Notice. If a third party buyer is not found, the Board must consider and, subject to the Corporations Act, determine how the remaining Unaccepted Shares will be dealt with (for example, without limitation by means of cancellation, buy-back or selective reduction of capital) and the Defaulting Shareholder must co-operate in implementing that decision.

19.5 Suspension of rights

If a Defaulting Shareholder is taken to have given a Transfer Notice under clause 19.2, then from the date of the Transfer Notice:

- (a) all rights attaching to Shares held by the Defaulting Shareholder (other than rights to dividends and information pursuant to this document including rights to notices of meeting) are suspended, including rights to voting and to be counted in quorums;
- (b) any Director appointed by the Defaulting Shareholder is taken to have been removed by the Defaulting Shareholder and any Director appointment rights of the Defaulting Shareholder suspended.

Each of the suspensions referred to above, continues in respect of any Shares held by the Defaulting Shareholder until such time as the event causing a Shareholder to become a Defaulting Shareholder is remedied or (if later) such time as the Shares are cancelled or sold to another Shareholder or other person with the prior written approval of the Unrelated Substantial Shareholders.

20 Deadlock resolution

20.1 Director discussion

If a Deadlocked Matter arises, 2 Consortium Investor Directors, the Non-Investor Party Director and the CBL Director (if any) will meet within 10 Business Days of the Deadlocked Matter arising and in good faith attempt to reach agreement on the resolution of Deadlocked Matter and if those Directors do so:

- (a) approval of those four Directors will satisfy the requirements of this Deed to obtain approval of a Special Majority Directors' Resolution and, if applicable, approval of a Shareholders' Special Resolution, in relation to the Deadlocked Matter; and
- (b) to the maximum extent permitted by law, no further approval of the Board or any Shareholders will be required to implement the Deadlocked Matter.

20.2 Reconsideration

If the discussions referred to in clause 20.1 do not result in a resolution of the Deadlocked Matter within 30 Business Days (or any other period agreed between the 2 Consortium Investor Directors, the Non-Investor Party Director and the CBL Director (if any) who have discussed the matter in accordance with that clause),

then the Deadlocked Matter may be put again before the Board or Shareholders for consideration in accordance with clause 5.1(b) or clause 5.1(c), as applicable, no earlier than 40 Business Days after the date the Deadlocked Matter was first put before the relevant body.

20.3 Appointment of Independent Expert

- (a) If a Deadlocked Matter remains unresolved following reconsideration in accordance with clause 20.2, then any Director may require that the Company appoints an Independent Expert to consider:
- (i) the Deadlocked Matter and the views of the Consortium Investor Directors, the Non-Investor Party Director and the CBL Director (if any) regarding their respective proposals regarding the Deadlocked Matter; and
 - (ii) any other factors the Independent Expert determines to be relevant,

and then make a written recommendation to the Board, the Consortium Investor directors and the Non-Investor Parties in relation to the Independent Expert's determination of the preferred manner in which the Group should seek to resolve the Deadlocked Matter.

- (b) The Company must request that any Independent Expert appointed in accordance with clause 20.3 makes a recommendation with respect to the Deadlocked Matter in accordance with the following provisions:
- (i) the Independent Expert is to:
 - (A) make its recommendation within 20 Business Days after the Deadlocked Matter is referred to the Independent Expert; and
 - (B) provide a report of its recommendation to the Company;
 - (ii) the Independent Expert's recommendation is to be based on the most appropriate means of resolving the Deadlocked Matter with reference to the Group's Liabilities, financial performance and prospects and the operations of the Business provided that the Independent Expert must not make any recommendation which is inconsistent with, or requires a party to waive any of its express rights under, this document or any document referenced in this document or entered into in connection with the issue or acquisition of any Shares;
 - (iii) the Company, Directors and Shareholders must provide the Independent Expert with any information and assistance reasonably required by the Independent Expert to make its recommendation;
 - (iv) all correspondence between a party and the Independent Expert must be in writing and copied to the Company, the Consortium Investors and any nominated representatives of the Non Investor Parties;
 - (v) the Independent Expert acts as an independent expert and not as an arbitrator; and
 - (vi) the recommendation of the Independent Expert is advisory only and will not bind any party.

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- (c) The costs of the Independent Expert must be paid by the Company.

21 Acknowledgment

Each party acknowledges and agrees that, except as expressly provided in clause 23 and subject always to compliance by any person who is an officer of a Group Member with their duties as an officer of the relevant Group Member or Group Members, nothing in this document prevents a Consortium Investor from engaging in, and they may engage in, (including having any economic interest in, establishing, promoting or advertising and/or assisting), at any time, any investments, companies, businesses, other entities, other business relationships, strategic relationships and ventures provided that the Consortium Investor does not Control a company, the primary business of which is the distribution of honey, and which is a material competitor of the Group.

22 Termination

22.1 Termination

Subject to clause 22.2, unless otherwise expressly provided to the contrary, this document terminates automatically:

- (a) **(Consortium Investor or Non-Investor Party ceasing to hold)** for any Consortium Investor or Non-Investor Party, when it ceases to hold any Shares other than in connection with an action required to prepare for an IPO contemplated by clause 14.3, at the time of any such termination the Consortium Investor or Non-Investor Party (as applicable) will have no further rights or obligations under this document (except under clauses 10.9, 17, 19, 21, 22, 23, 24, 25, 26, 27, 30, 32 and 33);
- (b) **(wind up)** when the Company is wound up by an order of a court;
- (c) **(IPO)** on the day on which Securities offered in an IPO are issued and/or transferred;
- (d) **(one party only)** on the day on which all the Shares are held by 1 party only; or
- (e) **(completed sale)** on the day on which an agreement to Dispose of all the Shares is completed.

22.2 Certain provisions continue

The termination of this document with respect to a party or all parties does not affect:

- (a) any obligation of that party or those parties, as applicable, under this document which accrued prior to that termination and which remains unsatisfied;
- (b) any rights or Liabilities of a party which accrued prior to such termination; and
- (c) (in addition to the clauses identified in clause 22.1(a) in respect of the Consortium Investors and the Non-Investor Parties) any other provision of this document which is expressed to come into effect on, or to continue in effect after, that termination.

23 Confidential Information

23.1 Disclosure of Confidential Information

A party may not disclose any Confidential Information to any person except:

- (a) with the prior written consent of each other Shareholder which consent may be given or withheld in each Shareholder's absolute discretion;
- (b) in the case of the Shareholders, to their legal or financial advisers;
- (c) in the case of the Shareholders, to their Related Bodies Corporate and their Representatives;
- (d) if it is required to do so by law, a Government Agency or by a stock exchange;
- (e) to an existing or proposed financier (or its advisers) to a Shareholder or the Group; and
- (f) to any prospective purchaser of Shares who gives an appropriate confidentiality undertaking to the prospective seller, for the benefit of the Company and each Shareholder; and
- (g) for the purpose of an Exit.

23.2 Disclosure by recipient of Confidential Information

Any party disclosing information under clause 23.1 must use all reasonable endeavours to ensure that persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted in clause 23.1.

23.3 Use of Confidential Information

A party who has received Confidential Information from another under this document must not use it except for the purpose of exercising its rights or performing its obligations under this document.

23.4 Excluded Information

Clauses 23.1, 23.2 and 23.3 do not apply to the Excluded Information.

23.5 Announcements or releases

A party may not make press or other announcements or releases relating to this document and the matters referred to in this document without the prior approval of the other parties to the form and manner of the announcement or release unless and to the extent that disclosure is required to be made by a party by law, by Government Agency or by a stock exchange. To the extent that the announcement or release is required to be made by the party by law, by a Government Agency or by a stock exchange, the disclosing party must consult with the other parties as to the content of any such announcement or release.

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23.6 Return of Confidential Information

If a Shareholder ceases to be a Shareholder, it must, upon a written request from the Company, as soon as reasonably practicable deliver to the Company all documents or other materials containing or referring to the Confidential Information which are in its possession, power or control or in the possession, power or control of persons who have received Confidential Information under clause 23.1.

23.7 Obligations continue

The rights and obligations of a Shareholder under this clause 23 with respect to confidentiality continue to apply to a Shareholder even after it ceases to be a Shareholder.

24 Representations and warranties

24.1 Representations and warranties

Each party represents and warrants that:

- (a) it has full power and authority to enter into and perform its obligations under this document;
- (b) it has taken all necessary action to authorise the execution, delivery and the performance of this document; and
- (c) this document constitutes its legal, valid and binding obligations, enforceable in accordance with its terms.

24.2 Continuing obligation

The representations and warranties given under clause 24.1 are continuing obligations for the term of this document.

25 Bare Trusts

25.1 Issue or Disposal to Custodian

- (a) The terms of the Scheme provide that all Original Capilano Shareholders who would otherwise become a Shareholder may, at the election of the Company, immediately after implementation of the Scheme, have their Shares held by the Custodian.
- (b) If requested by the Company (with Board approval), a Non-Investor Party which is not a Substantial Holder must Dispose of the Shares which it holds to the Custodian.
- (c) Each Non-Investor Party which is not a Substantial Holder must comply with the directions of the Company for the purposes of facilitating the Disposal of its Shares to the Custodian in accordance with this clause 25, including executing an accession deed to accede to the Custodian Deed.
- (d) The Company will not elect or require that a Substantial Holder have its Shares held by the Custodian.

25.2 Intended operation of this clause

- (a) The parties confirm that the principle to which this clause 25 is intended to give effect is that the voting, economic and other interests of an Original Capilano Shareholder or other Non-Investor Party under this document and in respect of the Original Capilano Shareholder's or Non-

Investor Party's (as applicable) holding of Shares should, assuming that the Custodian and Original Capilano Shareholder or Non-Investor Party act in accordance with this document and the Custodian Deed, be neither enhanced nor impaired as a consequence of appointing the Custodian in respect of that Non-Investor Party's Shares.

- (b) Each party must take all actions within its power and authority, including giving relevant instructions to the Custodian and, in the case of an Appointing Beneficiary, exercising its rights in its capacity as appointor of the Custodian, to give effect to the principle in clause 25.2(a).
- (c) Clauses 25.3 to 25.7 (inclusive) are subject to the principle in clause 25.2(a).

25.3 Appointing Beneficiary rights and obligations

- (a) The parties agree that under this document and any Custodian Deed, each Appointing Beneficiary is "absolutely entitled" at all times to the Shares legally held by the Custodian as contemplated by section 106-50(1) and (2) of the *Income Tax Assessment Act 1997* (Cth).
- (b) Each Appointing Beneficiary will continue to have the benefit of, and be bound by, all the provisions of this document which would have applied to the Appointing Beneficiary by virtue of, or in relation to, that Appointing Beneficiary's holding of the relevant Custodian Shares had it not transferred legal title to those Custodian Shares to the Custodian (**Relevant Rights and Obligations**), subject to the terms of this document and the Custodian Deed. For these purposes the relevant Appointing Beneficiary will be considered a Shareholder.
- (c) The Relevant Rights and Obligations will so far as possible have application to the Custodian and the relevant Appointing Beneficiary in the same way as they would have continued to apply to the Appointing Beneficiary if it held legal title to the Custodian Shares.

This clause 25.3 applies separately in relation to the Custodian in its capacity as bare trustee for each Appointing Beneficiary.

- (d) Each Appointing Beneficiary undertakes to the Company that it will not:
 - (i) take any action, or omit to take any action (including the giving of any Instruction to the Custodian or failing to give any Instruction to the Custodian) which would breach its obligations under this document;
 - (ii) fail to give, or delay in giving, any Instruction to the Custodian which is required to enable the Appointing Beneficiary to comply with their respective obligations under this document; or
 - (iii) give an Instruction to the Custodian which has the effect of cancelling or superseding an Instruction given on behalf of the Appointing Beneficiary by an attorney acting on behalf of the Appointing Beneficiary under clause 17.1.
- (e) If:
 - (i) an Appointing Beneficiary is under an obligation to Dispose of its Shares in accordance with this document or otherwise to take an action under this document which can only be undertaken by the

Custodian as the registered holder of the Appointing Beneficiary's Beneficial Shares; and

- (ii) the Appointing Beneficiary gives an Instruction or Instructions to the Custodian to undertake the Disposal or other action and otherwise takes all action appropriate to, and does not take any action which would inhibit, the Custodian undertaking that Disposal or other action (including providing the Custodian with any information reasonably requested under the Custodian Deed),

and the Custodian does not undertake that Disposal or other action, the Appointing Beneficiary will not be taken to be in breach of this document by reason of the Custodian's failure to undertake that Disposal or other action.

25.4 Definitions

- (a) Where the context requires to give effect to clauses 25.2 and 25.3 and without limiting any other provision of this document, any reference in this document to an Original Capilano Shareholder or Non-Investor Party who is an Appointing Beneficiary is to be taken to include a reference to the Custodian as bare trustee of that Appointing Beneficiary in relation to the Appointing Beneficiary's Custodian Shares.
- (b) If an Original Capilano Shareholder or Non-Investor Party is a Appointing Beneficiary, then for the purposes of any references in this document to the Shares of or held by the Original Capilano Shareholder or Non-Investor Party (or any comparable expression, including for the purposes of determining the Share Ownership Percentage of the Original Capilano Shareholder or Non-Investor Party), the Original Capilano Shareholder or Non-Investor Party is to be regarded as holding its Beneficial Shares.
- (c) An Original Capilano Shareholder will continue to be an Original Capilano Shareholder for the purposes of this document irrespective of whether legal title to all or any of the Original Capilano Shareholder's Shares is held by the Custodian. A Non-Investor Party will continue to be a Non-Investor Party for the purposes of this document irrespective of whether legal title to all or any of the Non-Investor Party's Shares is held by the Custodian.
- (d) Obligations under this document or the Constitution on an Original Capilano Shareholder or other Non-Investor Party who is an Appointing Beneficiary to exercise voting rights or take other steps as the registered holder of Shares are to be interpreted as obligations to ensure that the Custodian takes the relevant steps (at the Appointing Beneficiary's direction, or by the Company or another attorney on behalf of the Appointing Beneficiary, acting under power of attorney, or otherwise).
- (e) To avoid doubt but without limiting any other provision of this clause 25:
 - (i) in the context of any requirement that an act be approved by Original Capilano Shareholders or Non-Investor Parties with at least a specified Share Ownership Percentage, each Appointing Beneficiary is to be treated as if they were the legal holder of their Beneficial Shares; and
 - (ii) a requirement that an Original Capilano Shareholder or Non-Investor Party maintain a minimum Share Ownership Percentage will be determined by reference to the number of its Beneficial Shares.

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- (f) The Custodian is not itself to be regarded for the purposes of this document as:
- (i) a Shareholder, Original Capilano Shareholder or Non-Investor Party; or
 - (ii) otherwise as the holder of any Shares.

25.5 Voting and dividends

- (a) Instructions may be given by each Appointing Beneficiary to the Custodian (as the person legally entitled to voting rights, dividends and distributions in respect of those Shares) in accordance with this document and the Custodian Deed:
- (i) in relation to voting, Disposals and other dealings in respect of the Appointing Beneficiary's Beneficial Shares; and
 - (ii) in respect of the payment of dividends and distributions.
- (b) Each Appointing Beneficiary directs the Company to pay dividends and distributions in respect of its Beneficial Shares as it directs in accordance with the Custodian Deed. This clause 25.5(b) does not affect the right of an Appointing Beneficiary to change such a direction from time to time.

25.6 Disposals of Shares

- (a) References to Disposals of Shares in this document and the Constitution include Disposals in a beneficial interest in Beneficial Shares and any Disposal of the legal title to those Shares by the Custodian (at the Appointing Beneficiary's direction, or by the Company or another attorney on behalf of the Appointing Beneficiary acting under power of attorney, or otherwise).
- (b) An Appointing Beneficiary must not direct the Custodian to Dispose of, nor otherwise procure the Disposal of, legal title to any of its Beneficial Shares to itself or any other person unless it would be entitled in accordance with clause 10.1 to Dispose of its Beneficial Shares in the relevant circumstances if it held legal title to them.
- (c) Where this document permits any party to issue, transfer, sell or otherwise Dispose of Shares to any person, that provision includes permission to issue, transfer, sell or otherwise Dispose Shares to the Custodian as bare trustee for the relevant person.
- (d) Unless otherwise approved in writing by the Board, an Appointing Beneficiary may Dispose of Shares to a Permitted Holder under clause 10.2 on the basis that the Custodian is directed to hold legal title to the relevant Shares as bare trustee on behalf of the transferee Permitted Holder (that is, the Appointing Beneficiary may only Dispose of the beneficial interest in its Beneficial Shares without a Disposal of legal title from the Custodian).

25.7 Additional Shares

- (a) If an Appointing Beneficiary becomes entitled to receive any additional Shares, whether by way of issue or Disposal (and whether under this document or otherwise), then unless the Board has approved another holding arrangement in relation to the relevant transaction, the issue or Disposal must be made in favour of the Custodian on the basis that the Shares are to be held by the Custodian as bare trustee for the

Appointing Beneficiary and will be Beneficial Shares of the Appointing Beneficiary.

- (b) An offer to an Appointing Beneficiary to participate in an issue of Shares on the basis that legal title to the relevant Shares will be issued to the Custodian as bare trustee for the Appointing Beneficiary will not be regarded for that reason alone as being on different terms from the terms offered to other Shareholders.

25.8 Notices

All notices or communications under this document or the Custodian Deed which are provided to the Custodian in its capacity as bare trustee for a particular Appointing Beneficiary must also be provided at the same time to the relevant Appointing Beneficiary.

25.9 Liability of Custodian

Each party acknowledges that, subject to the terms of the Custodian Deed, the Custodian is obliged to act in accordance with the directions of the Appointing Beneficiaries in relation to their respective Beneficial Shares. Each party agrees that any breach of this document or the Constitution which arises as a result of the Custodian complying with a direction given by a Appointing Beneficiary (**Directed Breach**) is to be construed for all purposes as a breach by the relevant Appointing Beneficiary for which the Appointing Beneficiary is personally liable (including in accordance with the Custodian Deed) and not by the Custodian and without limiting the foregoing:

- (a) the Custodian is released from any claim or Liability in respect of any Directed Breach; and
- (b) each party (other than the Custodian) covenants not to claim, sue or take any action against the Custodian in respect of any Directed Breach.

25.10 Limitation of Custodian's liability

- (a) Each party acknowledges that the Custodian enters into this document in its capacity as bare trustee of the Bare Trusts and in no other capacity.
- (b) Any Liability of the Custodian arising under or in connection with this document is limited to, and can be enforced against the Custodian only to the extent to which it can be satisfied out of, the assets of the Bare Trust from which the Custodian is actually indemnified for the Liability or to the extent that under the Custodian Deed the Custodian is actually indemnified for the Liability. This limitation of the Custodian's Liability applies despite any other provision of this document and extends to all Liabilities of the Custodian in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document or the Custodian Deed.
- (c) No party may sue the Custodian in any capacity other than as trustee of a Bare Trust, including seeking the appointment of a receiver (except in relation to property of a Bare Trust), a liquidator, an administrator, or any similar person to the Custodian nor may any party prove in any liquidation, administration or arrangement of or affecting the Custodian (except in relation to property of the relevant Bare Trust).
- (d) The provisions of this clause 25.10 do not apply to any Liability of the Custodian to the extent that it is not satisfied under the Custodian Deed or by operation of law or there is a reduction in the extent of the Custodian's indemnification out of the assets of the relevant Bare Trust,

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in each case as a result of the Custodian's fraud, negligence or breach of trust.

- (e) No attorney, agent, receiver or receiver and manager appointed in accordance with this document has authority to act on behalf of the Custodian in a way which exposes the Custodian to any personal liability.

26 Disclaimers

26.1 No representation about acquisition or investment

None of the Consortium Investors, the Non-Investor Parties, the Company or any of their respective Representatives makes:

- (a) any representation or warranty to any other Consortium Investor or Non-Investor Party in relation to any acquisition by the Group, the proposed business strategy or potential exit strategy of any Group Member or the returns achievable on an Exit; or
- (b) any recommendation on the suitability of an acquisition by any Group Member or an investment in the Company by any Consortium Investor or Non-Investor Party.

26.2 Benefit

- (a) Each Consortium Investor holds the benefit of clause 26.1 in their own right and on behalf of the Consortium Investor's Representatives.
- (b) The Company holds the benefit of clause 26.1 in its own right and on behalf of the Representatives of the Company.
- (c) Each Non-Investor Party holds the benefit of clause 26.1 in their own right and on behalf of the Non-Investor Party's Representatives.

26.3 No liability accepted for Shareholders investing

To the maximum extent permitted by law, the Company, the Consortium Investors, the Non-Investor Parties, and their respective Representatives disclaim all Liability in relation to the matters referred to in clause 26.1, and no Consortium Investor or Non-Investor Party may take any action against the Company, a Consortium Investor, a Non-Investor Party, or any of their respective Representatives for any Liability suffered as a result of a Consortium Investor's or Non-Investor Party's decision to invest in the Company or in relation to any acquisition made by a Group Member (whether made on or around the date of this document or at any time in the future), or in relation to the proposed business strategy, business performance, potential exit strategy or returns achievable on an Exit or as a result of any Consortium Investor or Non-Investor Party lawfully performing its obligations and/or exercising its rights under this document, save to the extent that such loss or damage arises as a result of the fraud or wilful misconduct of the Consortium Investor or Non-Investor Party (as applicable) against whom the claim is made.

26.4 Independent investigations, assessment and advice

Each party:

- (a) acknowledges and agrees that it has entered into this document on the basis of its own independent investigation and assessment and after making its own enquiries; and

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- (b) confirms that it has received independent legal, accounting and tax advice in relation to the terms and conditions of this document and the escrow arrangements contemplated by clauses 14.5 and 14.6.

26.5 No limitation of Scheme Implementation Agreement

Nothing in this clause 26 limits any Liability of any person under the Scheme Implementation Agreement.

27 Trustee limitation of liability

27.1 Application

In this clause 27 the term **Trustee** means each party (excluding the Custodian) who enters into this document, and acquires any Shares, in the capacity of a trustee of a trust (in respect of each such Trustee, its **Trust**).

27.2 Acknowledgement

Each Trustee and each party acknowledges that the Trustee enters into this document in its capacity as trustee of its Trust.

27.3 Limited Capital

Any Liability arising under or in connection with this document is limited to, and can be enforced against the Trustee only to the extent to which it can be satisfied out of the assets of its Trust out of which the Trustee is actually indemnified for the Liability. This limitation of the Trustee's liability applies despite any other provision of this document other than clause 27.7 and extends to all Liabilities of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.

27.4 Limited rights to sue

No other party may sue the Trustee in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator, or any similar person to the Trustee or proving in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust).

27.5 Exceptions

The provisions of this clause 27 do not apply to any obligation or Liability of the Trustee to the extent that, as a result of the Trustee's fraud, negligence or breach of trust, is not satisfied under, the deed governing the Trust or by operation of law there is a reduction in the extent of the Trustee's indemnification out of the assets of the Trust.

27.6 Limited authority

No attorney, agent, receiver or receiver and manager appointed in accordance with this document has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability.

27.7 Multiple capacities

Notwithstanding this clause 27, nothing prevents a party suing a Trustee in his or her personal capacity or otherwise limits the Liability of a Trustee if that Trustee is a party to this document both as trustee of a relevant trust and in its personal capacity and the Trustee has breached its obligations under this document in its personal capacity.

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28 Notices and other communications

28.1 Form

- (a) Unless this document expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in connection with this document must be in writing and signed by the sender (if an individual) or an authorised officer of the sender.
- (b) All communications (other than email communications) must also be marked for the attention of the person referred to in the Details, relevant Schedule or in an Accession Deed or as otherwise notified by the recipient in writing to the other parties.
- (c) Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

28.2 Delivery

Communications must be:

- (a) left at the address referred to in the Details, relevant Schedule or in an Accession Deed or as otherwise notified by the recipient in writing to the other parties;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address referred to in the Details, relevant Schedule or in an Accession Deed or as otherwise notified by the recipient in writing to the other parties; or
- (c) sent by email to the address referred to in the Details, relevant Schedule or in an Accession Deed or as otherwise notified by the recipient in writing to the other parties.

If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

28.3 When effective

Communications take effect from the time they are received or taken to be received under clause 28.4 (whichever happens first) unless a later time is specified in the communication.

28.4 When taken to be received

Communications are taken to be received:

- (a) if sent by post, 6 Business Days after posting (or 10 days after posting if sent from one country to another);
- (b) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) 4 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 delivery failed,

whichever happens first.

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28.5 Receipt outside business hours

Despite anything else in this clause 28, if communications are received or taken to be received under clause 28.4 after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause 28.5, the place in the definition of Business Day is taken to be the place specified for the purposes of this document as the address of the recipient and the time of receipt is the time in that place.

29 Costs

29.1 Costs

The parties agree to pay their own legal and other costs and expenses in connection with the preparation, negotiation, execution and completion of this document, the Custodian Deed and the Transaction Documents.

29.2 Trade Sale Costs

Each Shareholder will be liable for its proportionate share of all Trade Sale Costs (which will, to the extent that the Board determines that it is practicable, be set off from the Proceeds payable to the Shareholder in the Trade Sale). For the purpose of this clause 29.2, a Shareholder's proportionate share of the Trade Sale Costs is the proportion that the Proceeds which it has received, or which it is or would have been entitled to receive before any deductions or withholdings in accordance with this document (including this clause 29.2) or applicable law, as the case may be, in respect of Shares as part of the Trade Sale, bears to the total Proceeds in connection with the Trade Sale.

29.3 IPO Costs

Unless the Board determines that the IPO Costs will be borne by each Shareholder in its Share Ownership Percentage (to the extent that the Board determines that it is practicable, those IPO Costs set off from any Proceeds payable to the Shareholder in the IPO), the Company will pay the IPO Costs. Each party will be liable for any Individual Costs incurred by it.

29.4 Aborted Exit

If a Trade Sale or an IPO is aborted prior to its completion, the Company will pay all Trade Sale Costs and IPO Costs to the maximum extent permitted by applicable laws.

30 GST

30.1 Definitions and interpretation

For the purposes of this clause 30:

- (a) **"GST Act"** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (b) words and phrases which have a defined meaning in the GST Act have the same meaning when used in this clause 30, unless the contrary intention appears;
- (c) unless otherwise expressly stated in this document, all consideration to be provided under this document is exclusive of GST; and
- (d) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as if it were a separate supply.

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30.2 Payment of GST

- (a) If GST is payable, or notionally payable, on a supply made under or in connection with this document, the party providing the consideration for the supply must pay to the supplier an additional amount equal to the amount of GST payable on that supply (**GST Amount**).
- (b) Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.
- (c) This clause does not apply to the extent that the consideration for the supply is expressly stated to include GST or the supply is subject to a reverse-charge.

30.3 Adjustment events

If an adjustment event arises for a supply made under or in connection with this document, the GST Amount must be recalculated to reflect that adjustment, the supplier or the recipient (as the case may be) must make any payments necessary to reflect the adjustment and the supplier must issue an adjustment note.

30.4 Reimbursements

Any payment, reimbursement, indemnity or similar payment that is required to be made under this document which is calculated by reference to an amount paid by another party shall be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled to. If the reduced payment is consideration for a taxable supply, clause 30.2 will apply to the reduced payment.

31 Amendments

31.1 Amendment

This document may be amended only by a document signed by:

- (a) the Company (with approval from the Board by a Special Majority Directors' Resolution); and
- (b) each Consortium Investor,

and approved by a Shareholders' Special Resolution.

31.2 Complying amendments

This document may be amended by the Company by Special Majority Directors' Resolution but without a Shareholders' Special Resolution if the Consortium Investors approve the amendment in writing and:

- (a) the amendment is made to cure any ambiguity, omission, manifest error, mistake or defect or inconsistency identified by the Board;
- (b) the amendment does not diminish the rights, or increase the obligations, of a Non-Investor Party;
- (c) based on professional legal advice received on the issue by the Company, the Board by Special Majority Directors' Resolution resolves that the amendment is required in order for this document to comply with the applicable laws and/or applicable listing rules of any recognised

stock exchange on which the Company or the IPO Vehicle is admitted (or is to be admitted) following an IPO;

- (d) based on professional legal advice received by the Company, the Board by Special Majority Directors' Resolution resolves that the amendment is reasonably necessary to achieve a successful IPO and ongoing listing of the Company or the IPO Vehicle, including any amendment relating to:
 - (i) the terms of Disposal of any Shares; or
 - (ii) the removal or amendment of any term or condition of this document to make this document generally consistent with market practice for comparable agreements for listed entities;
- (e) based on professional tax advice received on the issue, which must be made available to the Board, the Board by Special Majority Directors' Resolution resolves that the amendment is reasonably required to take into consideration possible adverse Tax implications in respect of this document and the amendment does not diminish the rights, or increase the obligations, of a Non-Investor Party; or
- (f) the amendment, variation or waiver relates only to a particular party and is made with the consent of that party and does not diminish the rights or increase the obligations of any other party.

31.3 Ceasing to be a party

If this document terminates with respect to a party under clause 22, then as from that time, that former Shareholder will cease to be a party to this document for the purposes of clauses 31.1 and this document may be amended without reference to, or the need for the signature of, that former Shareholder.

31.4 Trustee limitation of liability clause

Despite clauses 31.1 to 31.3, clause 27 cannot be amended without the written agreement of the Consortium Investors and any other Trustee.

32 General

32.1 Discretion in exercising rights

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

32.2 Partial exercising of rights

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

32.3 No liability for loss

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

32.4 Approvals and consents

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

32.5 Remedies cumulative

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

32.6 Variation and waiver

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

32.7 Indemnities

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

32.8 Further steps

Each party agrees, at its own expense, to do anything reasonably requested by another party (including casting their votes as Shareholders of the Company, negotiating in good faith, obtaining consents, signing and producing documents and getting documents completed and signed) to give effect to the provisions of this document and the transactions contemplated by it.

32.9 Construction

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

32.10 Conflict of interest

Each party may exercise their rights, powers and remedies in connection with this document even if this involves a conflict of duty or they have a personal interest in their exercise.

32.11 Specific performance

The parties acknowledge that:

- (a) Shares cannot be readily purchased or sold in an open market and that damages or an account of profits may be an inadequate remedy to compensate the relevant non-breaching parties for a breach of this document by another party; and
- (b) each party is, to the extent permitted by law, entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by another party of this document, in addition to any other remedies available to them at law or in equity.

32.12 Indemnities and reimbursement obligations

Any indemnity, reimbursement or similar obligation in this document:

- (a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this document, any settlement or any other thing;
- (b) is independent of any other obligations under this document; and
- (c) continues after this document, or any obligation arising under it, ends or terminates.

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity in connection with this document.

32.13 Further steps

Each party agrees to do anything (such as obtaining consent, signing and producing documents, producing receipts and getting documents completed and signed) which another party reasonably requests and which is necessary to:

- (a) bind a party and any other person intended to be bound under this document;
- (b) show whether a party is complying with this document; and
- (c) enable a party to register a power of attorney in clause 17 of this document or a similar power.

32.14 Assignment or other dealings

A party may not assign or otherwise Dispose of any of its rights under this document or allow any interest in them to arise or be varied without the consent of the other parties or as otherwise expressly permitted by this document.

32.15 Severability

If the whole or any part of a provision of this document is void, unenforceable or illegal in a jurisdiction it is to be severed for that jurisdiction. The remainder of this document has full force and effect and the validity or unenforceability of that provision in any other jurisdiction is not affected. This clause 32.15 has no effect if the severance alters the basic nature of this document or is contrary to public policy.

32.16 Rules of construction

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

32.17 Relationship of parties

Unless this document expressly states otherwise, nothing contained or implied in this document constitutes any party as the partner, agent, associate, employee or representative of any other party for any purpose or creates any partnership, agency or trust between them and no party has authority to bind any other party in any way.

32.18 Attorneys

Each attorney executing this document or an Accession Deed states that the attorney has no notice of revocation or suspension of the power of attorney under which the attorney executes this document or an Accession Deed.

32.19 Non-Investor Parties' approvals

Subject to the Corporations Act, the approval of some or all Non-investor Parties for a purpose under this document may be obtained by majority of Shares held by Non-Investor Parties, by either of the following means of approval or by aggregating the number of affirmative votes and confirmations received by both of the following means of approval:

- (a) a resolution passed at a general meeting of the Company or one or multiple general meetings and/or meetings of Non-Investor Parties; and

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- (b) the relevant Non-Investor Parties signing a document (which may be in counterparts) or providing other written confirmations (including by email) to the effect that they approve of the relevant resolution or other matter for the purposes of this document.

32.20 Fractions

If the operation of any clause in this document results in any party having an entitlement to acquire, or an obligation to Dispose of, a fraction of an Share, then the Board may round up or down the entitlement or obligation to the nearest Share in its discretion.

32.21 Method of payment

All payments required to be made under this document must be made by way of direct transfer of immediately available funds to the credit of an Australian bank account nominated by the payee to the payer at least 3 Business Days before the due date for payment or by any other method agreed by the parties.

32.22 Custodian Transfer

Provided that clauses 9.14 and 9.18 are observed but despite anything to the contrary in this document, nothing in this document:

- (a) prevents or limits the ability of the Custodian, or the Company to require the Custodian or a Non-Investor Party, to undertake a Custodian Transfer at any time; or
- (b) confers on any Consortium Investor or any Non-Investor Party any rights with respect to any Custodian Transfer.

32.23 PPSA

Notwithstanding clause 32.13, if a Non-Investor Party determines that this document contains a Security Interest, that Non-Investor Party must notify the Consortium Investors and consult with the Consortium Investors in relation to what steps (if any) the Non-Investor Party may take to ensure that the Security Interest is enforceable, perfected and otherwise effective. No Non-Investor Party may apply for any registration, or give any notification, in relation to any Security Interest for the purposes of the PPSA, or disclose a copy of this document, without the prior written consent of the Consortium Investors.

32.24 No notice under PPSA

No Non-Investor Party may give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded or unless the Company and the Consortium Investors otherwise consent in writing.

32.25 Enforcement

To the extent permitted by law, section 115(1) of the PPSA will not apply on the enforcement by the parties of any Security Interest provided for, created or evidenced by this document.

32.26 Conflict with the Constitution

- (a) If there is an inconsistency between any provision of this document and the Constitution, the provision of this document will prevail to the extent of the inconsistency and the parties agree to amend the Constitution to remove the inconsistency.
- (b) An inconsistency will be taken to exist between this document and the Constitution for the purposes of this clause 32.26 if:

- (i) the subject matter of the relevant provisions in this document and the Constitution is the same and those provisions specify differing requirements; or
 - (ii) the action required to be taken or not taken (as the case may be) under the relevant provisions in this document and the Constitution is the same but those provisions specify requirements which both cannot be satisfied by taking, or omitting to take, that action in the same way.
- (c) If this document and the Constitution require an action to be taken, including obtaining an approval or consent, at different standards of performance or other relevant thresholds and both this document and the Constitution can be complied with by satisfying the higher standard of performance or other relevant threshold (as determined finally by the Board), those provisions will not be taken to be inconsistent for the purposes of this clause 32.26 and the parties must comply with that higher standard of performance or other relevant threshold (to the extent applicable to them).

32.27 [not used]

32.28 Enforcement actions

A Non-Investor Party may not:

- (a) take any action to enforce this document; or
- (b) waive, or purport to waive, a right under this document,

on behalf of any 1 or more other Non-Investor Parties, without the consent of the relevant Non-Investor Parties. To avoid doubt, nothing in this clause 32.28 limits a Non-Investor Party's right, without the consent of any other Non-Investor Party, to enforce or waive any of its own rights under this document.

32.29 Other Shares

Notwithstanding anything to the contrary in this document, any Incentive Shares issued in accordance with any separately documented incentive arrangement approved by the Board and established after the Implementation Date by a Group Member will be subject to the rules of that incentive plan and are not subject to the provisions of this document until such time as those Incentive Shares become fully vested (including that the Incentive Shares have ceased to be subject to, or calculated by reference to, any performance, financial, time or employment or other engagement based criteria) in accordance with their terms and the rules of that plan provide that those Incentive Shares or their holder is subject to, or intended to be bound by, any provision of this document.

32.30 Costs

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

32.31 Stamp duty

The Company agrees to:

- (a) pay all stamp duty (including fines and penalties) chargeable by legislation or by any revenue office on the Transaction Documents; and
- (b) indemnify on demand the Shareholders against any liability for that stamp duty (including fines and penalties).

32.32 Supervening legislation

Any present or future legislation which operates to vary the obligations of a party in connection with this document with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

32.33 Entire agreement

This document and the Constitution constitute the entire agreement of the parties about the subject matter and supersede all previous agreements, understandings and negotiations on that subject matter.

32.34 Counterparts

This document may consist of a number of copies, each signed by one or more parties to the agreement. If so, the signed copies are treated as making up the one document.

33 Governing law

33.1 Governing law

This document is governed by the law in force in New South Wales, Australia.

33.2 Jurisdiction

Each party submits to the exclusive jurisdiction of the courts of New South Wales, Australia and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

33.3 Serving documents

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address for service of notices under clause 28.

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Shareholders Deed

Schedule 1 Relevant boards

1 Structure generally

- (a) **(WH's right to appoint Directors)** For so long as the Consortium Investors have an aggregate Share Ownership Percentage of 45% or greater and WH is a Shareholder, or at least one of its Affiliates is a Shareholder, WH will have the right to appoint 2 Directors. Each Director appointed by WH under this paragraph 1(a) will be a WH Director and a Consortium Investor Director for the purposes of this document. WH may remove any Director it has appointed and may appoint another Director in his or her place at any time by written notice to the Company and the Directors, signed on behalf of WH.
- (b) **(ROC's right to appoint Director)** For so long as the Consortium Investors have an aggregate Share Ownership Percentage of 45% or greater, and ROC is a Shareholder, or at least one of its Affiliates is a Shareholder, ROC will have the right to appoint 1 Director. The Director appointed by ROC under this paragraph 1(b) will be a Consortium Investor Director for the purposes of this document. ROC may remove any Director it has appointed and may appoint another Director in his or her place at any time by written notice to the Company and the Directors, signed on behalf of ROC.
- (c) **(CBL's right to appoint Director)** Until the earlier of:
- (i) CBL ceasing to be Controlled by a Beekeeper Supplier or (collectively) by Beekeeper Suppliers; and
 - (ii) completion of an Exit,
- CBL will have the right to appoint 1 Director. CBL may remove any Director it has appointed and may appoint another Director in his or her place at any time by written notice to the Company and the Directors, signed on behalf of CBL.
- (d) **(Non-Investor Party's right to appoint Directors)**
- (i) For so long as a Non-Investor Party has a Share Ownership Percentage of 25% or greater, the Non-Investor Party will have the right to appoint 1 Director. Each Director appointed by a Non-Investor Party under this paragraph 1(d)(i) will be a Non-Investor Party Director for the purposes of this document. A Non-Investor Party may remove any Director they have appointed and may appoint another Director in his or her place at any time by written notice to the Company and the Directors, signed on behalf of the Non-Investor Party.
 - (ii) If no single Non-Investor Party has a Share Ownership Percentage of 25% or greater, the Non-Investor Parties will collectively have the right to appoint 1 Director (for so long as the Non-Investor Parties have an aggregate Share Ownership Percentage of 10% or greater). Each Director appointed by the Non-Investor Parties under this paragraph 1(d)(ii) will be a Non-Investor Party Director for the purposes of this document. The Non-Investor Parties may remove any Director they have

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appointed and may appoint another Director in his or her place at any time by written notice to the Company.

- (e) **(WHs' right to appoint Chairman)** For so long as the Consortium Investors have an aggregate Share Ownership Percentage of 45% or greater and WH is a Shareholder, or at least one of its Affiliates is a Shareholder, WH may from time to time, by notice to the Company and the Directors, nominate any of the Directors to become the Chairman. If this paragraph 1(e) applies and the Chairman is absent from a meeting of the Board, or is unwilling to act, then the Consortium Investor Directors present at that meeting may nominate any Director present at the meeting to act as chairman of the meeting.
- (f) **(maximum Board size)** The Board will consist of a maximum of 6 Directors, unless otherwise approved in writing by the Consortium Investors.
- (g) **(boards of directors of other Group Members)** Subject to paragraphs 1(a) to 1(f) above, clause 6.1(b) and the terms of any shareholders' agreement (or comparable agreement) in respect of a relevant Group Member, the board of directors of each Group Member (other than the Company) is to be comprised of such persons appointed by the Board from time to time. The Company and the Shareholders must Procure that no person is appointed to, or removed from, the board of directors of any Group Member (other than the Company) except as required, or otherwise consented to, by this paragraph 1(g).
- (h) **(application to other Group Members)** The Board may from time to time determine the extent to which this document applies to the directors of each Group Member (other than the Company).

2 Appointment and removal of Directors

The Directors will be appointed and removed as follows:

- (a) any appointment of a Director under paragraphs 1(a) to 1(d) (inclusive) takes effect on the latest of:
 - (ii) the time of the relevant notice; and
 - (iii) receipt by the Company of a proper consent to act from the relevant proposed Director;
- (b) a Director may not be removed or replaced except in accordance with paragraphs 1(a) to 1(d) (inclusive) and by the person or persons entitled to remove or replace the Director or as provided in paragraph 2(c). Any removal or replacement of a Director takes effect immediately on the passing of the relevant resolution or the giving of the relevant notice to the Company, as applicable, or at a later time resolved by the parties or the Board who are entitled to effect the removal or replacement and specified in the relevant notice to the Company; and
- (c) if:
 - (i) the Consortium Investors cease to have an aggregate Share Ownership Percentage of 45% or greater (or WH's or ROC's entitlement to appoint directors otherwise ends) and the Consortium Partner(s) do not remove their appointed Directors within 24 hours of that cessation, the CBL appointed Director may remove any or all of the relevant Consortium Directors with immediate effect, by notice in writing to the Company; or

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- (ii) a Non-Investor Party ceases to have a Share Ownership Percentage of 25% or greater and does not remove its appointed Director within 24 hours of that cessation, the Consortium Investors may remove the Non-Investor Party Director with immediate effect, by notice in writing to the Company once a replacement Non-Investor Party Director has been appointed under paragraph 1(d).

3 Alternate Director

3.1 Appointment of alternate directors

A Director may from time to time appoint an alternate director by notice in writing to the Company (**Alternate Director**).

3.2 Rights of Alternate Directors

An Alternate Director:

- (a) may attend a Board meeting and vote on any resolution on which the appointing Director could vote, if the appointor does not attend that meeting;
- (b) is entitled to exercise the votes which would be exercisable by each Director the Alternate Director represents as an alternate (in addition to any votes the Alternate Director may have as a Director in his or her own right, if applicable);
- (c) is entitled to notice of Board meetings in the same way that Directors are entitled to receive notice of such meetings; and
- (d) who attends a Board meeting is counted, for quorum purposes, as a Director for each Director on whose behalf the Alternate Director is attending the meeting (in addition to being counted as a Director in his or her own right, if applicable).

3.3 Cease

The appointment of the Alternate Director will cease on the earliest of:

- (a) automatically on the appointor Director in respect of whom the Alternate Director was appointed ceasing to be a Director;
- (b) on the date specified in the notice referred to in paragraph 3.1 (if any); or
- (c) on the appointor Director providing notice to the Company revoking the appointment.

3.4 Effect

- (b) The appointment of an Alternate Director takes effect immediately on the earlier of receipt of the relevant notice by the Company (or any later date specified in the notice) and receipt by the Company of a proper consent to act from the proposed Alternate Director.
- (c) The removal of an Alternate Director takes effect immediately on the receipt of the relevant notice by the Company (or any later date specified in the notice) or on the date specified under paragraph 3.3.

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4 Observers

4.1 Appointment of Observers

In addition to its rights under paragraphs 1(a) and 1(g), WH may appoint up to 2 persons as observers from time to time (**Observers**) to attend any meeting of the Board or any other board meeting of any Group Member provided that:

- (a) WH gives notice to the Chairman, if any, identifying each Observer; and
- (b) if requested by the Board, each Observer has executed a confidentiality agreement in a form approved by the Board.

4.2 Confidentiality agreement

A Group Member must give to each Observer (provided they have entered into the confidentiality agreement referred to in paragraph 4.1(b), if requested by the Board with approval by the Board), all information furnished to directors at, or for the purposes of, those meetings of the relevant Group Member's board at which that Observer is present.

4.3 No vote

Any Observer will be entitled to attend and speak at, but not vote at, any meetings of the board and/or committee of any Group Member. The Company will deliver all written materials and other information given to Directors in connection with any board or committee meetings to any Observer at the same time that those materials or information are given to the Directors.

5 Voting and Quorum

5.1 Quorum

The quorum for a meeting of the Board is at least:

- (a) 1 Consortium Investor Director;
- (b) for so long as any Non-Investor Party Directors are appointed to the Board, 1 Non-Investor Party Director; and
- (c) for so long as a CBL Director is appointed to the Board, 1 CBL Director.

5.2 Quorum not present

If a quorum is not present at a meeting of the Board convened under paragraph 5.1, the meeting is adjourned to the same time and place 2 Business Days after the date on which the meeting is adjourned (or such other time and place unanimously agreed by all Directors). A quorum at such re-convened meeting will consist of at least 1 Consortium Investor Director and either 1 Non-Investor Party Director or 1 CBL Director.

5.3 Number of votes

At a meeting of the Board:

- (a) on each resolution, subject to paragraph 5.4, each Director has 1 vote;
- (b) subject to paragraph 5.3(c), the Chairman, if any, will have a casting vote in addition to his deliberative vote if on a resolution there are an equal number of votes in favour of and against a resolution but will not otherwise have a casting vote; and

- (c) all decisions are by majority vote, unless otherwise expressly provided in this document.

5.4 Recusal in the case of conflict

Unless determined otherwise by Special Majority Directors' Resolution (for the purposes of this paragraph, if a Special Majority Directors' Resolution will be determined as if the relevant Director who must recuse himself or herself were not a Director), where any matter at a Board meeting involves a discussion relating to a matter involving a Group Member and any:

- (a) Other Business of which a Consortium Investor Director is also a director, the Consortium Investor Director must recuse himself or herself from the discussion; or
- (b) Other Business of which a Non-Investor Party Director or a Special Relative of the Non-Investor Party Director is also a director, the Non-Investor Party Director must recuse themselves from the discussion,

and in either case, the Board meeting will continue to be considered quorate for the purposes of this document and the Constitution and the other Consortium Investor Directors or Non-Investor Party Directors, as applicable, must not provide to that Director any Confidential Information discussed during the portion of the meeting from which the relevant Director recused himself.

6 Notice

- (a) A meeting of the Board requires at least 5 Business Days' prior written notice to be given to all Directors, unless all Directors otherwise agree. The notice must provide reasonable details of the matters to be considered at the meeting and the business to be put to the vote of the Board.
- (b) Any Director may from time to time give a notice of meeting to all Directors in accordance with this paragraph 6. Any notice provided by a Director under this paragraph 6 must provide reasonable details of the matters to be considered at the meeting and the business to be put to the vote of the Board.

7 Board papers

A notice of a meeting of the Board must include an agenda accompanied by:

- (a) if it is a regularly scheduled monthly meeting:
 - (ii) a report from the Group CEO on the Business' trading since the last Board meeting, including (unless otherwise required or not required by the Board) comments on revenues, margins, overheads, profits, cash flow, prospects and any major commercial issues affecting the current and future trading position of the Group and proposed actions to correct any adverse variances; and
 - (iii) a report from the Group CFO on the Business' trading since the last Board meeting including (unless otherwise required or not required by the Board) in respect of the Group a profit and loss statement for the month and year to date relative to budget, consolidated finance report, consolidated balance sheet, major variations to budget, cash flow and forecasts;
- (b) a copy of all papers to be considered at the meeting; and

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- (c) such other materials or information as may reasonably be requested by a Director from time to time.

8 Committees

- (a) The Board may, in its discretion and at any time, subject to clauses 4.3 and 5.1:
- (i) delegate specific powers to a committee of the Board (including audit and risk and remuneration committees), provided that at least 1 Consortium Investor Director and, for so long as there is a Non-Investor Party Director, that Non-Investor Party Director, is represented on that committee (unless otherwise consented to in writing by the Consortium Investors or the Non-Investor Party, as applicable); and
 - (ii) amend, revoke or replace any delegation made to any committee of the Board. The voting requirements in paragraph 5 will apply to the operation of any committee appointed by the Board as if the references to Directors in that paragraph were references to members of the committee.

9 Frequency and location of meetings

- (a) A meeting of the Board must be held at least 6 times in each Financial Year or such other number as agreed by the Board unanimously provided that in the period between the Implementation Date and 30 June 2019, no minimum number of Board meetings will be required.
- (b) Board meetings will be held at such locations as approved by the Board and a Director may attend any meeting using any technology that allows each Director to hear proceedings and be heard by the other Directors.

10 Directors remuneration

10.1 No fee

No Director (other than the CBL Director) will be entitled to be paid a fee. The Company must pay to the CBL Director, monthly in arrears, a fee to be determined before the start of each Financial Year by the Board by Ordinary Directors' Resolution.

10.2 Expenses

All reasonable expenses incurred by the Directors which are associated with, or incidental to, the discharge of their obligations as Directors or are otherwise incurred in connection with the Business, including all travelling, hotel and other expenses, are to be reimbursed by the Company to the relevant Directors. The Company may request a statement of account or other evidence in respect of those expenses and may defer payment of some or all of the claimed expenses pending receipt of the account or other evidence.

11 Written resolutions

Subject to applicable law and without limiting any other provision of this document, a written resolution circulated to all the Directors, and signed by:

- (a) if the written resolution is required because a quorum was not achieved at a re-convened meeting under paragraph 5.2, those Directors capable of passing the relevant resolution if it was considered at a Board meeting; or

- (b) if the written resolution is required for any other reason, all Directors who would be eligible to vote on the relevant resolution if it was considered at a Board meeting,

will be as valid and effective as a resolution duly passed at a meeting of the Board called and held in accordance with this document.

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Shareholders Deed

Schedule 2 Matters to be determined by Ordinary Directors' Resolution, Special Majority Directors' Resolution, Shareholders' Special Resolution

Where a paragraph of this Schedule 2 specifies an amount in Australian dollars and a relevant transaction, contract or other circumstance arises which is denominated in another currency, the Board may determine the appropriate foreign exchange rate for determining the Australian dollar equivalent of that transaction, contract or other circumstance.

Part A – Matters to be determined by Ordinary Directors' Resolution

- (a) **(Business Plan)** subject to clause 6.3, adopt or materially vary the Business Plan.
- (b) **(variations to Business Plan for adverse events)** make any material changes to the Business Plan or undertake any actions or activities outside the terms of the Business Plan or a budget to address any material unbudgeted Liability, actual or potential breach of any law, change in law which requires a change to the Group's operations or any other event or circumstance arising after approval of the Business Plan which could have adverse reputational consequences for the Group.
- (c) **(Reorganisation Event)** undertake or undergo a Reorganisation Event.
- (d) **(accounting standards, policies and principles)** materially alter the accounting standards or principles previously adopted by the Company or the Group for the preparation or presentation of individual or consolidated financial statements or alter the accounting policies or basis previously adopted by the Company or the Group, except if required to do so by law.
- (e) **(borrowings)** borrow or accept financial accommodation (other than in accordance with the Business Plan) of more than \$1,000,000 for the Group as a whole or such other amount as the Board determines.
- (f) **(guarantee)** give or enter into any guarantee, indemnity, letter of comfort or performance bond to secure the performance of an obligation by any person (other than a Group Member) except if the amount secured by or maximum amount payable by any Group Member under (as applicable) all such guarantees, indemnities, letters of comfort and performance bonds is less \$500,000 and the guarantee, indemnity, letter of comfort or performance bond is in the ordinary course of the Business.
- (g) **(loans)** make a loan or give credit or other financial accommodation to a person except in the ordinary course of business.
- (h) **(Shareholder resolutions)** propose, call a meeting to consider or approve any written resolutions with respect to, an ordinary or a special resolution of Shareholders.

- (i) **(partnerships and joint ventures)** enter into, materially amend or vary a partnership or joint venture other than in accordance with the Business Plan.
- (j) **(dividends)** declare, determine, make or pay a dividend or other distribution of profits or assets or make any change to the dividend policy of a Group Member.
- (k) **(contracts)** enter into, terminate, materially amend or materially vary a contract:
- (i) outside the ordinary course of business;
 - (ii) which generates, or could reasonably be expected to generate, revenues or expenses for any Group Member in excess of \$10,000,000 in aggregate over the life of the contract or in any 12 month period; or
 - (iii) of an onerous or unusual nature or has a term of 12 months or longer.
- (l) **(Security Interest)** create any Security Interest (other than a Permitted Security Interest) over the assets or undertaking of any Group Member except in the ordinary course of the Business.
- (m) **(incentive plan)** adopt or vary any incentive plan (whether an equity, profit or other incentive plan) in any way relating to the remuneration of any director, officer or employee of any Group Member and make any award or allotment (including issue any Shares) under any such plan.
- (n) **(disputes)** with the exception of defences to proceedings brought against the Company or any Group Member (and any cross-claims made in the course of such defences), commence, settle or conduct any dispute, litigation, arbitration or other proceedings (including with any Tax authority) where the amount claimed or the amount of the settlement is \$500,000 or greater other than claims in the ordinary course of business or in the case of urgent injunctive application or other proceedings necessary to protect its rights or preserve or defend its position.

Part B – Matters to be determined by Special Majority Directors’ Resolution

- (a) **(acquisitions and disposals)** other than in connection with an Exit, Dispose of the Business (or any material part of it) or any Securities in or held by any Group Member, or acquire any other business (or any material part of a business) or any securities in any company or trust.
- (b) **(assets)** other than in connection with an Exit, sell or buy any assets (either tangible or intangible) having a value of more than \$10,000,000 in a single transaction, in a series of related transactions over any period or in a series of unrelated transactions in a 12 month period by one or more Group Members.
- (c) **(propose a buy back or redemption of Shares)** propose or implement a buy back or redemption of any Shares or a capital reduction by any Group Member other than a mandatory buy back or redemption in accordance with the terms of issue of the relevant Shares.
- (d) **(deal or agree to deal in Shares)** purchase, retire or acquire any Shares, or agree to do so.

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- (e) **(Shares)** except as (i) required under a Transaction Document or the Constitution; (ii) an issue of Shares under clause 9.13(f) and clauses 9.20 to 9.22 (inclusive) or any subsequent issue to a Catch-up Offeree, (iii) an issue of Incentive Shares or (iv) as required in connection with a transaction in accordance with clause 14, issue or grant any right to issue or acquire Shares or other Securities (including Securities which are convertible into Shares) of any Group Member.
 - (f) **(auditor)** appoint or remove an auditor of any Group Member.
 - (g) **(Related Party Proposal)** approve a Related Party Proposal.
 - (h) **(change in nature of Business)** other than in accordance with the Business Plan or pursuant to a transaction in accordance with clause 14, cease to carry on, or materially alter the scale of operations of, the Business or commence any business or operational activities other than the Business.
 - (i) **(winding up)** take any step to dissolve or wind up any Group Member other than where the dissolution or winding up is required to prevent insolvent trading by a Group Member.
 - (j) **(Restructuring Event)** undertake or undergo a Restructuring Event.

Part C – Matters to be determined by Shareholders’ Special Resolution

- (a) **(variation of rights)** vary the rights attaching to Shares or the shares or other securities of any other Group Member other than a variation of rights attaching to the foundation shares in Capilano.
- (b) **(effect a buy back or redemption of Shares)** effect a buy back or redemption of any Shares or a capital reduction by any Group Member.
- (c) **(Constitution)** amend or vary the constitution of any Group Member or adopt a new constitution for any Group Member, other than (i) amendments to the Capilano constitution in connection with a proposed variation of rights attaching to the foundation shares in Capilano; and (ii) adoption of a constitution for Capilano that is substantially the same as the BidCo constitution.

Shareholders Deed

Schedule 3 Accession Deed

Details

Parties

Acceding Party	Name
	[ACN/ARBN]
	Formed in
	Address
	Email
	Attention

Recitals	A	The [Transferor, the] Continuing Shareholders and the Company are parties to the Shareholders Deed.
	B	[The Transferor has agreed to sell and the Transferee has agreed to purchase [insert number] shares in the Company. / The Company has agreed to issue and the Acceding Party has agreed to purchase [insert number] Shares in the Company.]
	C	Under clause 9.14 of the Shareholders Deed, before it is registered as a holder of any Shares, a transferee or subscriber must become a party to the Shareholders Deed, by entering into an agreement in the form of this Accession Deed.
	D	[The Transferor wishes to be released from its obligations under the Shareholders Deed in respect of the Sale Shares, as from the Effective Date, to the extent permitted under the Shareholders Deed.]
	E	The Continuing Shareholders have agreed to the [transfer/issue] of the [Sale/New] Shares, subject to the Acceding Party entering into this Accession Deed.

Date of deed	See Signing page
---------------------	------------------

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Accession Deed

General terms

1 Definitions and interpretation

1.1 Definitions

Unless the contrary intention appears, these meanings apply:

Accession Date has the meaning given to it in clause 2.1.

Acquired Shares means the Shares issued to, transferred to or acquired by the Acceding Party in accordance with the terms of the Shareholders Deed.

Company means Bravo HoldCo Pty Ltd (ACN 628 069 474)

Continuing Shareholders means each party (whether an original party or a party by accession) to the Shareholders Deed, as listed in Schedule 1 to this document.

Shareholders Deed means the Shareholders Deed dated on or about [insert] relating to the Company as amended from time to time, a copy of which is attached as Attachment A.

Transferor means [insert].

1.2 Terms defined in the Shareholders Deed

Unless the contrary intention appears, a term which has a defined meaning in the Shareholders Deed has the same meaning when used in this document

1.3 Interpretation

Clauses 1.2 and 1.3 of the Shareholders Deed apply to this document as if set out in full in this document.

2 Accession

2.1 Accession

The Acceding Party accedes to the Shareholders Deed on and from [insert relevant date / describe events triggering accession] (**Accession Date**).

2.2 Rights and obligations of Acceding Party

Upon accession to the Shareholders Deed, the Acceding Party is bound by all the terms of the Shareholders Deed from the Accession Date as if the Acceding Party was, from the Accession Date, a party to the Shareholders Deed with all the rights and obligations of a party to the Shareholders Deed in the capacity referred to in clause 2.3.

2.3 Capacity

Upon accession to the Shareholders Deed, the Acceding Party acknowledges that it will be a [Consortium Investor / Non-Investor Party] for the purposes of the Shareholders Deed and will have rights and obligations as if it were named in the Shareholders Deed as a [Consortium Investor / Non-Investor Party].

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3 Consent of Company and Continuing Shareholders

The Company and each Continuing Shareholder:

- (a) consent to the Acceding Party becoming a party to the Shareholders Deed (as a "Shareholder") and to the [transfer of the Sale Shares / issue of the New Shares] on and from the Effective Date [and to the Acceding Party assuming the obligations of the Transferor in accordance with (and to the extent referred to in) clause 2.3 of the Shareholders Deed];
- (b) agree that the Acceding Party will be entitled to exercise all of the rights, privileges and benefits of [the Transferor / a Shareholder] in respect of the [Sale / New] Shares; and
- (c) agree to be bound by the terms of the Shareholders Deed as if the Acceding Party were named in the Shareholders Deed as a "Shareholder" with effect from the Effective Date.

4 [Transferor released

With effect on and from the Effective Date, each Continuing Shareholder and the Company release and discharge the Transferor to the extent specified in clause 2.3 of the Shareholders Deed.]

5 Shareholders Deed

The parties agree that, except as provided above, the provisions of the Shareholders Deed remain in full force and effect.

6 Representations and warranties

The Acceding Party represents and warrants to each Continuing Party:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation or formation, is validly existing under those laws and has power and authority to own its assets and carry on its business as it is now being conducted;
- (b) **(power)** it has power to enter into this document, comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document does not and will not conflict with:
 - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
 - (ii) any law binding on or applicable to it or its assets;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms; and
- (f) **(solvency)** it is not Insolvent.

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7 Notices

7.1 Address of Acceding Party for notices

For the purposes of the Shareholders Deed the address of the Acceding Party to which all notices must be delivered is:

to [insert]:

Address: [insert]

Email: [insert]

Attention: [insert]

8 Costs and stamp duty

8.1 Costs

The costs of the Company arising out of the negotiation, preparation and execution of the Accession Deed will be borne by the Acceding Party. In all other respects, each party shall bear its own costs arising out of the negotiation, preparation and execution of this document.

8.2 Stamp duty

All stamp duty (including fines, penalties and interest) which may be payable on or in connection with this document, any instrument executed under this document, and in respect of a transaction evidenced by the agreement must be borne by the Acceding Party. The Acceding Party must indemnify the other parties to this document on demand against any liability for that stamp duty.

9 General

9.1 Entire agreement

This document, the Shareholders Deed and the documents referred to in the Shareholders Deed or executed in connection with the Shareholders Deed constitute the entire agreement of the parties about its subject matter and supersede all previous agreements, understandings and negotiations on that subject matter.

9.2 Invalid or unenforceable provisions

If a provision of this document is invalid or unenforceable in a jurisdiction:

- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- (b) that fact does not affect the validity or enforceability of:
 - (i) that provision in another jurisdiction; or
 - (ii) the remaining provisions.

9.3 Waiver

- (a) A provision of this document, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party to be bound.
 - (b) A waiver is effective only in the specific instance and for the specific purpose for which it is given.
-

- (c) Except as otherwise set out in this document, any partial exercise, failure to exercise, or delay in exercising a right or remedy provided under this document or by law does not operate as a waiver or prevent or restrict any further or other exercise of that or any other right or remedy in accordance with this document.

9.4 Consents, approvals or waivers

By giving any approval, consent or waiver a party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.

9.5 Discretion in exercising rights

Unless this document expressly states otherwise, a party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this document in its absolute discretion (including by imposing conditions).

9.6 Amendment

This document may be amended only by a document signed by all the Acceding Party and each of the Continuing Parties.

9.7 Assignment

The Acceding Party may not assign or otherwise deal with its rights under this document or allow any interest in them to arise or be varied without the written consent of each of the Continuing Parties.

9.8 Severability

If the whole or any part of a provision of this document is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this document has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause 9.8 has no effect if the severance alters the basic nature of this document or is contrary to public policy.

10 Governing law

This document is governed by the laws of New South Wales. The parties submit to the exclusive jurisdiction of the courts exercising jurisdiction there.

11 Counterparts

This document may consist of a number of copies, each signed by one or more parties to the agreement. If so, the signed copies are treated as making up the one document.

Executed as a deed poll.

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Schedule 1 – Continuing Shareholders

[insert names and addresses of Continuing Shareholders]

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Shareholders Deed

Schedule 4 Group undertakings

1 Access

- (a) Each Consortium Investor and each of their respective Representatives has the right, to freely:
 - (i) visit and inspect any premises of the Company and any other Group Member, upon giving reasonable notice to the Board;
 - (ii) inspect and take copies of documents relating to the Business (including the Records of the Business); and
 - (iii) discuss the Group's affairs, finances and accounts with the Group Member's officers, employees, contractors and auditors at all reasonable times and as often as any such person may reasonably request.
- (b) Subject always to the terms of this document, at the cost of the requesting Shareholder, the Company shall provide to the Shareholder any information that it from time to time reasonably requests (provided that such information is to be used for a proper purpose), and shall provide all reasonable assistance to any Shareholder, to meet the requirements that such Shareholder has (directly or indirectly) in respect of taxation or other reporting under the rules of the Shareholder's tax jurisdiction and the respective applicable stock exchange rules or other applicable legal, regulatory or accounting requirements.

2 Provision of information

- (a) Without limiting any other provision of this document, the Company will, on the request of the Consortium Investors, cause the management of the Group to prepare, participate in and co-operate with, such presentations to the Consortium Investors, prospective investors and any financiers or potential financiers as the Consortium Investors may reasonably require from time to time.
- (b) The Company must promptly keep the Directors informed of all material developments regarding the Group. For the avoidance of doubt, nothing in this document limits the rights of the Directors to receive such financial and other information relating to any Group Member as the Directors are entitled by law to receive.
- (c) The Company must promptly deliver to the Consortium Investors and the Directors, as and when requested by them, such financial and other information relating to any Group Member as the Consortium Investors or a Director may reasonably require.
- (d) Without prejudice to the above, the Company must deliver to the Consortium Investors and each Director, the information set out in columns 1 and 2 of the table below on or before the dates set out in column 3 of the table below:

Column 1 General description	Column 2 Specific requirements	Column 3 Due date
Monthly management accounts	<ul style="list-style-type: none"> • Commentary on the operational and financial position for the immediately preceding calendar month, including variances between the actual results and those forecast in the Business Plan • A profit and loss account and cash flow statement for the immediately preceding calendar month • A balance sheet as at the end of the immediately preceding calendar month • Commentary on any material developments (not including details of any macroeconomic policies or events or any amendments to, or the introduction of, any laws) which may materially affect the Business (or any material part of it) 	15 Business Days after the end of each calendar month
Draft audited accounts	<ul style="list-style-type: none"> • Drafts of the audited accounts referred to in the line item below 	As soon as reasonably practicable after such drafts are substantially progressed
Group audited accounts	<p>In respect of the Group, each of the following:</p> <ul style="list-style-type: none"> • Audited consolidated profit and loss account • Audited consolidated balance sheet • Audited consolidated cash flow statement • Notes and reports of Directors and auditors 	3 months after the end of each Financial Year
Cash projection	<ul style="list-style-type: none"> • Projection, or updated projection, of cash requirements and expectations of each Group Member and consolidated statement, for such periods as requested 	As soon as possible after request
Bank facilities	<ul style="list-style-type: none"> • To the extent not provided above any information required to be given to any person under any bank facilities of the Group 	At the time, or promptly after, the information is given to that person

- (e) The Company must promptly notify the Consortium Investors of any material variation from the amount of any item specified in any Group budget, forecast or projection and any other variation in another Group Member's budget, forecast or projection which is material in the context of the Group, which may come to the notice of the Company.

3 Insurance

The Company must (and must ensure that each Group Member must) (unless the Board otherwise approves):

- (a) take out and maintain insurance in respect of risks associated with the Business that a reasonable prudent person operating in the same industry as the Business would normally insure against;
- (b) at all times pay all premiums falling due under its insurance policies and observe and perform in all respects their terms and conditions;
- (c) not assign, charge or otherwise dispose of any interest in its insurance policies or do or omit to do any act by reason of which they may be rendered void, voidable or otherwise unenforceable by the Company; and
- (d) not amend, alter or modify the terms of its insurance policies.

4 D&O Insurance

The Company must (unless the Board unanimously resolves otherwise):

- (a) enter into a Deed of Access, Insurance and Indemnity with each Director; and
- (b) maintain a D&O Insurance Policy in respect of each Director (on the same terms for each Director) and pay the premiums in respect of that D&O Insurance Policy.

5 Management of the Business

The Company must, and must, subject to clause 6.1(b), ensure that the other Group Members, except as waived or otherwise determined by the Board ensure that their respective businesses are properly managed in accordance with usual sound commercial practice;

6 Deemed delivery

The delivery to a Consortium Investor Director of any documents required to be delivered to the Consortium Investors under this document is deemed to be delivery to the Consortium Investors.

Shareholders Deed

Schedule 5 Consortium Investors

The Initial Consortium Investors are:

Initial Consortium Investor	Notice details
WH	<p>Address: Level 13, 179 Elizabeth Street Sydney NSW Australia 2000</p> <p>Email: capilano@wattlehillcap.com (Attention: Deane Conway)</p>
ROC	<p>Address: Level 11, 2 Bligh Street Sydney NSW Australia 2000</p> <p>Email: rocpops@rocp.com (Attention: Michael Lukin and Shaw Ng)</p> <p><i>Copying:</i></p> <p>Michael Lukin (E): michael.lukin@rocp.com</p> <p>Shaw Ng (E): shaw.ng@rocp.com</p>

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Shareholders Deed

Signing page

DATED: _____ 2018.

EXECUTED by **BRAVO HOLDCO PTY LTD** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

.....
Signature of director

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

.....
Signature of director/company secretary*
*delete whichever is not applicable

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

EXECUTED by **WATTLE HILL RHC FUND 1**, by its general partner, Wattle Hill RHC Fund 1 GP, by its general partner, **WATTLE HILL RHC GP MANAGEMENT PTY LTD** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

.....
Signature of director

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

.....
Signature of director/company secretary*
*delete whichever is not applicable

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

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EXECUTED by **ROC CAPITAL PTY LTD** (in its capacity as trustee of **ROC B&Y INVESTMENT TRUST**) in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

.....
Signature of director

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

.....
Signature of director/company secretary*
*delete whichever is not applicable

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

[EXECUTED by **CAPILANO BEEKEEPERS LTD** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

.....
Signature of director

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

.....
Signature of director/company secretary*
*delete whichever is not applicable

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

Shareholders Deed

Annexure A Constitution

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Constitution

Bravo HoldCo Pty Ltd (ACN 628 069 474) (“**Company**”)

A proprietary company limited by shares

Adopted on [●]

King & Wood Mallesons

Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.kwm.com

Constitution

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1 Definitions and interpretation

1.1 Definitions

In this Constitution unless the contrary intention appears:

Alternate Director means a person appointed as an alternate director under article 12.9.

Committee means a committee of Directors constituted under article 11.6.

Company means Bravo HoldCo Pty Ltd (ACN 628 069 474), as that name may be changed from time to time.

Constitution means this constitution as amended from time to time and a reference to an article is a reference to an article of this Constitution.

Corporations Act means the Corporations Act 2001 (Cwlth).

Director means a person holding office as a director of the Company, and where appropriate includes an Alternate Director.

Directors means the board of directors of the Company.

Executive Director means a person appointed as an executive director under article 11.8.

Managing Director means a person appointed as a managing director under article 11.8.

Member means a person entered in the Register as a holder of shares in the capital of the Company

Prescribed Interest Rate means the rate determined by the Directors for the purpose of this Constitution, and in the absence of a determination means the rate 4% per annum above the most recent 60 day Bank Bill Swap Reference Rate last published on or before that day in The Australian Financial Review (or if that rate has not been published, another date set by the Directors in good faith).

Register means the register of Members of the Company under the Corporations Act.

Registered Office means the registered office of the Company.

Representative means a person appointed to represent a corporate Member at a general meeting of the Company in accordance with the Corporations Act.

ROC means Roc Capital Pty Ltd (ABN 37 167 858 764) as trustee for Roc B&Y Investment Trust.

Secretary means a person appointed under article 13.1 as a secretary of the Company and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

Shareholders Deed means the Shareholders Deed dated [●] between the Company, WHC, ROC and other shareholders of the Company from time to time.

WHC means Wattle Hill RHC Fund 1.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation.

In this Constitution unless the contrary intention appears:

- (a) words importing any gender include all other genders;
- (b) the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (c) a reference to a document including this Constitution includes any variation or replacement of it;
- (d) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions.
- (e) the singular includes the plural and vice versa;
- (f) a reference to legislation includes regulations and other instruments under it and any variation or replacement of any of them;
- (g) a reference to “regulations” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (h) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (i) a power, an authority or a discretion given to a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time;
- (j) a reference to “law” includes common law, principles of equity and legislation (including regulations);
- (k) “writing” and “written” includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise;
- (l) a reference to dollars, A\$ or \$ is a reference to Australian dollars;
- (m) a chairman appointed under this Constitution may be referred to as a chairperson, chairwoman or as chair, as appropriate;
- (n) a reference to a person being “present” at a meeting includes participating in technology approved by the Directors in accordance with this Constitution; and
- (o) where a document (including a notice or consent) is required to be “signed”, the requirement may be satisfied in relation to an electronic communication of the document in any manner:
 - (i) permitted by relevant law relating to electronic transmissions (including electronic signature); or

- (ii) approved by the Directors (which could include authentication by providing an allocated code or specified personal information).

1.3 Corporations Act

In this Constitution unless the contrary intention appears:

- (a) a word or expression defined or used in the Corporations Act has the same meaning when used in this Constitution in a similar context; and
- (b) “section” means a section of the Corporations Act.

1.4 Replaceable rules not to apply

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and do not apply to the Company.

1.5 Shareholders Deed prevails

- (a) This Constitution is subject to the Shareholders Deed. To the extent of any inconsistency between this Constitution and the Shareholders Deed, the Shareholders Deed prevails.
- (b) Despite any other provision of this Constitution and without limiting any other provision of this Constitution or the Shareholders Deed, for so long as the Shareholders Deed is in force, the Company may not (and no Member or Director may take any action to procure that the Company will), take any action, including any of the matters set out in Schedule 2, parts B and C, of the Shareholders Deed, nor agree to do so, if such action would contravene or be inconsistent with the Shareholders Deed, including if any form of approval or process required under the Shareholders Deed for the relevant action has not been granted or followed.
- (c) A holder of any shares in the Company who, for any reason, is not at any time a party to the Shareholders Deed must comply with the Shareholders Deed as if it were a party to it.

2 Share capital and variation of rights

2.1 Directors to issue shares

The issue of shares in the Company is under the control of the Directors who may:

- (a) Issue, allot, cancel and otherwise dispose of shares in the Company;
- (b) grant options over unissued shares in the Company; and
- (c) settle the manner in which fractions of a share, however arising, are to be dealt with,

subject to the Corporations Act, Shareholders Deed and any special rights conferred on the holders of any shares or class of shares.

2.2 Variation of class rights

Subject to this Constitution, the Shareholders Deed and the terms on which any shares in the Company are issued, the rights attaching to shares in a class of

shares may only be varied or cancelled by a special resolution of the Company and:

- (a) by a special resolution passed at a meeting of Members entitled to vote and holding shares in that class; or
- (b) with the written consent of holders entitled to vote in respect of at least 75% of the issued shares of that class.

2.3 Class meetings

Subject to the Shareholders Deed and to the extent there are more than one class of shares, the provisions of this Constitution relating to general meetings apply so far as they are capable of application and with any necessary changes to every separate meeting of the holders of a class of shares except that:

- (a) a quorum is constituted by at least 2 persons who, between them, hold or represent one-third of the issued shares of the class (unless only one person holds all of the shares of the class, in which case that person constitutes a quorum); and
- (b) any holder of shares of the class, present in person or by proxy, or attorney or Representative, may demand a poll.

2.4 Redemption in accordance with terms of issue of shares

The terms of article 2.2 do not apply and consent is not required for a redemption of any shares or variation of rights attaching to any shares in compliance with the terms of issue of those shares.

2.5 No variation

The rights attaching to shares in a class of shares will not be taken to be varied by:

- (a) the issue of further shares of that class; or
- (b) the issue of any shares of any other class; or
- (c) the conversion of shares or other securities to new shares or securities,

which rank equally with, or in priority to, the shares in the relevant class of shares, unless expressly provided by their respective terms of issue or the Corporations Act.

2.6 Non-recognition of interests

Except as required by law, the Company is not required to recognise:

- (a) a person as holding a share on any trust; or
- (b) any other interest in any share or any other right in respect of a share except an absolute right of ownership in the registered holder,

whether or not it has notice of the trust, interest or right.

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2.7 Joint holders of shares

Where two or more persons are registered as the joint holders of shares then they are taken to hold the shares as joint tenants with rights of survivorship, but the Company is not bound:

- (a) to register more than three persons as joint holders of a share; or
- (b) to issue more than one certificate or holding statement for shares jointly held.

3 Lien

3.1 Lien on share

To the extent permitted by law, the Company has a first and paramount lien on every share for:

- (a) all due and unpaid calls and instalments in respect of that share;
- (b) all money which the Company is required by law to pay, and has paid, in respect of that share;
- (c) interest at the Prescribed Interest Rate on the amount due from the date it becomes due until payment; and
- (d) reasonable expenses of the Company in respect of the default on payment.

3.2 Lien on distributions

A lien on a share under article 3.1 extends to all distributions for that share, including dividends.

3.3 Exemption from article 3.1

The Directors may at any time exempt a share wholly or in part from the provisions of article 3.1.

3.4 Extinguishment of lien

The Company's lien on a share is extinguished if a transfer of the share is registered without the Company giving notice of the lien to the transferee.

3.5 Company's rights to recover payments

A Member must reimburse the Company on demand in writing for all payments the Company makes to a government or taxing authority in respect of the Member, the death of a Member or the Member's shares or any distributions on the Member's shares, including dividends, where the Company is either:

- (a) required by law to make the relevant payment; or
- (b) advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxing authority that the Company is required by law to make the relevant payment.

The Company is not obliged to advise the Member in advance of its intention to make the payment.

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3.6 Reimbursement is a debt due

The obligation of the Member to reimburse the Company is a debt due to the Company as if it were a call on all of the Member's shares, duly made at the time when the written demand for reimbursement is given by the Company to the Member. The provisions of this Constitution relating to non-payment of calls, including payment of interest and sale of the Member's shares under lien, apply to the debt.

3.7 Sale under lien

Subject to article 3.8, the Company may sell, in any manner the Directors think fit, any share on which the Company has a lien. To the maximum extent it is able, the Company must comply with the Shareholders Deed on any sale as if it were a Member transferring the shares.

3.8 Limitations on sale under lien

A share on which the Company has a lien may not be sold by the Company unless:

- (a) an amount in respect of which the lien exists is presently payable; and
- (b) the Company has, not less than 14 days before the date of sale, given to the registered holder of the share or the person entitled to the share by reason of the death or bankruptcy of the registered holder, a notice in writing setting out, and demanding payment of, the amount which is presently payable in respect of which the lien exists.

3.9 Transfer on sale under lien

For the purpose of giving effect to a sale under article 3.7, the Company may receive the consideration, if any, given for the share so sold and may execute a transfer of the share sold in favour of the purchaser of the share, or do all such other things as may be necessary or appropriate for it to do to effect the transfer. The purchaser is not bound to see to the application of the purchase money.

3.10 Irregularity or invalidity

The title of the purchaser to the share is not affected by any irregularity or invalidity in connection with the sale of the share under article 3.7.

3.11 Proceeds of sale

The proceeds of a sale under article 3.7 must be applied by the Company in payment of the amount in respect of which the lien exists as is presently payable, and the residue, if any, must be paid to the person entitled to the share immediately before the sale.

4 Calls on shares

4.1 Directors to make calls

The Directors may:

- (a) make calls on a Member in respect of any money unpaid on the shares of that Member, if the money is not by the terms of issue of those shares made payable at fixed times;

- (b) make a call payable by instalments; and
- (c) revoke or postpone a call.

4.2 Time of call

A call is taken to be made at the time when the resolution of the Directors authorising the call is passed.

4.3 Members' liability

Upon receiving not less than 30 business days' notice specifying the time or times and place of payment, each Member must pay to the Company by the time or times, and at the place, specified in the notice, the amount called on that Member's shares.

4.4 Joint holders' liability

The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

4.5 Non-receipt of notice

The non-receipt of a notice of any call by, or the accidental omission to give notice of a call to, a Member does not invalidate the call.

4.6 Interest on default

If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due must pay interest on the sum from the day it is due to the time of actual payment at the Prescribed Interest Rate. The Directors may waive payment of that interest wholly or in part.

4.7 Fixed instalments

If the terms of a share make a sum payable on issue of the share or at a fixed date, this is taken to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable. In the case of non-payment, all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

4.8 Differentiation between holders as to calls

The Directors may, on the issue of shares, differentiate between the holders of the shares as to the amount of calls to be paid and the times of payment.

4.9 Prepayment of calls and interest

The Directors may:

- (a) accept from a Member the whole or part of the amount unpaid on a share even if no part of that amount has been called; and
- (b) authorise payment by the Company of interest on the whole or any part of an amount so accepted, until the amount becomes payable, at such rate, not exceeding the Prescribed Interest Rate, as is agreed between the Directors and the Member paying the sum.

5 Forfeiture of shares

5.1 Notice requiring payment of call

If a Member fails to pay a call or instalment of a call on the day appointed for payment of the call or instalment, the Directors may, at any time afterwards during such time as any part of the call or instalment remains unpaid, give a notice to the Member requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued and all costs and expenses that may have been incurred by the Company by reason of that non-payment.

5.2 Contents of notice

The notice must name a further day, which is at least 14 days from the date of service of the notice, on or before which the payment required by the notice is to be made and must state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

5.3 Forfeiture for failure to comply with notice

If a notice under article 5.1 has not been complied with by the date specified in the notice, the Directors may by resolution forfeit the relevant shares, at any time before the payment required by the notice has been made.

5.4 Dividends and distributions included in forfeiture

A forfeiture under article 5.3 includes all dividends and other distributions to be made in respect of the forfeited shares which have not been paid or distributed before the forfeiture.

5.5 Sale or re-issue of forfeited shares

Subject to the Corporations Act, a share forfeited under article 5.3 may be sold, re-issued or otherwise disposed of to such person and on such terms as the Directors think fit. To the maximum extent it is able, the Company must comply with the Shareholders Deed on any sale or disposal as if it were a Member selling or disposing of the shares and on any re-issue of any share forfeited under article 5.3.

5.6 Notice of forfeiture

If any share is forfeited under article 5.3 notice of the forfeiture must be given to the Member holding the share immediately before the forfeiture and an entry of the forfeiture and its date must be made in the Register. Any failure to give notice or enter the forfeiture in the Register does not invalidate the forfeiture.

5.7 Surrender instead of forfeiture

The Directors may accept the surrender of any share which they are entitled to forfeit on any terms they think fit and any share so surrendered is taken to be a forfeited share.

5.8 Cancellation of forfeiture

At any time before a sale, re-issue or disposal of a share under article 5.5, the forfeiture of that share may be cancelled on such terms as the Directors think fit.

5.9 Effect of forfeiture on former holder's liability

A person whose shares have been forfeited:

- (a) ceases to be a Member in respect of the forfeited shares; and
- (b) remains liable to pay the Company all money that, at the date of forfeiture, was payable by that person to the Company in respect of the shares, plus interest at the Prescribed Interest Rate from the date of forfeiture and the reasonable expenses of the sale of the shares, until the Company receives payment in full of all money (including interest and expenses) so payable in respect of the shares.

5.10 Evidence of forfeiture

A statement in writing declaring that the person making the statement is a Director or a Secretary, and that a share in the Company has been forfeited in accordance with this Constitution on the date declared in the statement, is prima facie evidence of the facts in the statement as against all persons claiming to be entitled to the share.

5.11 Transfer of forfeited share

The Company may receive any consideration given for a forfeited share on any sale, re-issue or disposal of the share under article 5.5 and may execute or effect a transfer of the share in favour of the person to whom the share is sold, re-issued or disposed.

5.12 Registration of transferee

On the execution of the transfer, the transferee must be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.

5.13 Irregularity or invalidity

The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale, re-issue or disposal of the share.

6 Transfer of shares

6.1 Transfer of Shares

Subject to this Constitution, the Shareholders Deed and the terms on which any shares in the Company are issued, a Member may transfer shares in the Company. A Member must comply with the Shareholders Deed when transferring shares in the Company.

6.2 Forms of instrument of transfer

Subject to this Constitution and the Shareholders Deed, a share in the Company is transferable by any method of transfer required or permitted by the Corporations Act.

6.3 Execution and delivery of transfer

If a duly completed instrument of transfer:

- (a) is used to transfer a share in accordance with article 6.2; and

- (b) is left for registration at the share registry of the Company, accompanied by any information that the Directors properly require to show the right of the transferor to make the transfer,

the Company must, subject to the Shareholders Deed and the powers vested in the Directors by this Constitution, register the transferee as the holder of the share.

6.4 Effect of registration

A transferor of a share remains the holder of the share transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the share.

6.5 Company to retain instrument of transfer

The Company must retain every instrument of transfer which is registered for the period required by any applicable law.

6.6 Directors' powers to refuse to register

The Directors:

- (a) must refuse to register a transfer of shares in the Company which does not comply with the Shareholders Deed or this Constitution; and
- (b) must register any transfer of shares in the Company which complies with the Shareholders Deed and this Constitution.

6.7 Transfer to or by a secured party

Subject to the Shareholders Deed, the Directors may not refuse to register a transfer of shares under article 6.6 if the transfer is either to a person holding a mortgage, charge, pledge or other security interest (or to a person acting as agent, trustee or nominee for such a person) ("**Secured Party**") which is given by a Member over their shares in the Company ("**Share Security**"), or is pursuant to an exercise by a Secured Party of rights in relation to a Share Security.

In any such case, the Directors must register the transferee as a Member. The Directors may request and rely on a written statement of the Secured Party certifying that the transfer is pursuant to an exercise of rights under a Share Security.

7 Transmission of shares

7.1 Transmission of shares on death

If a Member, who does not hold shares jointly, dies, the Company will recognise only the personal representative of the Member as being entitled to the Member's interest in the shares.

This article is subject to the Shareholders Deed.

7.2 Information given by personal representative

If the personal representative of the Member who has died gives the Directors the information they reasonably require to establish the representative's entitlement to be registered as a holder of the shares:

- (a) the personal representative may:
 - (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
 - (ii) by giving a completed transfer form to the Company, transfer the shares to another person; and
- (b) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the Member.

On receiving an election under paragraph 7.2(a)(i), the Company must register the personal representative as the holder of the shares.

A transfer under paragraph 7.2(a)(ii) is subject to the articles that apply to transfers generally.

This article is subject to the Shareholders Deed.

7.3 Death of joint owner

If a Member, who holds shares jointly, dies, the Company will recognise only the survivor as being entitled to the Member's interest in the shares. The estate of the Member is not released from any liability in respect of the shares.

7.4 Transmission of shares on bankruptcy

If a person entitled to shares because of the bankruptcy of a Member gives the Directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares, the person may:

- (a) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
- (b) by giving a completed transfer form to the Company, transfer the shares to another person.

On receiving an election under paragraph (a), the Company must register the person as the holder of the shares.

A transfer under paragraph (b) is subject to the articles that apply to transfers generally.

This article is subject to the Bankruptcy Act 1966 (Cwlth) and the Shareholders Deed.

7.5 Transmission of shares on mental incapacity

If a person entitled to shares because of the mental incapacity of a Member gives the Directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares:

- (a) the person may:
 - (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
 - (ii) by giving a completed transfer form to the Company, transfer the shares to another person; and

- (b) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the Member.

On receiving an election under paragraph 7.5(a)(i), the Company must register the person as the holder of the shares.

A transfer under paragraph 7.5(a)(ii) is subject to the articles that apply to transfers generally.

This article is subject to the Shareholders Deed.

8 General meetings

8.1 Convening a general meeting

The Directors or a Director may convene and arrange to hold a general meeting of the Company whenever they think fit and must do so if required to do so under the Corporations Act.

8.2 Use of technology at general meetings

A company may hold a meeting of its members at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate

8.3 Notice of general meeting

Subject to the Shareholders Deed, a notice of a general meeting must be given in accordance with article 18 and the Corporations Act.

8.4 Calculation of period of notice

In computing the period of notice under article 8.3, both the day on which the last notice to Members is given or taken to be given and the day of the meeting convened by it are to be disregarded.

8.5 Cancellation or postponement of a meeting

Where a general meeting is convened by the Directors they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place for the meeting.

This article 8.5 does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members, by the Directors on the request of Members or to a meeting convened by a court.

8.6 Notice of cancellation or postponement of a meeting

Notice of cancellation or postponement or change of place of a general meeting must state the reason for cancellation or postponement and be given:

- (a) to each Member; and
- (b) to each other person entitled to be given notice of a general meeting.

8.7 Contents of notice of postponement of meeting

A notice of postponement of a general meeting must specify:

- (a) the postponed date and time for the holding of the meeting;
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

8.8 Number of clear days for postponement of meeting

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days' notice of the general meeting required to be given by this Constitution or the Corporations Act.

8.9 Business at postponed meeting

The only business that may be transacted at a postponed general meeting, is the business specified in the original notice convening the meeting.

8.10 Proxy, attorney or Representative at postponed meeting

Where by the terms of an instrument appointing a proxy or attorney or an appointment of a Representative:

- (a) the appointed person is authorised to attend and vote at a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of Representative unless the Member appointing the proxy, attorney or Representative gives to the Company at its Registered Office written notice not less than 48 hours before the time to which the holding of the meeting has been postponed.

8.11 Non-receipt of notice

The non-receipt of notice of a general meeting or cancellation or postponement of a general meeting by, or the accidental omission to give notice of a general meeting or cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.

8.12 Director entitled to notice of meeting

A Director is entitled to receive notice of and to attend all general meetings and all separate meetings of the holders of any class of shares in the capital of the Company and is entitled to speak at those meetings.

8.13 Appointment of proxy, Representative or attorney

Subject to the Corporations Act, a Member who is entitled to participate in and vote at a meeting of the Company may appoint a person as the Member's proxy

or may appoint a Representative or an attorney, to participate in and vote at the meeting for the Member.

If a Member is entitled to cast two or more votes at the meeting, the Member may appoint two proxies who may each exercise half of the Member's votes at the meeting, unless the instrument appointing the proxies specifies the proportion or number of the Member's votes that each proxy may exercise.

9 Proceedings at general meetings

9.1 Number for a quorum

The quorum for a general meeting is 2 Members present in person or by proxy, attorney or Representative who between them hold shares representing not less than 60% of the total number of votes attaching to all shares in the Company. In determining whether a quorum is present, each individual attending as a proxy, attorney or Representative is to be counted, except that:

- (a) where a Member has appointed more than one proxy, attorney or Representative, only one is to be counted; and
- (b) where an individual is attending both as a Member and as a proxy, attorney or Representative, that individual is to be counted once for that Member and once for each Member for whom that individual is attending as a proxy, attorney or Representative.

9.2 Requirement for a quorum

An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the chairman of the meeting (on the chairman's own motion or at the request of a Member, proxy, attorney or Representative who is present) declares otherwise.

9.3 If quorum not present

If within 15 minutes after the time appointed for a meeting a quorum is not present, the meeting:

- (a) if convened in accordance with the Corporations Act by a single Director, by Members or by the Directors at the request of Members, is dissolved; and
- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

9.4 Adjourned meeting

At a meeting adjourned under article 9.3(b), where the Company has only one Member, the quorum is that Member, and otherwise, the quorum is 2 Members, who taken together hold at least 30% of the ordinary shares on issue in the capital of the Company and if a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

9.5 Appointment of chairman of general meeting

If the Directors have elected one of their number as chairman of their meetings, that person is entitled to preside as chairman at a general meeting.

9.6 Absence of chairman at general meeting

If a general meeting is held and:

- (a) a chairman has not been elected by the Directors; or
- (b) the elected chairman of Directors is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as chairman of the meeting (in order of precedence):

- (c) a Director chosen by a majority of the Directors present;
- (d) the only Director present; or
- (e) a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.

9.7 Conduct of general meetings

The chairman of a general meeting:

- (a) has charge of the general conduct of the meeting and the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairman under this article is final.

9.8 Adjournment of general meeting

The chairman of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and place, but:

- (a) in exercising the discretion to do so, the chairman may, but need not, seek the approval of the Members present in person or by proxy, attorney or Representative; and
- (b) only unfinished business is to be transacted at a meeting resumed after an adjournment.

Unless required by the chairman, a vote may not be taken or demanded by the Members present in person or by proxy, attorney or Representative in respect of any adjournment.

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9.9 Notice of adjourned meeting

Any notice of an adjournment or of the business to be transacted at any adjourned meeting must be given as in the case of an original meeting.

9.10 Questions decided by majority

Subject to the requirements of the Corporations Act and the Shareholders Deed, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

9.11 No casting vote for chairman

If there is an equality of votes, either on a show of hands or on a poll, the chairman of the general meeting is not entitled to a casting vote in addition to any votes to which the chairman is entitled as a Member or proxy or attorney or Representative.

9.12 Voting on show of hands

Subject to the Shareholders Deed, at any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is effectively demanded and the demand is not withdrawn. A declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact. Neither the chairman nor the minutes need state, and it is not necessary to prove, the number or proportion of the votes recorded in favour of or against the resolution.

9.13 Poll

If a poll is effectively demanded:

- (a) it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is a resolution of the meeting at which the poll was demanded;
- (b) on the election of a chairman or on a question of adjournment, it must be taken immediately;
- (c) the demand may be withdrawn; and
- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

9.14 Entitlement to vote

Subject to the Shareholders Deed, this Constitution, the Corporations Act and any rights or restrictions for the time being attached to any class or classes of shares:

- (a) on a show of hands, each Member present in person and each other person present as a proxy, attorney or Representative of a Member has one vote; and
- (b) on a poll, each Member present in person has one vote for each fully paid share held by the Member and each person present as proxy, attorney or Representative of a Member has one vote for each fully paid share held by the Member that the person represents.

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9.15 Joint shareholders' vote

If a share is held jointly and more than one Member votes in respect of that share, only the vote of the Member whose name appears first in the Register counts.

9.16 Effect of unpaid call

A Member is not entitled at a general meeting to cast a vote attached to a share on which a call is due and payable and has not been paid.

9.17 Validity of vote in certain circumstances

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy, attorney or Representative, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Member dies;
- (b) the Member is mentally incapacitated;
- (c) the Member revokes the appointment or authority;
- (d) the Member revokes the authority under which the appointment was made by a third party; or
- (e) the Member transfers the share in respect of which the appointment or authority was given.

9.18 Objection to voting qualification

An objection to the right of a person to attend or vote at the meeting or adjourned meeting:

- (a) may not be raised except at that meeting or adjourned meeting; and
- (b) must be referred to the chairman of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

10 The Directors

10.1 Number of Directors

The number of Directors is determined in accordance with the Shareholders Deed.

10.2 Appointment and removal of Directors

Directors must be appointed and removed in accordance with the Shareholders Deed.

10.3 Change to number of Directors

Subject to the Shareholders Deed, the Company in general meeting may by resolution increase or reduce the number of Directors.

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10.4 Remuneration of Directors

The Directors are to be remunerated for their services as Directors only to the extent permitted under the Shareholders Deed.

10.5 Additional or special duties

Subject to the Shareholders Deed, if a Director at the request of the Directors performs additional or special duties for the Company, the Company may remunerate that Director as determined by the Directors and that remuneration may be either in addition to or in substitution for that Director's remuneration under article 10.3.

10.6 Retirement benefit

Subject to the Corporations Act and the Shareholders Deed, the Company may pay a former Director, or the personal representative of a Director who dies in office, a retirement benefit in recognition of past services of an amount determined by the Directors. The Company may also enter into a contract with a Director providing for payment of a retirement benefit. A retirement benefit paid under this article is not remuneration to which article 10.4 applies.

10.7 Expenses

Subject to the Shareholders Deed, a Director is entitled to be reimbursed out of the funds of the Company such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the business of the Company.

10.8 Director's interests

Subject to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:

- (a) hold any office or place of profit in the Company, except that of auditor;
- (b) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into any contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees of the Company or Directors or persons dependent on or connected with them;
- (e) act in a professional capacity (or be a member of a firm or an officer of an employee of a body corporate which acts in a professional capacity) for the Company, except as auditor;
- (f) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors;
- (g) sign or participate in the execution of a document by or on behalf of the Company;
- (h) do any of the above despite the fiduciary relationship of the Director's office:

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- (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
- (ii) without affecting the validity of any contract or arrangement; and
- (i) exercise the voting power conferred by securities in any entity held by the Company, in accordance with the terms of their appointment, including in circumstances where a Director may be interested in the exercise (such as a resolution appointing a Director as an officer of the entity or providing for the payment of remuneration to officers of the entity); and
- (j) act as a nominee or representative of a shareholder of the Company, on terms agreed with the Company.

A reference to the Company in this article 10.8 is also a reference to each related body corporate of the Company.

This article is subject to the Shareholders Deed.

10.9 Vacation of office of Director

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act or under the Shareholders Deed, the office of a Director becomes vacant if:

- (a) the Director is an executive Director and ceases to be employed by the Company or a related body corporate;
- (b) the Director becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (c) the Director resigns from the office by notice in writing to the Company; or
- (d) the Director's appointing Member ceases to be entitled to appoint the Director in accordance with the Shareholders Deed.

11 Powers and duties of Directors

11.1 Directors to manage Company

The business of the Company is to be managed by the Directors, who may exercise all such powers of the Company as are not, by the Corporations Act, this Constitution or the Shareholders Deed, required to be exercised by the Company in general meeting. In exercising those powers, the Directors must comply with the Shareholders Deed.

11.2 Specific powers of Directors

Without limiting the generality of article 11.1 and subject to the Shareholders Deed, the Directors may exercise all the powers of the Company to borrow or raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

11.3 Appointment of attorney

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for such period and subject to such conditions as they think fit.

11.4 Provisions in power of attorney

A power of attorney granted under article 11.3 may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

11.5 Signing of receipts and negotiable instruments

The Directors may determine the manner in which and persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Company, may be signed, drawn, accepted, endorsed or otherwise executed.

11.6 Committees

The Directors may, subject to the Shareholders Deed, delegate any of their powers, other than powers required by law to be dealt with by Directors as a board, to a Committee or Committees consisting of one or more of their number as they think fit.

11.7 Powers delegated to Committees

A Committee to which any powers have been delegated under article 11.6 must exercise those powers in accordance with any directions of the Directors, and no matter which requires a Special Majority Directors' Resolution under the Shareholders Deed may be determined by a Committee.

11.8 Appointment of Managing and Executive Directors

The Directors may appoint one or more of themselves to the office of Managing Director or as an Executive Director or to any other office (except auditor) or any position of employment with the Company for the period and on the terms they think fit.

11.9 Ceasing to be a Managing or Executive Director

Whether or not the appointment of a Managing Director or Executive Director was expressed to be for a specified term, the appointment of a Managing Director or Executive Director terminates if:

- (a) the Managing Director or Executive Director ceases for any reason to be a Director;
- (b) the Directors remove the Managing Director or Executive Director from the office of Managing Director or Executive Director (which, subject to any contract between the Company and the Managing Director or Executive Director, the Directors have power to do); or
- (c) the Managing Director or the Executive Director ceases to be employed by the Company or a related body corporate.

11.10 Remuneration of Managing and Executive Directors

The remuneration of a Managing Director or an Executive Director may be fixed by the Directors and may be by way of salary or commission or participation in profits or by all or any of those modes, but may not be by a commission on or percentage of operating revenue.

11.11 Powers of Managing and Executive Directors

The Directors may:

- (a) confer on a Managing Director or an Executive Director such of the powers exercisable by them, on such terms and conditions and with such restrictions, as they think fit, provided that no matter which requires a Special Majority Directors' Resolution under the Shareholders Deed may be determined by a Managing Director; and
- (b) withdraw or vary any of the powers conferred on a Managing Director or an Executive Director.

11.12 Delegation of Directors' powers

The Directors may delegate any of their powers to any persons they select for any period, to be exercised for any objects and purposes on any terms and subject to any conditions and restrictions as they think fit, and may revoke, withdraw, alter or vary the delegation of any of those powers.

The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by section 198D of the Corporations Act.

12 Proceedings of Directors

12.1 Directors' meetings

The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as required by the Shareholders Deed and, in other cases, as they think fit.

12.2 Director may convene a meeting

A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors. The convening of a meeting must comply with the Shareholders Deed in respect of notice or any other requirements.

12.3 Use of technology for Directors' meetings

A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.

12.4 Questions decided by majority

Except to the extent that the Shareholders Deed provides otherwise, a question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote and that decision is for all purposes a decision of the Directors.

12.5 Alternate Director or proxy and voting

A person who is present at a meeting of Directors as an Alternate Director or as a proxy for another Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director or proxy and, if that person is also a Director, has one vote as a Director in that capacity.

12.6 Chairman of Directors

If the Shareholders Deed deals with the appointment and removal of the chairman of a meeting of Directors, the chairman must be appointed and removed in accordance with the Shareholders Deed. Otherwise, the Directors may elect one of their number as chairman of their meetings and may also determine the period for which the person elected as chairman is to hold office.

12.7 Absence of chairman at Directors' meeting

If a Directors' meeting is held and:

- (a) a chairman has not been elected under article 12.6 or as provided under the Shareholders Deed (if applicable); or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the Directors present must elect one of their number to be a chairman of the meeting.

12.8 Chairman's casting vote at Directors' meeting

The chairman of the Directors' meeting has a casting vote subject to the Shareholders Deed.

12.9 Appointment of Alternate Director

Subject to the Corporations Act and the Shareholders Deed, a Director may appoint a person to be an Alternate Director in the Director's place during such period as the Director thinks fit.

12.10 Alternate Director and meetings

An Alternate Director is entitled to notice of all meetings of the Directors and, if the appointor does not participate in a meeting, the Alternate Director is entitled to participate and vote in the appointor's place subject to the Shareholders Deed.

12.11 Alternate Director's powers

Subject to the Shareholders Deed, an Alternate Director may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the appointor except to the extent that the appointor has exercised or performed them.

12.12 Alternate Director responsible for own acts and defaults

While acting as a Director, an Alternate Director:

- (a) is an officer of the Company and not the agent of the appointor; and

- (b) is responsible to the exclusion of the appointor for the Alternate Director's own acts and defaults.

12.13 Alternate Director and remuneration

An Alternate Director is not entitled to receive from the Company any remuneration or benefit under article 10.4 or article 10.6 .

12.14 Termination of appointment of Alternate Director

The appointment of an Alternate Director may be terminated at any time by the appointor even if the period of the appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to be a Director for any reason.

12.15 Appointment or termination

An appointment, or the termination of an appointment, of an Alternate Director must be effected by a notice signed by the Director who makes or made the appointment and delivered to the Company.

12.16 Alternate Director and number of Directors

An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.

12.17 Director attending and voting by proxy

A Director may participate in and vote by proxy at a meeting of the Directors if the proxy:

- (a) is another Director; and
- (b) has been appointed in writing signed by the appointor.

The appointment may be general or for one or more particular meetings. A Director present as a proxy for another Director, who would be entitled to vote if present at the meeting, has one vote for the appointor and one vote in his or her own capacity as a Director.

12.18 Quorum for Directors' meeting

At a meeting of Directors, the number of Directors whose presence in person or by proxy is necessary to constitute a quorum is:

- (a) where there is only one Director, that Director; and
- (b) where there is more than one Director, as determined by the Shareholders Deed.

12.19 Adjournment of Directors' meeting if no quorum

- (a) If a quorum is not present at a meeting of the Board convened, the meeting is adjourned to the same time and place 2 Business Days after the date on which the meeting is adjourned (or such other time and place unanimously agreed by all Directors). A quorum at such re-convened meeting is to be determined by the Shareholders Deed.
- (b) If a quorum is not present at a meeting of the Board convened under clause 12.19(a), the meeting is adjourned to the same time and place 5

Business Days after the date on which the reconvened meeting is adjourned (or such other time and place unanimously agreed by all Directors). A quorum at such re-convened meeting is to be determined by the Shareholders Deed.

12.20 Continuing Directors may act

Subject to the Shareholders Deed, the continuing Directors may act despite a vacancy in their number.

12.21 Chairman of Committee

The members of a Committee may elect one of their number as chairman of their meetings. If a meeting of a Committee is held and:

- (a) a chairman has not been elected; or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the members involved may elect one of their number to be chairman of the meeting.

12.22 Meetings of Committee

A Committee may meet and adjourn as it thinks proper.

12.23 Determination of questions

Questions arising at a meeting of a Committee are to be determined by a majority of votes of the members of the Committee present and voting.

The chairman of the meeting does not have a casting vote.

12.24 Circulating resolutions

- (a) The Directors may pass a resolution without a Directors' meeting being held if all Directors entitled to vote on the resolution, as determined in accordance with the Shareholders Deed, sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last participating Director signs. The resolution is not invalidated if it is consented to by a Director who is not entitled to vote.
- (b) A written resolution can be signed in counterpart (provided those counterparts are on identical terms) and original executed counterparts are not required to be exchanged. A copy of a written resolution passed in accordance with this clause must be provided to each of the Directors as soon as practicable. However, failure to provide a copy of the written resolution as passed will not validate the passing of the resolution, provided it is fully executed in accordance with this clause.
- (c) This article 12.24 applies to resolutions of Committees as if the references to Directors were references to Committee members.
- (d) Any document referred to in this article may be in the form of a fax or electronic notification. Separate copies of a document (including in electronic form) may be signed by the Directors if the wording of the resolution and statement is identical in each copy.

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12.25 Validity of acts of Directors

All acts done at a meeting of the Directors or of a Committee, or by a person acting as a Director are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote,

as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

13 Secretary

13.1 Appointment of Secretary

The Company may, but need not, have one or more Secretaries who are to be appointed by the Directors.

13.2 Suspension and removal of Secretary

The Directors may suspend or remove a Secretary from that office.

13.3 Powers, duties and authorities of Secretary

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Directors.

14 Seals

14.1 Safe custody of common seals

The Directors must provide for the safe custody of any seal of the Company.

14.2 Use of common seal

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a Committee authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

15 Inspection of records

15.1 Inspection by Members

Subject to the Corporations Act and the Shareholders Deed, the Directors may determine whether, to what extent, at what time and places and under what conditions the accounting records and other documents of the Company or any of

them will be open to the inspection of Members (other than Directors, and, if relevant, a holding company of the Company).

15.2 Right of a Member or other person to inspect

A Member or other person (other than a Director, or if relevant, a holding company of the Company) does not have the right to inspect any document of the Company except as provided by law or the Shareholders Deed or as authorised by the Directors.

16 Dividends and reserves

16.1 Payment of dividend

Subject to the Corporations Act, the Shareholders Deed, this Constitution and the terms of issue or rights of any shares with special rights to dividends, the Directors may determine that a dividend is payable, fix the amount and the time for payment and authorise the payment or crediting by the Company to, or at the direction of, each Member entitled to that dividend. The Directors may rescind or alter any such determination before payment is made.

16.2 No interest on dividends

Interest is not payable by the Company on a dividend.

16.3 Reserves and profits carried forward

Subject to the Corporations Act, the Directors may:

- (a) before paying any dividend, set aside such sums as they think proper as a reserve, to be applied, at the discretion of the Directors, for any purpose for which such sums may be properly applied; and
- (b) carry forward so much of the profits that are not included in the sums set aside under article 16.3(a) without transferring those profits to a reserve.

Pending application, any sum set aside as a reserve may, at the discretion of the Directors, be used in the business of the Company or be invested as the Directors think fit.

16.4 Calculation and apportionment of dividends

Subject to the rights of any persons entitled to shares with special rights as to dividend and to the terms of issue of any shares to the contrary, all sums that the Company determines are to be distributed among the Members as dividends are divisible among the Members so that, on each occasion on which a dividend is paid:

- (a) the same sum is paid on each share on which all amounts payable have been paid; and
- (b) the sum paid on a share on which all amounts payable have not been paid is the proportion of the sum referred to in article 16.4(a) that the amount paid on the shares bears to the total of the amounts paid and payable on the share.

To determine the amount paid on a share, exclude any amount:

- (c) paid or credited as paid in advance of a call; and

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- (d) credited as paid on a share to the extent that it exceeds the value (ascertained at the time of issue of the share) of the consideration received for the issue of the share.

All dividends are to be apportioned and paid proportionately to the amounts paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but, if any share is issued on terms providing that it will rank for dividend as from a particular date, that share ranks for dividend accordingly.

16.5 Deductions from dividends

The Directors may deduct from any dividend payable to, or at the direction of, a Member any sums presently payable by that Member to the Company on account of calls or otherwise in relation to shares in the Company.

16.6 Distribution of specific assets

When resolving to pay a dividend or to return capital by a reduction of capital or otherwise, the Directors may:

- (a) resolve that the dividend or return of capital be satisfied either wholly or partly by the distribution of specific assets to some or all of the persons entitled to the dividend or return of capital, including shares in, or debentures or other securities of the Company or any other body corporate or trust; and
- (b) direct that the dividend or return of capital payable in respect of any particular shares be satisfied wholly or partly by such a distribution and that the dividend or return of capital payable in respect of other shares be paid in cash.

16.7 Ancillary powers regarding distributions

- (a) In relation to any decision to pay a dividend or to return capital by way of a reduction of capital or otherwise, the Directors may:
- (i) settle any difficulty that arises in making the distributions as they think expedient and in particular:
- (A) make any cash payments in cases where Members are entitled to fractions of shares, debentures and other securities;
- (B) decide that amounts or fractions of less than a particular value decided by the Directors may be disregarded in order to adjust the rights of all parties by withholding assets, cash, shares, debentures or other securities where the Company is required to make a payment in respect of that Member to a government or taxing authority in relation to the distribution or issue; and
- (C) decide to make distributions by disregarding transfers of shares or aggregating parcels of shares where they form the opinion that shareholdings have been split or aggregated to obtain the benefit of rounding on fractions of shares;
- (ii) fix the value for distribution for any specified assets or any part of those assets;

- (iii) pay cash or issue shares, debentures or other securities to, or at the direction of, any Member on the basis of the value so fixed in order to adjust the rights of all parties;
 - (iv) vest any of those specific assets, cash, shares, debentures, or other securities in a trustee or nominee on trust for the persons entitled to the distribution or capitalised amount, on any terms that seem expedient to the Directors; and
 - (v) authorise any person to make, on behalf of Members, or a particular Member, entitled to any specific assets, cash, shares, debentures or other securities as a result of the decision, an agreement (including in writing) with the Company or another person which provides as appropriate, for the distribution or issue to them of the assets, cash, shares, debentures or other securities and by applying to them their respective proportions of the amount resolved to be distributed;
- (b) any agreement made under an authority referred to in article 16.7(a)(v) is effective and binds all Members concerned;
- (c) instead of making a distribution or issue of specific assets, shares, debentures or other securities to a particular Member, the Directors may make a cash payment to that Member or allocate some or all of the assets, shares, debentures or other securities to a trustee to be sold on behalf, and for the benefit of, or in respect of, that Member, if:
- (i) the distribution or issue would otherwise be illegal or unlawful;
 - (ii) in the Directors' discretion, the distribution or issue would, for any reason, be impracticable; or
 - (iii) the Member so agrees; and
- (d) if the Company distributes to Members (either generally or to specific Members) shares, debentures, or securities of the Company or another body corporate or trust (whether as a dividend or return of capital or otherwise and whether or not for value), each of those Members appoints the Company and any officer of the Company nominated on their behalf by the Directors, as his or her agent or attorney to do anything needed or desirable to give effect, or assist in giving effect, to that distribution, including agreeing to become a member, holder of shares, holder of debentures or holder of securities of the Company or that other body corporate or trust.

16.8 Payments in respect of shares

A dividend, interest or other money payable in cash in respect of shares may be paid using any payment method chosen by the Company, including:

- (a) by means of a direct credit as determined by the Directors to the latest payment of the account details for the relevant holding as provided in writing by the holder or holders shown on the Register; or
- (b) by cheque sent through the post directed to the address in the Register of the holder or, in the case of joint holders, to the address of the joint holder first named in the Register or to such other address as the holder or joint holder directs in writing;

- (c) by some other method of direct credit determined by the Directors to the holder or holders shown on the Register or to such person or place directed by them.

Payment of money is at the risk of the holder or holders to whom it is sent.

16.9 Effectual receipt from one joint holder

Any one of two or more joint holders may give an effectual receipt for any dividend, interest or other money payable in respect of the shares held by them as joint holders.

17 Capitalisation of profits

17.1 Capitalisation of reserves and profits

Subject to the Shareholders Deed, the Directors:

- (a) may resolve to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to Members; and
- (b) may, but need not, resolve to apply the sum in any of the ways mentioned in article 17.2, for the benefit of Members in the proportions to which those Members would have been entitled in a distribution of that sum by way of dividend.

17.2 Applying a sum for the benefit of Members

The ways in which a sum may be applied for the benefit of Members under article 17.1 are:

- (a) in paying up any amounts unpaid on shares held by Members;
- (b) in paying up in full unissued shares or debentures to be issued to Members as fully paid; or
- (c) partly as mentioned in paragraph 17.1(a) and partly as mentioned in paragraph (b).

17.3 Implementing the resolution

The Directors may do all things necessary to give effect to a resolution under article 17.1 and in particular, to the extent necessary to adjust the rights of the Members among themselves, may:

- (a) make cash payments in cases where shares or debentures become issuable in fractions;
- (b) authorise any person to make, on behalf or all or any of the Members entitled to any further shares or debentures on the capitalisation, an agreement with the Company providing for:
- (i) the issue to them, credited as fully paid up, of any further shares or debentures; or
- (ii) the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing

shares by the application of their respective proportions of the sum resolved to be capitalised,

and any agreement so made is effective and binding on all the Members concerned;

- (c) fix the value of specified assets; or
- (d) vest properly in trustees.

18 Service of documents

18.1 Document includes notice

In this article 18, a reference to a document includes a notice and a notification by electronic means.

18.2 Form of document

Unless expressly stated otherwise in this Constitution, all notices, certificates, statements, demands, appointments, directions and other documents referred to in this Constitution must be in writing.

18.3 Methods of service

The Company may give a document to a Member:

- (a) personally;
- (b) by delivering it or sending it by post to the address for the Member in the Register or an alternative address nominated by the Member;
- (c) by sending it to a fax number or electronic address nominated by the Member; or
- (d) by notifying the Member by an electronic means nominated by the Member that:
 - (i) the document is available; and
 - (ii) how the Member may use the nominated access means to access the document.

18.4 Post

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, must be sent by airmail,

and, in either case, is taken to have been given and received on the day after the day of its posting.

18.5 Fax or other electronic address

A document sent or given by fax or other electronic means:

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- (a) is taken to be effected by properly addressing and transmitting the fax or other electronic transmission; and
- (b) is taken to have been given and received on the day after the date of its transmission.

18.6 Evidence of service

A certificate in writing signed by a Director or a Secretary stating that a document was sent, delivered or given to a Member personally, by post, fax or other electronic means on a particular date is prima facie evidence that the document was sent, delivered or given on that date and by that means.

18.7 Joint holders

A document may be given by the Company to the joint holders of a share by giving it to the joint holder first named in the Register in respect of the share.

18.8 Persons entitled to shares

A person who by operation of law, transfer or other means whatsoever becomes entitled to any share is absolutely bound by every document given in accordance with this article 18 to the person from whom that person derives title prior to registration of that person's title in the Register.

19 Winding up

19.1 Distribution of assets

If the Company is wound up, the liquidator may, with the sanction of a special resolution of the Company, divide among the Members in kind the whole or any part of the property of the Company and may for that purpose set such value as the liquidator considers fair on any property to be so divided and may determine how the division is to be carried out as between the Members or different classes of Members.

19.2 Powers of liquidator to vest property

The liquidator may, with the sanction of a special resolution of the Company, vest the whole or any part of any such property in trustees on such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no Member is compelled to accept any shares or other securities in respect of which there is any liability.

19.3 Shares issued on special terms

Articles 19.1 and 19.2 do not prejudice or affect the rights of a Member holding shares issued on special terms and conditions.

20 Indemnity and insurance

20.1 Indemnity

Subject to the Shareholders Deed, the Company must indemnify any current or former Director or Secretary or senior manager of the Company or of a subsidiary of the Company out of the property of the Company against:

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- (a) any liability incurred by the person in that capacity (except a liability for legal costs);
- (b) legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity; and
- (c) legal costs incurred in good faith in obtaining legal advice on issues relevant to the performance of their functions and discharge of their duties as an officer of the Company or a subsidiary, if that expenditure has been approved in accordance with the Company's policy,

except to the extent that:

- (d) the Company is forbidden by law to indemnify the person against the liability or legal costs; or
- (e) an indemnity by the Company of the person against the liability or legal costs, if given, would be made void by law.

20.2 Insurance

The Company must pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or senior manager of the Company or of a subsidiary of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by law to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by law.

20.3 Contract

The Company may enter into an agreement with a person referred to in articles 20.1 and 20.2 with respect to the matters covered by those articles. An agreement entered into pursuant to this article may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

21 Proprietary Company

The Company is a proprietary company and accordingly:

- (a) the number of Members:
 - (i) counting joint holders of a particular parcel of shares in the Company as one person; and
 - (ii) excluding:
 - (A) each Member who is an employee of the Company or of a subsidiary of the Company; and
 - (B) each Member who became a Member at a time when that member was an employee of the Company or of a subsidiary of the Company,

must not exceed 50; and

- (b) the Company may not engage in anything that would require disclosure to investors under Chapter 6D of the Corporations Act, other than an offer of shares to:
 - (i) a Member; or
 - (ii) a person in the employment of the Company or of a subsidiary of the Company.

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