



**Billabong  
International  
Limited**

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## ASX ANNOUNCEMENT

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### **BILLABONG INTERNATIONAL LIMITED ENTERS INTO A SCHEME IMPLEMENTATION DEED WITH BOARDRIDERS, INC.**

**GOLD COAST, 5 January 2018:** Billabong International Limited (ASX:BBG) (**Company**) attaches the Scheme Implementation Deed with Boardriders, Inc. referred to in the Company's announcement earlier today.

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Boardriders, Inc.  
Billabong International Limited

## Scheme Implementation Deed

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This Deed is made on 5 January 2018

## Parties

- 1 **Boardriders, Inc.** of 5600 Argosy Avenue, Building 100, Huntington Beach, California 92649, United States of America (**Boardriders**); and
- 2 **Billabong International Limited** (ACN 084 923 946) registered in Queensland of 1 Billabong Place, Burleigh Heads, Queensland 4220, Australia (**Billabong**).

## Recitals

- A The parties have agreed that Boardriders shall procure that the Boardriders Sub(s) (as applicable) will acquire all of the Scheme Shares by means of a scheme of arrangement under Part 5.1 of the Corporations Act between Billabong and its shareholders.
- B Billabong has agreed to propose and implement the Scheme, and Boardriders has agreed to assist Billabong to propose and implement the Scheme, on the terms of this deed.

It is agreed as follows.

## 1 Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**ACCC** means the Australian Competition and Consumer Commission.

**Accounting Standards** means:

- (a) the requirements of the Corporations Act about the preparation of financial reports; and
- (b) the accounting standards and any authoritative interpretations issued by the Australian Accounting Standards Board.

**Accounts** means the consolidated financial statements (including the notes thereto) contained in the financial report in respect of the Billabong Group for the period to the Accounts Date.

**Accounts Date** means 30 June 2017.

**Additional Warranties** means the warranties set out in paragraphs 14 to 31 of Schedule 2.

**Adviser** means, in relation to an entity:

- (a) a financier to the entity in connection with the Transaction; or
- (b) a financial, corporate, legal, or other expert adviser or consultant, who provides advisory or consultancy services in a professional capacity in the ordinary course of its business and has been engaged in that capacity in connection with the Transaction by the entity.

**Antitrust Laws** means statutes, rules, regulations, orders, decrees, administrative or judicial doctrines or other laws, whether of Australia or any foreign country, that are designed to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade (including, for the avoidance of doubt, the *Competition and Consumer Act 2010* (Cth)).

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

**ASX** means ASX Limited (ABN 98 008 624 691) or, as the context requires, the financial market known as the Australian Securities Exchange operated by it.

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

**Billabong Consolidated Group** means the Consolidated Group of which Billabong is the Head Company.

**Billabong Group** means Billabong and each of its subsidiaries. A reference to a **member of the Billabong Group** is a reference to Billabong or any such subsidiary.

**Billabong GST Group** means the GST Group (as defined in the GST Act) of which Billabong is the representative member.

**Billabong Material Adverse Change** means any event, occurrence or matter that individually or when aggregated with all such events, occurrences or matters:

- (a) diminishes, or could reasonably be expected to diminish, the consolidated net assets of the Billabong Group by an amount equal to \$46,500,000 or more (calculated after taking into account any event, occurrence or matter which (i) occurs after the date of this deed, (ii) had not been budgeted for by the Billabong Group at the date of this deed, and (iii) has had, or could reasonably be expected to have, a positive effect on consolidated net assets, as demonstrated by Billabong to Boardriders), as compared to what the consolidated net assets of the Billabong Group could reasonably be expected to have been but for the relevant events, occurrences or matters; or
- (b) diminishes, or could reasonably be expected to diminish, the consolidated EBITDA of the Billabong Group by an amount more than \$7,500,000 in any financial year (calculated after taking into account any event, occurrence or matter which (i) occurs after the date of this deed, (ii) had not been budgeted for by the Billabong Group at the date of this deed, and (iii) has had, or could reasonably be expected to have, a positive effect on consolidated EBITDA, as demonstrated by Billabong to Boardriders), as compared to what the consolidated annual EBITDA of the Billabong Group could reasonably be expected to have been in that financial year but for the relevant events, occurrences or matters,

in each case other than an event, occurrence or matter:

- (c) required or expressly permitted by this deed or the Scheme;
- (d) to the extent that it was fairly disclosed in the Due Diligence Material or the Disclosure Letter;
- (e) fairly disclosed to ASX within 5 years prior to the date of this deed or fairly disclosed in a document lodged with ASIC by or on behalf of Billabong within 12 months prior to the date of this deed;
- (f) arising from any actual or proposed change in any law or change in accounting standards after the date of this deed;
- (g) arising from general economic, retail industry or political conditions or changes in those conditions (including financial market fluctuations, changes in interest rates or changes in foreign currency exchange rates) after the date of this deed;
- (h) arising from an act of terrorism, war (whether or not declared), natural disaster or the like after the date of this deed;
- (i) arising from the announcement of, or entry into, or performance of obligations under, this deed and consummation of the transactions contemplated hereby;
- (j) which is a non-cash impairment charge in response to indicators arising from the difference between Billabong's share price and the carrying value of the Billabong Group's assets;

- (k) which is a reduction in deferred tax assets or increase in deferred tax liabilities or which is an adverse movement in foreign currency translation reserves; or
- (l) arising from any unforeseen disruption to the Billabong Group's supply chain or information technology systems but only to the extent that such disruption is not caused or contributed to by any member of the Billabong Group,

but, in respect of paragraphs (f), (g) and (h), excluding any event, occurrence or matter which has a materially disproportionate effect on the Billabong Group, taken as a whole, as compared to other participants in the industries in which the Billabong Group operates.

**Billabong Party** means any member of the Billabong Group or any Officer, employee or Adviser of any member of the Billabong Group.

**Billabong Prescribed Occurrence** means any of the occurrences set out in Schedule 3, other than an occurrence:

- (a) required or expressly permitted by this deed or the Scheme;
- (b) to the extent that it was fairly disclosed in the Due Diligence Material or the Disclosure Letter; or
- (c) fairly disclosed to ASX within 5 years prior to the date of this deed or fairly disclosed in a document lodged with ASIC by or on behalf of Billabong within 12 months prior to the date of this deed.

**Billabong Registry** means Computershare Investor Services Pty Limited (ABN 48 078 279 277) or any replacement provider of share registry services to Billabong.

**Billabong Representation and Warranty** means a representation and warranty of Billabong set out in Schedule 2.

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

**Billabong Shareholder** means a person who is registered as the holder of Billabong Shares from time to time.

**Billabong Share Register** means the register of members of Billabong maintained in accordance with the Corporations Act.

**Boardriders Group** means Boardriders and each of its related bodies corporate (excluding, at any time, Billabong and its subsidiaries to the extent that Billabong and its subsidiaries are subsidiaries of Boardriders at that time). A reference to a **member of the Boardriders Group** is a reference to Boardriders or any such related body corporate but does not include any Oaktree Entity.

**Boardriders Information** means information about the Boardriders Group provided or approved by Boardriders or any of its Advisers to Billabong in writing for inclusion in the Scheme Booklet.

**Boardriders Party** means any member of the Boardriders Group or any other Related Entity of Boardriders, or any officer, employee or Adviser of any of them.

**Boardriders Representation and Warranty** means a representation and warranty of Boardriders set out in Schedule 1.

**Boardriders Sub** means a directly or indirectly wholly owned subsidiary of Boardriders, nominated in writing by Boardriders to Billabong prior to the lodgement of the draft Scheme Booklet with ASIC to acquire a specified proportion of the Scheme Shares, provided that, for the avoidance of doubt:

- (a) more than one such subsidiary of Boardriders may be nominated by Boardriders to acquire a specified proportion of the Scheme Shares; and



- (b) prior to the lodgement of the draft Scheme Booklet with ASIC, Boardriders must nominate one or more such subsidiaries to acquire (in aggregate) all of the Scheme Shares.

**Break Fee** means \$1,600,000.

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

**Centerbridge** means Centerbridge Partners, L.P.

**Centerbridge BV** means CCP II Dutch Acquisition - E, B.V..

**Change of Control List** has the meaning given in paragraph 13 of Schedule 2.

**Claim** means, in relation to a person, a demand, claim, action or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent.

**Code** means the U.S. Internal Revenue Code of 1986, as amended.

**Competition Approval** means:

- (a) any approval, clearance, filing or expiration or termination of a waiting period under any Antitrust Law of a country or jurisdiction set forth in Annexure C required in relation to the Transaction; and
- (b) any approval, clearance, filing or expiration or termination of a waiting period in relation to the Transaction under any Antitrust Law of any other country or jurisdiction that is required or that Boardriders reasonably determines advisable.

**Competition Authority** means any Government Agency having responsibility for any Antitrust Law.

**Competing Proposal** means a transaction or arrangement, or any proposal, offer or expression of interest in relation to a transaction or arrangement, pursuant to which:

- (a) a Third Party will, if the transaction or arrangement is entered into or completed:
- (i) acquire (whether directly or indirectly) or become the holder of a legal, beneficial and/or economic interest in, all or a substantial part of the business or assets of the Billabong Group taken as a whole;
- (ii) acquire a relevant interest in, or otherwise acquire or have a right to acquire a legal, beneficial and/or economic interest in, 20% or more of the Billabong Shares; or
- (iii) acquire control of Billabong within the meaning of section 50AA of the Corporations Act or otherwise acquire or merge with Billabong,
- whether by way of takeover bid, scheme of arrangement, shareholder approved transaction, capital reduction or buy-back, sale or purchase of shares or assets, joint venture, dual-listed company structure (or other synthetic merger), or other transaction or arrangement; or
- (b) Billabong would be required to not proceed with the Transaction or as a result of which the Transaction otherwise would not proceed.

**Confidentiality Deed** means the confidentiality deed between Boardriders and Billabong dated 20 June 2017.

**Consolidated Group** means (i) a "consolidated group" or a "MEC group" as those terms are defined in section 995-1(1) of the ITAA 1997 or (ii) any consolidated or unitary group under U.S. federal, state or local Tax Law.

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

**Counterparties** means the parties listed in the Change of Control List.

**Court** means the Federal Court of Australia (New South Wales Registry) or such other court of competent jurisdiction under the Corporations Act agreed to in writing between the parties.

**Debt Commitment Letters** means:

- (a) the credit-approved, executed commitment letter and accompanying term sheet and fee letter (in each case including all exhibits, schedules and annexes thereto, as may be amended, modified, supplemented, replaced, restated, substituted, or waived in accordance with clause 6.5 and any alternative financing in accordance with clause 6.5) from certain financial institutions in respect of a certain term loan facility addressed to Boardriders on or about the date of this deed; and
- (b) the credit-approved, executed commitment letter and accompanying term sheet and fee letter (in each case including all exhibits, schedules and annexes thereto, as may be amended, modified, supplemented, replaced, restated, substituted, or waived in accordance with clause 6.5 and any alternative financing in accordance with clause 6.5) from certain financial institutions in respect of a certain asset based revolving facility addressed to Boardriders on or about the date of this deed.

**Debt Financing** has the meaning given in paragraph 8 of Schedule 1.

**Deed Poll** means a deed poll in favour of all Scheme Shareholders in the form of Annexure B (or such other form agreed to in writing between the parties).

**Disclosure Letter** means the letter identified as such provided by Billabong to Boardriders and countersigned by or on behalf of Boardriders on or prior to the date of this deed and any document identified in that letter as having been disclosed to Boardriders subject to such document having been fairly disclosed in the Due Diligence Material.

**Disputing Action** means, in respect of a Tax Demand, any action to cause the Tax Demand to be withdrawn, reduced or postponed or to avoid, resist, object to, defend, appear against or compromise the Tax Demand and any judicial or administrative proceedings arising out of that action.

**Due Diligence Material** means the information disclosed by or on behalf of the Billabong Group (including in response to requests for information) to a Boardriders Party through the electronic data room at

[https://dataroom.ansarada.com/\\_mvc/projmeerkat%7C30809/1548723/DocumentIndex#/DocumentIndex](https://dataroom.ansarada.com/_mvc/projmeerkat%7C30809/1548723/DocumentIndex#/DocumentIndex) prior to the date of this deed, as included on a USB delivered to Gilbert + Tobin (acting on behalf of Boardriders) prior to execution of this deed (subject to Gilbert + Tobin confirming on behalf of Boardriders that such USB contains the full contents of the Due Diligence Material for the purposes of this deed).

**Duty** means any stamp, transaction or registration duty or similar charge imposed by any Government Agency and includes any interest, fine, penalty, charge or other amount imposed in respect of any of them, but excludes any Tax.

**EBITDA** means earnings before interest, tax, depreciation, amortization and non-cash significant items (excluding adjustments to inventory and accounts receivable).

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

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

**Employee** means an employee of a member of the Billabong Group.

**Encumbrance** means any interest or power (whether created or arising under a security

agreement, bill of sale, mortgage, charge, lien, pledge, trust, power or otherwise) by way of, or having a similar commercial effect to, security for the payment of a debt or performance of an obligation, including any agreement to grant or create any such interest or power and any security interest within the meaning of section 12(1) of the *Personal Property Securities Act 2009* (Cth).

**End Date** means the date which is 6 months after the date of this deed, subject to any extension under clause 3.6.

**Ex-Im Laws** means all laws relating to export, re-export, transfer and import controls, including the U.S. Export Administration Regulations and the Australian Defence Export Controls and the customs and import laws administered by U.S. Customs and Border Protection and the Australian Department of Immigration and Border Protection.

**Excluded Share** means a Billabong Share held by any person on behalf of, or for the benefit of, Boardriders or any of its Related Entities (which, for the avoidance of doubt, as at the date of this deed includes the Billabong Shares held by Oaktree BV).

**Excluded Shareholder** means a holder of Excluded Shares.

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

- (a) the termination of this deed; and
- (b) the End Date.

**Executive Leadership Team** means the team comprising Neil Fiske, Jim Howell, Tracey Wood, Mara Pagotto, Stacy Reece, Mike Yerkes, Shannan North, Kevin Meehan, David Brooks, Paul Burdekin and Jean-Louis Rodrigues.

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

**Financing Sources** means entities that have committed to provide or otherwise entered into agreements in connection with the Debt Financing or other financings in connection with the transactions contemplated hereby, including the parties to the Debt Commitment Letter and any joinder agreements or credit agreements (including the definitive agreements executed in connection with the Debt Commitment Letter) relating thereto.

**Financing Source Parties** means, collectively, the Financing Sources, their affiliates and such persons' and their affiliates' respective current, former and future directors, officers, general or limited partners, shareholders, members, managers, controlling persons, employees, representatives and agents, and the respective successors and assigns of each of the foregoing.

**FIRB** means the Australian Foreign Investment Review Board.

**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 that the Scheme Meeting be convened is heard or, if the application is adjourned for any reason, the day on which the adjourned application is heard.

**Government Agency** means any Australian or foreign government or governmental, semi-governmental or judicial entity or authority (including any statute-owned entity). It also includes any self-regulatory organisation established under statute or any securities exchange and, for the avoidance of doubt, includes ASIC, ASX, FIRB, the ACCC and equivalent bodies in jurisdictions outside Australia.

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

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

**GST Law** has the same meaning as in the GST Act.

**Head Company** has the meaning given by section 995-1 of the ITAA 1997.

**Implementation Date** means the fifth Business Day after the Scheme Record Date or such other date agreed to in writing between Boardriders and Billabong, provided that if such date falls on:

- (a) a Monday; or
- (b) a day that is a public holiday in the United States of America and on which commercial banks in that place are closed (such day, a **U.S. Holiday**) or the day after a U.S. Holiday,

the 'Implementation Date' shall be the next Business Day on which neither (a) or (b) above apply. It is understood that the reference to a "day" in the United States of America shall refer to the day preceding the applicable day in Australia (by way of example, only, February 28th in Australia shall be February 27th in the United States of America).

**Incentive Plan** means the Billabong International Limited Executive Incentive Plan.

**Indemnities** means the indemnity in clause 8.2(c) and the indemnity in clause 9, each of them being an **Indemnity**.

**Independent Expert** means Grant Samuel & Associates Pty Limited (ABN 28 050 036 372).

**Independent Expert's Report** means a report (including any written updates to such report) of the Independent Expert stating whether or not in its opinion the Scheme is in the best interests of Billabong Shareholders (other than Excluded Shareholders).

**Intellectual Property Rights** means all intellectual and industrial property rights of whatever nature throughout the world conferred under statute, common law or equity, whether existing now or at any time in the future, and includes rights in respect of or in connection with trade marks, service marks (including goodwill in those marks), business names, trade names, domain names, designs, inventions (including patents), business processes or methods, circuit layouts, copyright and analogous rights, rights to have confidential information, know-how and similar intellectual property and industrial rights, whether or not registered or registrable, and includes pending applications for such rights and the right to apply for or renew the registration of such rights.

**Insolvency Event** means, in the case of any entity:

- (a) it ceases, suspends, or threatens to cease or suspend the conduct of all or a substantial part of its business or disposes of or threatens to dispose of all or a substantial part of its assets;
- (b) it stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (c) it is, or under legislation is presumed or taken to be, insolvent (other than as the result of a failure to pay a debt or Claim the subject of a good faith dispute);
- (d) it has an administrator, controller or similar officer appointed, or any step preliminary to the appointment of such an officer is taken;
- (e) an application or an order is made, proceedings are commenced, or a resolution is passed (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days) for:
  - (i) its winding up, dissolution or administration; or
  - (ii) it entering into an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;
- (f) a:
  - (i) receiver, receiver and manager, administrative receiver or similar officer is appointed to;
  - (ii) security interest becomes enforceable or is enforced over; or

- (iii) distress, attachment or other execution is levied or enforced or applied for over, all or a substantial part of its assets; or
- (g) anything analogous to anything referred to in the above paragraphs, or which has substantially similar effect, occurs with respect to it, including under any foreign law.

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

**Lenders** means the 'Lenders' as defined in the Debt Commitment Letters.

**Management Accounts** means the management accounts of the Billabong Group contained in the Due Diligence Material.

**Marketing Period** means a period of at least twenty (20) consecutive Business Days, ending no later than the Business Day immediately prior to the Effective Date, commencing upon receipt by Boardriders of the Required Financial Statements, provided that (i) such 20 consecutive Business Day period shall not commence until January 5, 2018 and (ii) each of January 15, 2018, February 19, 2018, March 30, 2018, April 2, 2018 and May 28, 2018 shall not be a Business Day for purposes the Marketing Period, provided, further, that once the Marketing Period has commenced, in no event shall the Marketing Period be restarted or cease to continue if additional financial statements required to be delivered under clause 6.6(a) are delivered (or are required to be delivered). Boardriders acknowledges that Billabong has delivered the Required Financial Statements, and represents to Billabong that the Marketing Period will commence on January 5, 2018. For the avoidance of doubt, references in this definition to a particular date are to such date in the United States of America.

**MEC Group** has the meaning given by section 995-1 of the ITAA 1997.

**Oaktree** means Oaktree Capital Management, L.P.

**Oaktree BV** means OCM Clean Wave Holdings B.V..

**Oaktree Entity** means Oaktree and each of its Related Entities (including Oaktree BV).

**Officer** has the meaning given in the Corporations Act.

**Options** means, collectively, the options granted by Billabong to:

- (a) Participants under the Incentive Plan;
- (b) Patrick M. Tenore, Jr under the Option Agreement dated 31 January 2014, as amended;
- (c) ACP Burleigh Holdings, LLC; FS Investment Corporation and FS Investment Corporation II; and
- (d) Centerbridge BV and Oaktree BV under the Equity Funding Deed dated 18 September 2013,

as set out in Part A and Part B of Schedule 4.

**Option Holder** means a person who is registered as the holder of Options as at the date of this deed.

**Order** means any decree, judgment, injunction, direction, writ or other order, whether temporary, preliminary or permanent, made or given by a court of competent jurisdiction or by another Government Agency.

**Participant** has the meaning given under the Incentive Plan.

**Performance Rights** has the meaning given to 'Right' under the Incentive Plan, as set out in Part C of Schedule 4.

**Regulatory Approvals** means:

- (a) any approval, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, direction, declaration, authority or exemption from, by or with a Government Agency (including, for the avoidance of doubt, the approvals referred to in clauses 3.1(a) and 3.1(b)); or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Government Agency intervened or acted in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without notification.

**Related Entity** has the meaning given in the Corporations Act. For the avoidance of doubt, Boardriders Related Entities include the members of the Boardriders Group and the Oaktree Entities.

**Required Financial Statements** has the meaning given in clause 6.6(a).

**Representative** means, in relation to Boardriders or Billabong:

- (a) each other member of the Boardriders Group or Billabong Group (as applicable);
- (b) an officer or employee of a member of the Boardriders Group or Billabong Group (as applicable); or
- (c) an Adviser to a member of the Boardriders Group or Billabong Group (as applicable).

**Sanctioned Country** means any country or region that is currently or was in the last five years the subject or target of a comprehensive embargo under Sanctions Laws (including, without limitation, Cuba, Iran, North Korea, Sudan, Syria, and the Crimea region of Ukraine).

**Sanctioned Person** means any person that is the subject or target of sanctions or restrictions under Sanctions Laws or Ex-Im Laws, including: (i) any person listed on any applicable U.S., Australian, or other non-U.S. sanctions- or export-related restricted party list, including the U.S. Department of the Treasury's Office of Foreign Assets Control's (**OFAC**) Specially Designated Nationals and Blocked Persons List and the Australian Department of Foreign Affairs and Trade's Consolidated List; (ii) any person that is, in the aggregate, 50 percent or greater owned, directly or indirectly, or otherwise controlled by a person or persons described in clause (i); or (iii) any national of a Sanctioned Country.

**Sanctions Laws** means all U.S., Australian, and other non-U.S. laws relating to economic or trade sanctions, including the laws administered or enforced by the U.S. (including by OFAC or the U.S. Department of State), the Australian Department of Foreign Affairs and Trade, and the United Nations Security Council.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between Billabong and the Scheme Shareholders in the form of Annexure A (or such other form agreed to in writing between the parties).

**Scheme Booklet** means the scheme booklet to be prepared by Billabong in accordance with clause 5.1(a) and to be approved by the Court and despatched to Billabong Shareholders (other than Excluded Shareholders) and which must include the Scheme, an explanatory statement complying with the requirements of the Corporations Act, the Independent Expert's Report, notice of the Scheme Meeting and a proxy form for the Scheme Meeting.

**Scheme Consideration** has the meaning given in clause 4.2.

**Scheme Meeting** means the meeting of Billabong Shareholders (other than Excluded Shareholders) ordered by the Court to be convened under section 411(1) of the Corporations Act.

**Scheme Record Date** means 7pm on the fifth Business Day after the Effective Date or such other time and date agreed to in writing between the parties.

**Scheme Shares** means the Billabong Shares on issue as at the Scheme Record Date other than the Excluded Shares.

**Scheme Shareholder** means a person registered in the Billabong Share Register as the holder of one or more Scheme Shares at the Scheme Record Date.

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

**Social Media Accounts** means all accounts, pages, profiles, feeds, registrations and other presences maintained by or on behalf of the Billabong Group on or in connection with any social media or social networking service, blog, mobile application, content-sharing website, rating or review website or online forum.

**Standard Tax Condition** means any tax-related conditions which are in the form, or substantially in the form, of those set out in Part A of Attachment A of FIRB's Guidance Note 47 on 'Tax Conditions' (in the form released on 24 November 2016).

**Superannuation Guarantee Charge** means a charge levied against an employer for failing to make the minimum level of contribution to superannuation funds on behalf of its employees prescribed by the *Superannuation Guarantee (Administration) Act 1992* (Cth).

**Superior Proposal** means a bona fide, written Competing Proposal received after the date of this deed (that has not been solicited, invited, encouraged or initiated in breach of clauses 12.2, 12.3 or 12.4) that the Billabong Board determines, acting in good faith and in order to satisfy what the Billabong Board considers to be its fiduciary or statutory duties (and after having obtained written advice from Billabong's external legal and, if appropriate, financial advisers):

- (a) is reasonably capable of being valued and implemented, taking into account all aspects of the Competing Proposal; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to Billabong Shareholders (other than the Excluded Shareholders) than the Scheme.

**TAA** means the *Taxation Administration Act 1953* (Cth).

**Tax** means any tax, levy, charge, impost, fee, deduction, goods and services tax (including GST), compulsory loan or withholding, that is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above, but excludes Duty.

**Tax Costs** means all costs and expenses incurred in:

- (a) managing an inquiry; or
- (b) conducting any Disputing Action in relation to a Tax Demand.

**Tax Demand** means:

- (a) a demand or assessment from a Government Agency requiring the payment of any Tax or Duty for which Billabong may be liable under this deed;
- (b) any document received from a Government Agency administering any Tax or Duty assessing, imposing, claiming or indicating an intention to claim any Tax or Duty;
- (c) a notice to a contributing member of a Consolidated Group given under section 721-15(5) or (5A) of the ITAA 1997;
- (d) a notice to a member of a GST Group (as defined in the GST Act) in relation to section 444-90(1) of Schedule 1 to the TAA; or

- (e) a lodgement of a Tax or Duty return or a request for an amendment to a lodged Tax or Duty return.

**Tax Law** means any law relating to either Tax or Duty as the context requires.

**Tax Sharing Agreement** means the agreement contemplated by section 721-25 of the ITAA 1997 and entered into between Billabong and each of the subsidiary members (within the meaning of section 995-1 of the ITAA 1997) of the Billabong Consolidated Group as most recently executed by the parties thereto (and as amended from time to time).

**Third Party** means a person other than Boardriders and its Related Entities.

**Timetable** means the indicative timetable for the implementation of the Transaction set out in Annexure D.

**Transaction** means the acquisition of the Scheme Shares by the Boardriders Sub(s) (as applicable) through implementation of the Scheme in accordance with the terms of this deed.

**U.S. Employee Benefit Plan** means each "employee benefit plan" (as such term is defined in Section 3(3) of the U.S. Employee Retirement Income Security Act of 1974, as amended (**ERISA**)), each severance, incentive, bonus, retention, transaction, change in control, deferred compensation, employment, profit sharing, retirement, welfare, post-employment welfare, vacation or paid-time-off, equity or equity-based, and each other compensation or benefit plan, policy, program, agreement or arrangement that is maintained, sponsored or contributed or required to be contributed to by a member of the Billabong Group or with respect to which any member of the Billabong Group has any current or contingent liability or obligation, in each case on account of current or former U.S. service providers.

**Vesting Performance Rights** means 334,879 Performance Rights held by a certain Employee as agreed between Billabong and Boardriders.

**W&I Policy** means any policy of warranty and indemnity insurance issued to Boardriders following the date of this deed in respect of the Billabong Representations and Warranties and the Indemnities.

**Warranty or Indemnity Claim** means a Claim for breach of a Billabong Representation and Warranty or a Claim under an Indemnity.

**Work Safety Authority** means a Government Agency with responsibility for the investigation and enforcement of work health and safety legislation, amongst other functions.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this deed.
- (f) A reference to an *agreement* or *document* (including a reference to this deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the



extent prohibited by this deed or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document.

- (g) A reference to a party to this deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (j) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (k) A reference to *dollars* and \$ is to Australian currency.
- (l) All references to time are to Sydney, Australia time.
- (m) Mentioning anything after *includes, including, for example*, or similar expressions, does not limit what else might be included.
- (n) Nothing in this deed is to be interpreted against a party solely on the ground that the party put forward this deed or a relevant part of it.
- (o) A reference to *associate, control* (by an entity of another entity), *officer, related body corporate, subsidiary, relevant interest* or *voting power* is to that term as it is defined in the Corporations Act.
- (p) A reference to 'fairly disclosed' in relation to a matter is to such matter being disclosed in sufficient detail to enable a reasonable person experienced in the industries in which the Billabong Group operates or transactions similar to the Transaction to identify the nature and scope of the relevant matter.

### 1.3 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

### 1.4 Best and reasonable endeavours

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

- (a) pay money:
  - (i) in the form of an inducement or consideration to a third party to procure something (other than the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing); or
  - (ii) in circumstances that are commercially onerous or unreasonable in the context of this deed;
- (b) provide other valuable consideration to or for the benefit of any person; or
- (c) agree to commercially onerous or unreasonable conditions.

### 1.5 Consents or approvals

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

## 1.6 Knowledge, belief or awareness of Billabong

- (a) Certain statements made in this deed (including certain Billabong Representations and Warranties) are given and made by Billabong only on the basis of its knowledge, belief or awareness. For the purposes of this deed, Billabong's knowledge, belief or awareness is limited to the actual knowledge, belief or awareness of the following individuals:
- (i) Tracey Wood;
  - (ii) Peter Myers;
  - (iii) Neil Fiske;
  - (iv) Jim Howell;
  - (v) Mara Pagotto; and
  - (vi) Mike Yerkes.
- (b) The knowledge, belief or awareness of any person other than the persons referred to in paragraph (a) will not be imputed to Billabong.
- (c) None of the persons referred to in paragraph (a) will bear any personal liability in respect of the Billabong Representations and Warranties or otherwise under this deed.

## 1.7 Listing requirements included as law

A listing rule or business rule of a securities exchange will be regarded as a *law*, and a reference to such a rule is to be taken to be subject to any waiver or exemption granted to a party.

## 2 Agreement to Proceed with Scheme

### 2.1 Billabong to propose the Scheme

Billabong agrees to propose and implement the Scheme on and subject to the terms of this deed.

### 2.2 Boardriders to assist

Boardriders agrees to assist Billabong to propose and implement the Scheme, and to procure the Boardriders Sub(s) (as applicable) to assist Billabong to propose and implement the Scheme, on and subject to the terms of this deed.

## 3 Conditions Precedent and Pre-implementation Steps

### 3.1 Conditions precedent

Subject to this clause 3, the Scheme will not become Effective, and the obligations of Boardriders under clause 4.3 are not binding, unless each of the following conditions precedent is satisfied or waived in accordance with clauses 3.2 and 3.4:

#### Conditions precedent for the benefit of both parties

- (a) **(FIRB approval)** before 8am on the Second Court Date, the Treasurer of the Commonwealth of Australia (or his delegate) either:
- (i) provides written notice that there are no objections under FATA to the Transaction, and that notice is not subject to any condition or is subject only to any Standard Tax Condition and/or any conditions that Boardriders reasonably considers to be acceptable; or

- (ii) becomes precluded by passage of time from making any order or decision under Division 2 of Part 3 of FATA in respect of the Transaction;
- (b) (**Competition Approvals**) all Competition Approvals have been obtained (or, in the case of a waiting period or filing, have terminated or expired or have been made, as the case may be);
- (c) (**Billabong Shareholder approval**) Billabong Shareholders (other than Excluded Shareholders) approve the Scheme by the requisite majorities under section 411(4)(a)(ii) of the Corporations Act at the Scheme Meeting;
- (d) (**Court approval**) the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act;
- (e) (**No restraints**) no applicable law shall have been enacted and no Order shall be in effect as at 8am on the Second Court Date that prevents, makes illegal or prohibits the implementation of the Scheme;

#### **Conditions precedent for the benefit of Boardriders only**

- (f) (**No Billabong Material Adverse Change**) no Billabong Material Adverse Change occurs between the date of this deed and 8am on the Second Court Date;
- (g) (**No Billabong Prescribed Occurrence**) no Billabong Prescribed Occurrence occurs between the date of this deed and 8am on the Second Court Date;
- (h) (**Billabong Representations and Warranties**) each Billabong Representation and Warranty, other than each Additional Warranty, is true and correct in all material respects on the date of this deed and at 8am on the Second Court Date;
- (i) (**Expiration of Marketing Period**) before 8am on the Second Court Date, the Marketing Period shall have commenced and expired;

#### **Conditions precedent for the benefit of Billabong only**

- (j) (**Boardriders funding**) the Boardriders Representation and Warranty in clause 8 of Schedule 1 is true and correct as if given at all times between the date of this deed and 8am on the Second Court Date; and
- (k) (**Boardriders Representations and Warranties**) each Boardriders Representation and Warranty is true and correct in all material respects on the date of this deed and at 8am on the Second Court Date.

### **3.2 Best endeavours and co-operation**

Without prejudice to any other obligations of the parties under this deed:

- (a) Boardriders must use its best endeavours to satisfy, or procure the satisfaction of, the conditions precedent in clauses 3.1(a), 3.1(b), 3.1(i), 3.1(j) and 3.1(k);
- (b) Billabong must use its best endeavours to satisfy, or procure the satisfaction of, the conditions precedent in clauses 3.1(f), 3.1(g) and 3.1(h);
- (c) each party must, to the extent it is within its power to do so, use its best endeavours to satisfy, or procure the satisfaction of, the conditions precedent in clauses 3.1(c), 3.1(d) and 3.1(e); and
- (d) no party will take any action that will or is likely to hinder or prevent the satisfaction of any conditions precedent, except to the extent that such action is required to be done or procured pursuant to, or is otherwise permitted by, this deed or the Scheme, or is required by law.

### 3.3 Regulatory Approvals

- (a) Without limiting the generality of clause 3.2 and subject to clause 3.3(b):
- (i) Boardriders must apply for all necessary Regulatory Approvals for the Transaction (**Required Regulatory Approvals**) as soon as practicable (and in any event within 10 Business Days after the date of this deed) and Billabong must provide such assistance in respect of any such application as Boardriders may reasonably request, and each party must take all reasonable steps required as part of the approval process in respect of any such application, including responding to reasonable requests for information at the earliest practicable time;
  - (ii) except in respect of the application for FIRB approval referred to in clause 3.1(a), Boardriders and Billabong each have the right to be represented and make submissions at any proposed meeting with any Government Agency relating to any Required Regulatory Approval;
  - (iii) Boardriders and Billabong must each promptly provide to the other party all information reasonably requested in connection with the applications for Required Regulatory Approvals;
  - (iv) except in respect of the application for FIRB approval referred to in clause 3.1(a), Boardriders and Billabong must each consult with the other party in advance in relation to all material communications (whether written or oral and whether direct or via an Adviser) with any Government Agency relating to any Required Regulatory Approval (**Communications**), and in relation to each material step in the process of obtaining each Required Regulatory Approval;
  - (v) Boardriders and Billabong must keep the other party fully informed of progress in relation to the obtaining of the Required Regulatory Approvals; and
  - (vi) without limiting clause 3.3(a)(iv), except in respect of the application for FIRB approval referred to in clause 3.1(a), Boardriders and Billabong must each:
    - (A) provide the other party with drafts of any material written Communications to be sent to a Government Agency, and allow the other party a reasonable opportunity to make comments on them prior to them being sent; and
    - (B) promptly provide copies of any material written Communications received from a Government Agency.
- (b) Before providing any document or other information to the other party (in this clause 3.3(b), the **Recipient**) pursuant to clause 3.3(a), a party (in this clause 3.3(b), the **Discloser**) may redact any part of that document, or not disclose any part of that information, which contains or constitutes confidential, competitively sensitive or privileged information to the extent that the Discloser reasonably considers that the disclosure of such information to the Recipient would be unlawful or damaging to the commercial or legal interests of the Discloser and its related bodies corporate or would be reasonably likely to jeopardise any attorney-client, work product or other legal privilege.
- (c) In the event that, following a process of reasonable consultation with Boardriders (including Boardriders providing written submissions on the matter), a Government Agency shall only agree to grant a Competition Approval subject to certain conditions, Boardriders must accept such conditions unless Boardriders considers (acting reasonably) that such conditions would or would be reasonably likely to:

- (i) materially detract from the benefits which Boardriders (acting reasonably) would anticipate to derive from the Transaction; or
- (ii) cause material prejudice to the Boardriders Group or its business, operations or activities.

### 3.4 Waiver of conditions precedent

- (a) The conditions precedent in clauses 3.1(a) to 3.1(e) are for the benefit of Billabong and Boardriders. Any breach or non-satisfaction of any of the conditions precedent in clauses 3.1(a), 3.1(c) or 3.1(d) cannot be waived. Any breach or non-satisfaction of any of the conditions precedent in clauses 3.1(b) or 3.1(e) may only be waived by Boardriders and Billabong giving their written consent.
- (b) The conditions precedent in clauses 3.1(f), 3.1(g), 3.1(h) and 3.1(i) are for the sole benefit of Boardriders, and any breach or non-satisfaction of those conditions precedent may only be waived by Boardriders giving its written consent.
- (c) The conditions precedent in clauses 3.1(i), 3.1(j) and 3.1(k) are for the sole benefit of Billabong, and any breach or non-satisfaction of those conditions precedent may only be waived by Billabong giving its written consent.
- (d) A party entitled to waive the breach or non-satisfaction of a condition precedent pursuant to this clause 3.4 may do so in its absolute discretion.
- (e) If a waiver by a party of a condition precedent is itself expressed to be conditional and the other party accepts the conditions, the terms of the conditions apply accordingly. If the other party does not accept the conditions, the relevant condition precedent has not been waived.
- (f) If a party waives the breach or non-satisfaction of a condition precedent, that waiver will not preclude it from suing the other party for any breach of this deed constituted by the same event that gave rise to the breach or non-satisfaction of the condition precedent.
- (g) Waiver of a breach or non-satisfaction in respect of one condition precedent does not constitute:
  - (i) a waiver of breach or non-satisfaction of any other condition precedent resulting from the same events or circumstances; or
  - (ii) a waiver of breach or non-satisfaction of that condition precedent resulting from any other event or circumstance.

### 3.5 Notifications

Each party must:

- (a) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the conditions precedent;
- (b) promptly notify the other party in writing if it becomes aware that any condition precedent has been satisfied, in which case the notifying party must also provide reasonable evidence that the condition precedent has been satisfied; and
- (c) promptly notify the other party in writing of a failure to satisfy a condition precedent or of any fact or circumstance that results in that condition precedent becoming incapable of being satisfied or that may result in that condition precedent not being satisfied in accordance with its terms.

### 3.6 Failure of conditions precedent

- (a) If:

- (i) there is a breach or non-satisfaction of a condition precedent which is not waived in accordance with this deed by the time or date specified in this deed for the satisfaction of the condition precedent;
- (ii) 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 deed for the satisfaction of the condition precedent (and the breach or non-satisfaction which would otherwise occur has not already been waived in accordance with this deed); or
- (iii) it becomes more likely than not that a condition precedent will not be satisfied by the End Date,

then either party may serve a written notice on the other party, and the parties must promptly consult in good faith with a view to determining whether:

- (iv) the Scheme or the Transaction may proceed by way of alternative means or methods;
  - (v) to extend the relevant time or date for satisfaction of the condition precedent;
  - (vi) to change the First Court Date or to adjourn the application for orders pursuant to section 411(1) of the Corporations Act convening the Scheme Meeting to another date agreed by the parties;
  - (vii) to change the Second Court Date or to adjourn the application for orders pursuant to section 411(4)(b) of the Corporations Act approving the Scheme to another date agreed by the parties; or
  - (viii) to extend the End Date.
- (b) If Billabong and Boardriders are unable to reach agreement under clauses 3.6(a)(iv), 3.6(a)(v), 3.6(a)(vi), 3.6(a)(vii) or 3.6(a)(viii) within 5 Business Days after the delivery of the notice under that clause or any shorter period ending at 5pm on the day before the Second Court Date, either party may terminate this deed by notice in writing to the other party, provided that:
- (i) the condition precedent to which the notice relates is for the benefit of that party (whether or not the condition precedent is also for the benefit of the other party); and
  - (ii) there has been no failure by that party to comply with its obligations under this deed, where that failure directly and materially contributed to the condition precedent to which the notice relates becoming incapable of satisfaction, or being breached or not fulfilled before the End Date,

in which case clause 14.3 will have effect.

### **3.7 Certificates in relation to conditions precedent**

- (a) On the Second Court Date each party must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8am on the Second Court Date the conditions precedent have been satisfied or waived in accordance with this deed.
- (b) Each party must provide to the other party a draft of the certificate to be provided by it pursuant to clause 3.7(a) by 5pm on the day that is two Business Days prior to the Second Court Date, and must provide to the other party on the Second Court Date a copy of the final certificate or other evidence provided to the Court.

## 4 Transaction Steps

### 4.1 Scheme

Billabong must propose a scheme of arrangement under which:

- (a) all of the Scheme Shares will be transferred to the Boardriders Sub(s) (as applicable); and
- (b) the Scheme Shareholders will be entitled to receive the Scheme Consideration.

### 4.2 Scheme Consideration

The **Scheme Consideration**, in respect of a Scheme Shareholder, means \$1 per Scheme Share held by that Scheme Shareholder.

### 4.3 Provision of Scheme Consideration

Boardriders undertakes to Billabong (in its own right and as trustee on behalf of the Scheme Shareholders) that, in consideration of the transfer to the Boardriders Sub(s) (as applicable) of the Scheme Shares under the terms of the Scheme, on the Implementation Date it will:

- (a) procure that the Boardriders Sub(s) (as applicable) accept(s) that transfer; and
- (b) before 12 noon on the Implementation Date, pay or procure payment of the Scheme Consideration for each Scheme Share in accordance with the Scheme and the Deed Poll.

### 4.4 Options

- (a) Simultaneously with execution of this deed, Billabong entered into a cancellation deed with Centerbridge BV and each other affiliate of Centerbridge that holds Options (if any) under which all of their Options will be cancelled for nil consideration (subject to implementation of the Scheme) with effect from the Implementation Date.
- (b) Billabong will, as soon as reasonably practicable after the date of this deed, use its reasonable endeavours to enter into a deed with each Relevant Option Holder (as defined below) substantially in the form of Annexure E or such other form acceptable to Boardriders (acting reasonably) under which the Options held by that Relevant Option Holder are cancelled for nil or nominal consideration (subject to implementation of the Scheme) with effect from the Implementation Date. The **Relevant Option Holders** are the holders of Options listed in the first four rows of the table in Part B of Schedule 4.
- (c) Billabong must use reasonable endeavours to obtain any necessary waiver from ASX listing rule 6.23.2 in respect of the cancellation of Options, provided that such waiver must be on terms acceptable to Boardriders (acting reasonably).
- (d) Billabong confirms and undertakes in favour of Boardriders that:
  - (i) none of the Options listed in Part A of Schedule 4 have vested and none of those Options are exercisable and none of those Options shall vest or become exercisable; and
  - (ii) the Billabong Board has exercised all necessary discretions and passed all necessary resolutions to procure that all Options listed in Part A of Schedule 4 shall lapse on or before the Scheme Record Date, and all such Options shall lapse on or before such date without any cost or liability to Billabong or any other member of the Billabong Group.

### 4.5 Performance Rights

Billabong confirms and undertakes in favour of Boardriders that:

- (a) the Billabong Board has exercised all necessary discretions and passed all necessary resolutions to procure that all Performance Rights other than the Vesting Performance Rights shall lapse on or before the Effective Date, and all such Performance Rights shall lapse on or before such date without any cost or liability to Billabong or any other member of the Billabong Group;
- (b) the Vesting Performance Rights shall vest on the Effective Date and, immediately upon vesting, such number of Billabong Shares as corresponds to the number of Vesting Performance Rights shall be transferred to the holder of the Vesting Performance Rights by the trustee of Billabong's employee share trust (**EST Trustee**) out of the Billabong Shares held by the EST Trustee in its capacity as trustee of such trust; and
- (c) other than as contemplated in paragraph (b), no Performance Rights shall vest and Billabong will not be or become obliged to issue or transfer any Billabong Shares to any holder of Performance Rights.

#### 4.6 Billabong employee share trust

Billabong confirms and undertakes in favour of Boardriders that:

- (a) as at the date of this deed, the EST Trustee holds 341,444 Billabong Shares in its capacity as trustee of Billabong's employee share trust, 6,565 of which are allocated to certain Billabong Shareholders; and
- (b) the EST Trustee shall not dispose of any such Billabong Shares prior to the Implementation Date other than in accordance with clause 4.5(b) and to the Billabong Shareholders to whom 6,565 of those Billabong Shares are already allocated.

## 5 Implementation

### 5.1 Billabong's obligations

Billabong must take all steps reasonably necessary to propose and implement the Scheme as soon as is reasonably practicable after the date of this deed and must use reasonable endeavours to ensure that each step in the Timetable is met by the date set out beside that step, including by doing any acts it is authorised and able to do on behalf of Billabong Shareholders and each of the following.

- (a) (**Preparation of Scheme Booklet**) Prepare the Scheme Booklet so that it complies with all applicable laws, including the Corporations Act, ASIC Regulatory Guide 60 and the ASX Listing Rules. The Scheme Booklet must include a statement that:
  - (i) other than the Boardriders Information and the Independent Expert's Report, the Scheme Booklet has been prepared by Billabong and is the responsibility of Billabong, and that no Boardriders Party assumes any responsibility for the accuracy or completeness of the Scheme Booklet (other than the Boardriders Information); and
  - (ii) the Boardriders Information has been provided by Boardriders and is the responsibility of Boardriders, and that no Billabong Party assumes any responsibility for the accuracy or completeness of the Boardriders Information.

The Scheme Booklet must also include the recommendation and statement required under clause 7.

- (b) (**Independent Expert**) Promptly appoint the Independent Expert (if the Independent Expert has not been appointed prior to the date of this deed), and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report.



- (c) **(Consultation with Boardriders)** Consult with Boardriders as to the content and presentation of the Scheme Booklet, such consultation to include allowing Boardriders a reasonable opportunity to review and make comments on successive drafts of the Scheme Booklet a reasonable time before its lodgement with ASIC and obtain Boardriders' written consent to the inclusion of the Boardriders Information (including in respect of the form and context in which the Boardriders Information appears in the Scheme Booklet) prior to lodgement of the Scheme Booklet with ASIC. Billabong must consider in good faith any comments on drafts of the Scheme Booklet provided by or on behalf of Boardriders.
- (d) **(Liaison with ASIC)** As soon as reasonably practicable after the date of this deed but no later than 14 days before the First Court Date, and following Boardriders giving confirmation or providing changes as contemplated by clause 5.3(d), provide an advanced draft of the Scheme Booklet to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act, and to Boardriders, and keep Boardriders reasonably informed of any matters raised by ASIC in relation to the Scheme Booklet (and of any resolution of those matters), and use reasonable endeavours, in consultation with Boardriders, to resolve any such matters (provided that Billabong may not resolve any such matters without the prior written consent of Boardriders to the extent that such matters relate to the Boardriders Information).
- (e) **(Indication of intent)** Apply to ASIC for a letter indicating whether ASIC proposes to make submissions to the Court, or intervene to oppose the Scheme, on the First Court Date.
- (f) **(Approval of Scheme Booklet)** As soon as practicable after ASIC has provided its indication of intent in accordance with paragraph (e), procure that a meeting of the Billabong Board is convened for the purpose of approving the Scheme Booklet for despatch to Billabong Shareholders.
- (g) **(Court direction)** Apply to the Court for orders directing Billabong to convene the Scheme Meeting, and consult with Boardriders as to the content of all relevant originating process, affidavits, submissions and draft minutes of Court orders. Such consultation must include providing Boardriders with a reasonable opportunity to review and comment on the relevant Court documents before they are lodged, and Billabong must consider in good faith any comments provided by or on behalf of Boardriders.
- (h) **(ASIC registration)** Request ASIC to register the Scheme Booklet in the form approved by the Court.
- (i) **(Despatch)** Send the Scheme Booklet to Billabong Shareholders following receipt of Boardriders' written consent to the inclusion of the Boardriders Information in the form and context in which the Boardriders Information appears in such version of the Scheme Booklet.
- (j) **(Update Scheme Booklet)** If, after the Scheme Booklet has been sent to Billabong Shareholders, it becomes aware of information that is:
  - (i) not included in the Scheme Booklet and that is:
    - (A) material for disclosure to Billabong Shareholders in deciding whether to approve the Scheme; or
    - (B) required to be disclosed to Billabong Shareholders under any applicable law; or

- (ii) included in the Scheme Booklet and is misleading or deceptive in a material respect in the form and context in which it appears in the Scheme Booklet, inform Billabong Shareholders of the information in an appropriate and timely manner, in accordance with applicable law. Billabong must consult with Boardriders as to the form and content of any supplementary disclosure before it is made to Billabong Shareholders, and, to the extent reasonably practicable, must provide Boardriders with a reasonable opportunity to review and comment on such disclosure before it is made and must consider in good faith any comments provided by or on behalf of Boardriders. To the extent that any supplementary disclosure relates to (or constitutes) Boardriders Information, it may only be made with Boardriders' prior written consent (not to be unreasonably withheld or delayed).
- (k) **(Promote Transaction)** Participate in efforts reasonably requested by Boardriders to promote the merits of the Transaction and the Scheme Consideration, including, where requested by Boardriders, meeting with key Billabong Shareholders.
- (l) **(Scheme Meeting)** Convene the Scheme Meeting to approve the Scheme (in accordance with any orders made by the Court).
- (m) **(No objection statement)** Apply to ASIC for the production of a statement in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme.
- (n) **(Court approval)** Subject to all conditions precedent in clause 3.1 (other than that in clause 3.1(d)) being satisfied or waived in accordance with this deed, apply to the Court for orders approving the Scheme, and consult with Boardriders as to the content of all relevant affidavits, submissions and draft minutes of Court orders. Such consultation must include providing Boardriders with a reasonable opportunity to review and comment on the relevant Court documents before they are lodged, and Billabong must consider in good faith any comments provided by or on behalf of Boardriders.
- (o) **(Court order)** Lodge with ASIC an office copy of any Court order approving the Scheme on the day such office copy is received (or such later date as Boardriders may agree in writing).
- (p) **(Representation)** Allow, and not oppose, any application by Boardriders for leave of the Court to be represented by counsel at the Court hearings in relation to the Scheme.
- (q) **(Information)** Provide all necessary information, and procure that the Billabong Registry provides all necessary information, in each case in a form reasonably requested by Boardriders, for the purpose of understanding legal ownership of Billabong Shares and proxy appointments and directions received by Billabong prior to the Scheme Meeting.
- (r) **(Implementation)** If the Scheme becomes Effective:
  - (i) procure ASX to suspend trading in Billabong Shares from the close of trading on the Effective Date;
  - (ii) close the Billabong Share Register at the Scheme Record Date to determine the identity of Scheme Shareholders and their entitlements to the Scheme Consideration; and
  - (iii) subject to Boardriders satisfying its obligations under clause 4.3, execute proper instruments of transfer of the Scheme Shares on behalf of the Scheme Shareholders in favour of the Boardriders Sub(s) (as applicable) and procure the registration in the Billabong Share Register of all transfers of Scheme Shares to

the Boardriders Sub(s) (as applicable) under those instruments on the Implementation Date.

- (s) **(ASX listing)** Maintain Billabong's admission to the official list of ASX and the quotation of Billabong Shares on ASX up to and including the Implementation Date.

## 5.2 Appeal process

If the Court refuses to make any orders convening the Scheme Meeting or approving the Scheme:

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

## 5.3 Boardriders' obligations

Boardriders must take all steps reasonably necessary to assist Billabong to propose and implement the Scheme as soon as is reasonably practicable and, without limiting the foregoing, must use reasonable endeavours to ensure that each step in the Timetable is met by the date set out beside that step, including by doing each of the following.

- (a) **(Boardriders Information)** Prepare and provide to Billabong the Boardriders Information for inclusion in the Scheme Booklet to comply with all applicable laws, including the Corporations Act, ASIC Regulatory Guide 60 and the ASX Listing Rules relevant to the Boardriders Information and consult with Billabong as to the content and presentation of the Boardriders Information in the Scheme Booklet, such consultation to include allowing Billabong a reasonable opportunity to review and make comments on successive drafts of the Boardriders Information before lodgement of the Scheme Booklet with ASIC. Boardriders must consider in good faith any comments on drafts of the Boardriders Information provided by or on behalf of Billabong.
- (b) **(Review drafts of Scheme Booklet)** As soon as practicable after delivery, review drafts of the Scheme Booklet prepared by Billabong and provide any comments on those drafts.
- (c) **(Independent Expert information)** Provide all assistance and information reasonably requested by Billabong or by the Independent Expert in connection with the preparation of the Independent Expert's Report.
- (d) **(Confirmation of Boardriders Information)** Before the Scheme Booklet is provided to ASIC pursuant to section 411(2) of the Corporations Act, procure that a meeting of the board of directors of Boardriders is held to consider the Boardriders Information included in the Scheme Booklet as being in a form appropriate for provision to ASIC for review, and either:
  - (i) confirm in writing to Billabong that the Boardriders Information in the form and context in which it appears in the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omission; or
  - (ii) provide to Billabong the changes required to ensure that the Boardriders Information in the form and context in which it appears in the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omission.
- (e) **(Approval of Boardriders Information)** As soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the

board of directors of Boardriders is held to consider the Boardriders Information included in the Scheme Booklet as being in a form appropriate for despatch to Billabong Shareholders, subject to approval of the Court.

- (f) **(Update Boardriders Information)** If at any time after the despatch of the Scheme Booklet, Boardriders becomes aware:
- (i) of new information which, were it known at the time of despatch, should have been included in any Boardriders Information included in that version of the Scheme Booklet; or
  - (ii) that any part of the Boardriders Information included in that version of the Scheme Booklet is misleading or deceptive in any material respect (whether by omission or otherwise),
- it must advise Billabong so that Billabong can determine whether supplementary disclosure to Billabong Shareholders is required in accordance with (and subject to the terms of) clause 5.1(j).
- (g) **(Deed Poll)** Before the first Court hearing on the First Court Date, enter into the Deed Poll and deliver it to Billabong.
- (h) **(Court representation)** Procure that it is represented by counsel at the Court hearings convened in relation to the Scheme, at which, through its counsel or solicitors, Boardriders will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this deed and the Scheme.
- (i) **(Scheme Consideration)** If the Scheme becomes Effective, provide the Scheme Consideration in the manner and amount contemplated by clause 4.3 on the Implementation Date in accordance with the Scheme.
- (j) **(Promote Transaction)** Participate in efforts reasonably requested by Billabong to promote the merits of the Transaction and the Scheme Consideration, including, where requested by Billabong, meeting with key Billabong Shareholders.

#### 5.4 Appointment of directors

On the Implementation Date, but subject to the Scheme Consideration having been paid by Boardriders in accordance with the Scheme and receipt by Billabong of signed consents to act, Billabong must:

- (a) take all actions necessary to appoint the persons nominated by Boardriders as new directors of Billabong and other members of the Billabong Group; and
- (b) procure that all directors on the Billabong Board or the board of another member of the Billabong Group (other than the new directors of Billabong appointed pursuant to clause 5.4(a)) resign from the Billabong Board or such other board (as applicable).

#### 5.5 Termination of equity funding deed

Simultaneously with execution of this deed, Billabong entered into a termination deed with Centerbridge BV and Oaktree BV in respect of the termination of the equity funding deed between Billabong, Centerbridge BV and Oaktree BV dated 18 September 2013 with effect from (and subject to) implementation of the Scheme.

### 6 Conduct of business and requests for access

#### 6.1 Conduct of Billabong business

During the period from the date of this deed up to and including the Implementation Date, Billabong must:

- (a) procure that the Billabong Group conducts its business and operations:
  - (i) in the ordinary course, including with respect to making payments and collecting receivables;
  - (ii) substantially in accordance with the budget for the Billabong Group in respect of each quarterly period during the financial year ending 30 June 2018 a summary of which is included in the Due Diligence Material (the **2018 Budget**) and provided that this provision only requires expenditure to be in accordance with the 2018 Budget on an individual cost centre basis, and is not to be tested on an item by item basis and further provided that this provision only operates during the period from the date of this deed up to and including the Implementation Date;
  - (iii) such that, in no event shall the Billabong Group (or any member thereof) purchase raw materials or order product greater than 110% of the trailing 12 month seasonal sales of the Billabong Group taken as a whole;
  - (iv) in accordance in all material respects with legal and contractual obligations; and
  - (v) in a manner generally consistent (subject to any applicable laws, regulations and regulatory approvals that requires otherwise) with the manner in which each such business and operation has been conducted in the 12 month period prior to the date of this deed;
- (b) to the extent consistent with the obligation in clause 6.1(a), use reasonable efforts to keep available the services of the current senior management team of Billabong, and to preserve the Billabong Group's relationship with:
  - (i) Government Agencies;
  - (ii) material customers, suppliers, licensors and licensees; and
  - (iii) others having material business dealings with it;
- (c) procure that no member of the Billabong Group:
  - (i) acquires, leases or disposes of any companies, businesses, securities or entities (or any interest in any of the foregoing), the value or aggregate value of which exceeds \$250,000;
  - (ii) incurs, commits to or undertakes any capital expenditure of an amount or aggregate amount exceeding \$250,000;
  - (iii) enters into:
    - (A) any contract or arrangement (other than any employment agreement) having a term of longer than 12 months which cannot be terminated on less than 60 days' notice without any penalty to the Billabong Group and under which the Billabong Group is or may be or become entitled to receive, or required to make, revenue or expenditure of \$350,000 or more over the life of such contract or arrangement other than contracts or arrangements entered into in the ordinary course of its business or operations including athlete sponsorship agreements; event sponsorship agreements; distribution agreements; licensee agreements; customer agreements and manufacturing agreements; or
    - (B) any lease or licence of premises or extension thereof;

- (iv) issues any debt securities or debt instruments, or borrows any money other than drawing down on existing debt facilities within existing facility limits;
- (v) grants a licence to use, or an Encumbrance over, any of its intellectual property rights other than in the ordinary course of business, or disposes of any right, title or interest in, or makes an assignment in respect of, any of its intellectual property rights or allows any of its intellectual property rights to lapse;
- (vi) enters into any enterprise agreement (or equivalent) or terminates or extends any such agreement or amends any such agreement in any material respect;
- (vii) employs or engages any officer, employee, contractor or consultant except where such officer, employee, contractor or consultant:
  - (A) is employed or engaged to fill a role where the expenditure on that role is not budgeted for in the 2018 Budget but:
    - (1) has an annual base salary (excluding benefits) of \$150,000 or less; and
    - (2) the amount of the aggregate annual base salaries (excluding benefits) of all such officers, employees, contractors or consultants employed or engaged by the Billabong Group does not exceed \$3,000,000; or
  - (B) is employed or engaged to fill a role where the expenditure on that role is budgeted for in the 2018 Budget;
- (viii) amends in any material respect the terms of employment or engagement of any officer, employee, contractor or consultant;
- (ix) terminates the employment or engagement of any officer, employee, contractor or consultant, except termination:
  - (A) for cause or material breach; or
  - (B) in respect of an officer, employee, contractor or consultant having a total employment or remuneration cost of less than \$150,000 per annum;
- (x) accelerates or amends the rights of any officer, employee, contractor or consultant to compensation or benefits of any kind (including any incentives such as (without limitation) performance rights, options and other incentive rights);
- (xi) pays any bonus or gives any other benefit of any kind to any officer, employee, contractor or consultant other than in accordance with contractual arrangements in place as at the date of this deed or statutory entitlements unless the payment of such bonus or giving of such benefit is conditional on the Scheme not becoming Effective, in which case any such member of the Billabong Group shall be entitled to agree to pay such bonus or give such benefit subject to such condition, but, for the avoidance of doubt, may not pay such bonus or give such benefit until and unless this deed is terminated;
- (xii) waives or forgives any loans made to any officer or employee of the Billabong Group, including any loan in respect of Billabong Shares issued under any employee or director share, option or incentive plan;
- (xiii) announces, declares, determines to pay or pays any dividend or other distribution, or returns capital to its members other than payments to wholly owned subsidiaries of Billabong which do not give rise to any adverse tax consequences;

- (xiv) makes, commences, settles or admits liability in relation to any Claim for an amount exceeding \$150,000 individually or \$300,000 in the aggregate;
  - (xv) changes its constitution or other constituent documents;
  - (xvi) changes its accounting policy other than any change required by applicable accounting standards; or
  - (xvii) authorises or agrees, offers, commits or resolves to do any of the things referred to in clauses 6.1(c)(i) to 6.1(c)(xvi) (inclusive), whether conditionally or otherwise; and
- (d) keep Boardriders informed of any current, pending or threatened Tax or Duty audits, reviews or investigations or Tax Demands relating to any member of the Billabong Group, and procure that no member of the Billabong Group settles, compromises or otherwise deals with such audits, reviews or investigations or Tax Demands without the prior written consent of Boardriders,

except to the extent:

- (e) required or expressly permitted by this deed or the Scheme;
- (f) fairly disclosed in the Due Diligence Material or the Disclosure Letter;
- (g) fairly disclosed to ASX within 5 years prior to the date of this deed or fairly disclosed in a document lodged with ASIC by or on behalf of Billabong within 12 months prior to the date of this deed;
- (h) the relevant expenditure is budgeted for in the relevant quarter in the 2018 Budget tested on an individual cost centre basis (and not on an item by item basis); or
- (i) agreed to in writing by Boardriders (such agreement not to be unreasonably withheld or delayed).

## 6.2 Access to information and co-operation

- (a) **(Provision of access and information)** During the period from the date of this deed up to and including the Implementation Date, Billabong must, and must procure each of its subsidiaries to, respond to reasonable requests from Boardriders and its Representatives for information concerning the Billabong Group businesses, operations and affairs as soon as reasonably practicable after such requests are made, and give Boardriders and its Representatives reasonable access to Billabong's Executive Leadership Team and records, and otherwise provide reasonable co-operation to Boardriders and its Representatives, in each case for the purposes of:
- (i) the implementation of the Scheme;
  - (ii) integration planning prior to implementation of the Scheme which, for the avoidance of doubt, does not include ongoing due diligence on the Billabong Group;
  - (iii) finalisation of the Boardriders Group's structuring arrangements for the Transaction; or
  - (iv) any other purpose that is agreed in writing between the parties.

Without limiting the foregoing, during the period from the date of this deed up to and including the Implementation Date, Billabong must promptly notify Boardriders in writing of any of the following matters of which Billabong becomes aware, and such written notification must include a reasonable summary of the relevant matter to the extent the details are known to Billabong:

- (v) events, facts, matters or circumstances which:
    - (A) would or would be likely to constitute a Billabong Material Adverse Change; or
    - (B) would or would be likely to have a material adverse effect on:
      - (1) the financial or operational performance of, or the reputation of, the Billabong Group taken as a whole; or
      - (2) the Billabong Group's relationships with Government Agencies or key customers, suppliers or other persons with whom the Billabong Group has material business dealings;
  - (vi) changes to the composition of Billabong's Executive Leadership Team;
  - (vii) any breach of, or default under, any law, contract, arrangement, permit, licence or authorisation that is binding upon any member of the Billabong Group and which is reasonably likely to result in a material liability on the part of any member of the Billabong Group; and
  - (viii) any breach of this deed by Billabong (including any Billabong Representation and Warranty being or becoming untrue or incorrect).
- (b) **(Limits on Billabong obligations)** The obligations in clause 6.2(a) and clause 6.3 do not require Billabong to:
- (i) do anything which would cause undue disruption to the operation of its business in the ordinary course;
  - (ii) require a Billabong Group Member to take any action that would reasonably be expected to conflict with or violate the entity's constituent documents or any law;
  - (iii) require a Billabong Group Member to take any action that would reasonably be expected to conflict with or violate any competition or anti-trust law;
  - (iv) provide information to Boardriders concerning the Billabong directors' and management's consideration of the Scheme; or
  - (v) provide any confidential, competitively sensitive or privileged information where the provision of such information is reasonably likely to cause prejudice to the commercial or legal interests of the Billabong Group taken as a whole, or would be reasonably likely to jeopardise any attorney-client, work product or other legal privilege.
- (c) The parties acknowledge that all information that is provided pursuant to this clause 6.2 will be provided subject to the terms of the Confidentiality Deed.

### 6.3 Integration planning

- (a) On and from the date of this deed, the parties agree to establish a committee (**Integration Committee**) initially comprising of the following individuals:
  - (i) as representatives of Billabong, all of the members of the Executive Leadership Team;
  - (ii) as representatives of Boardriders:
    - (A) David Tanner;
    - (B) Pierre Agnes, CEO;
    - (C) Thomas Chambolle, CFO;



- (D) Julie Ott, COO;
  - (E) Nico Foulet, CTO;
  - (F) Greg Healy, President APAC;
  - (G) Nate Smith, President AMS; and
  - (H) Ilene Eskenazi, General Counsel.
- (b) The role of the Integration Committee will be to act as a forum for discussion and planning in respect of the following:
- (i) matters related to integration planning, including employee retention and incentivisation, stakeholder engagement and communications, consolidation of operations and functions or processes; and
  - (ii) the process for giving notice to, or seeking consent or approval from, the Counterparties (as applicable).
- (c) Each party must ensure that its representatives on the Integration Committee act in good faith in their capacity as members of the Integration Committee with a view to fulfilling the role and objectives of such committee (to the extent within their power).
- (d) The Integration Committee will meet at least weekly and at such times and places as agreed between the members of the Integration Committee from time to time. Meetings may be held via telephone.
- (e) The members of the Integration Committee may agree to invite other persons to attend meetings of the Integration Committee from time to time.
- (f) From time to time, certain members of the Integration Committee or other representatives of the parties (as agreed between the parties) will meet separately to meetings of the Integration Committee to discuss and progress matters considered or plans developed by the Integration Committee.
- (g) The parties acknowledge and agree that:
- (i) the Integration Committee is a discussion and planning forum only, and the members of the Integration Committee do not have power to bind the other party or to give any consent, approval or waiver on behalf of such other party;
  - (ii) nothing in this clause 6.3 or elsewhere in this deed requires a party to act at the direction of the other party or is intended to create a relationship of partnership, joint venture or similar between the parties;
  - (iii) the respective businesses of the Boardriders Group and the Billabong Group are to continue to operate independently until (and subject to) implementation of the Scheme; and
  - (iv) nothing in this clause 6.3 requires any of Billabong's representatives on the Integration Committee to do anything which would unduly interfere with their responsibilities to Billabong and the ongoing conduct of Billabong's business.
- (h) Without limiting clause 6.1, Billabong agrees that, prior to entering into:
- (i) any new commitment or contract which is material to the Billabong Group (taken as a whole);
  - (ii) any distribution agreement expected to produce revenue in excess of \$350,000; or
  - (iii) any omni-related contract with expenditure in excess of \$350,000,

it will table such commitment or contract for discussion by the Integration Committee and, following such discussion, shall consider, in good faith, any reasonable comments which Boardriders may have in relation to such commitment or contract.

#### **6.4 Change of control consents**

- (a) Billabong must use all reasonable endeavours to procure that, as soon as practicable following the date of this deed (and, in any event, before the Second Court Date), each member of the Billabong Group has complied with and discharged all contractual obligations of which Billabong is aware requiring such member of the Billabong Group to give notice to, or to apply for the approval or consent of, the Counterparties, in connection with this deed or the transactions contemplated by it (including in respect of the change in control of Billabong resulting from implementation of the Scheme).
- (b) Billabong must consult with Boardriders, and Boardriders must provide reasonable assistance to Billabong, in connection with giving any notice or seeking any approval or consent under paragraph (a). Without limiting the foregoing, Billabong must promptly provide Boardriders with copies of all material communications with Third Parties pursuant to paragraph (a).
- (c) Any notice, approval or consent of a kind referred to in paragraph (a) may only be given or sought by Billabong in a form and on terms approved by Boardriders (such approval not to be unreasonably withheld or delayed).
- (d) Boardriders acknowledges and agrees that the obligations in clause 6.4(a) are reasonable endeavours obligations only, and that in no event is the failure to obtain any consent or approval to constitute a breach of this deed or to be a condition of Boardriders' obligations under this deed.

#### **6.5 Boardriders obligations in respect of Debt Financing**

- (a) Boardriders must use all commercially reasonable efforts (including enforcing its rights under the Debt Commitment Letters) to obtain the proceeds of the Debt Financing on the terms and conditions described in the Debt Commitment Letters on or prior to the Implementation Date, including by negotiating long form documentation in respect of the Debt Financing in good faith for the purpose of executing and delivering (or putting into final and agreed form, as the case may be) such documentation no later than the Second Court Date, and by using reasonable efforts (and procuring the other relevant members of the Boardriders Group use reasonable efforts) to:
  - (i) maintain in effect the Debt Commitment Letters;
  - (ii) negotiate definitive agreements with respect to the Debt Financing on terms which do not:
    - (A) reduce the aggregate amount of the Debt Financing such that the aggregate funds available to the Boardriders Group on the Implementation Date would not be sufficient to satisfy Boardriders' obligations hereunder; or
    - (B) impose new or additional conditions precedent (other than conditions precedent that have already been satisfied at the time they are so added) or adversely modify any existing conditions precedent to the receipt of the Debt Financing; and
  - (iii) satisfy on a timely basis all conditions precedent to funding of the Debt Financing applicable to a member of the Boardriders Group in the Debt Commitment Letters.

- (b) Boardriders must give Billabong prompt written notice of:
  - (i) any termination or repudiation of a Debt Commitment Letter of which Boardriders has knowledge; or
  - (ii) any breach or default of a Debt Commitment Letter by any party thereto of which Boardriders has knowledge that could reasonably be expected to materially and adversely affect the ability or likelihood of the relevant members of the Boardriders Group to consummate the transactions contemplated by this deed in accordance with the Timetable.
- (c) Boardriders will not, and will procure that the other relevant members of the Boardriders Group do not, without the prior written consent of Billabong:
  - (i) permit any material amendment or modification to, or any waiver of any provision or remedy under a Debt Commitment Letter; or
  - (ii) terminate a Debt Commitment Letter.
- (d) In the event that any portion of the Debt Financing becomes unavailable, regardless of the reason, Boardriders will:
  - (i) promptly notify Billabong of such unavailability and the reason, and
  - (ii) use reasonable efforts to obtain alternative debt financing (in an amount sufficient, when taken together with the available portion of the Debt Financing, to perform its obligations hereunder) from the same or other sources, and on terms which do not include any conditions to the consummation of such alternative financing that are materially more onerous than the conditions set forth in the relevant Debt Commitment Letter(s) (as applicable).

## 6.6 Billabong obligations in respect of Debt Financing

Billabong must provide, and must procure that its subsidiaries and the respective officers and employees of it and its subsidiaries provide, all reasonable co-operation to Boardriders and its Related Entities in connection with the arrangement of the Debt Financing where reasonably requested by Boardriders, including the following:

- (a) providing information and assistance in connection with preparing the documentation for, establishing and marketing, promoting and advertising the Debt Financing (including customary rating agency presentations, bank information memoranda, marketing materials and similar documents in connection with the syndication of the Debt Financing), which information shall include without limitation,
  - (i) audited consolidated balance sheets and related audited consolidated statements of income and cash flows of Billabong for each of the three most recently completed fiscal years ended at least one hundred twenty (120) days prior to the Effective Date (including the fiscal year ended June 30, 2017); and
  - (ii) unaudited consolidated balance sheets and related unaudited statements of income and cash flows of Billabong for the quarter ended September 30, 2017 and for each subsequent interim quarterly period which ends prior to the Effective Date, within sixty (60) days of the end of such quarterly period, the unaudited consolidated balance sheets and related unaudited statements of income and cash flows of Billabong,

(the financial statements described in the foregoing sub-clauses (i) and (ii), collectively, the **Required Financial Statements**);

- (b) using commercially reasonable efforts to cause such senior executives of the Billabong Group as may be nominated by Boardriders to attend management presentations and meetings with the Lenders;
- (c) assisting Boardriders in connection with the preparation of any guaranties, pledge and security documents and other definitive financing documents as may be reasonably requested by Boardriders in connection with the Debt Financing;
- (d) cooperating with any marketing efforts of Boardriders and any providers of the Debt Financing for any portion of the Debt Financing, including without limitation by:
  - (i) subject to appropriate confidentiality undertakings being given, providing executed authorization letters to such providers of the Debt Financing authorizing the distribution of information to prospective lenders or investors and containing a representation to such providers of the Debt Financing that the public-side versions of such documents, if any, do not include material non-public information about Billabong or its subsidiaries or securities for purposes of U.S. federal and state securities laws;
  - (ii) executing ratings agency engagement letters as required in connection with the Debt Financing provided that any obligations imposed on the Billabong Group pursuant to such letters are reasonable; and
  - (iii) using reasonable efforts to obtain consents of accountants for use of their reports in any materials relating to the Debt Financing, in each case as reasonably requested by Boardriders);
- (e) delivering notices of prepayment within the time period required by the relevant agreements governing the relevant financial indebtedness of Billabong and its subsidiaries and obtaining customary payoff letters, lien terminations and instruments of discharge in respect of such indebtedness to be delivered on or before the Implementation Date, and giving any other necessary notices, in each case to allow for the payoff, discharge and termination in full on the Implementation Date of all relevant financial indebtedness of Billabong and its subsidiaries required to be paid, discharged or terminated in connection with the Debt Financing; and
- (f) furnishing Boardriders and any providers of the Debt Financing with all documentation and other information reasonably required by regulatory authorities pursuant to applicable “know your customer” and anti-money laundering rules and regulations, provided that the request for such information has been made at least ten Business Days prior to the Effective Date.

Boardriders agrees to reimburse Billabong for its reasonable costs and expenses incurred as a result of complying with its obligations under this clause 6.6. Notwithstanding anything to the contrary in this clause 6.6, nothing herein shall require such assistance or cooperation to the extent it would unreasonably interfere with the ongoing business or operations of Billabong and Billabong shall receive reasonable advance notice of any requested assistance or cooperation.

## **6.7 D&O Insurance**

Each party acknowledges that, notwithstanding any other provision of this deed, any member of the Billabong Group may, prior to the Implementation Date, enter into a run-off insurance policy in respect of any of the Billabong Parties for a 7 year period (or longer if Boardriders agrees, acting reasonably), and that any actions to facilitate that insurance or in connection therewith will not be a Billabong Prescribed Occurrence or breach any provision of this deed, provided that the relevant member of the Billabong Group has not acted unreasonably and has consulted with Boardriders (who must act reasonably and not so as to cause delay) in entering into any such

policy. For the avoidance of doubt, an insurance premium of \$4,000,000 for such policy would not be unreasonable in the circumstances existing as at the date of this deed, but an insurance premium of more than \$4,000,000 would be unreasonable in any circumstances.

## 7 Billabong Board recommendation

- (a) Subject to clause 7(b), Billabong must ensure that:
- (i) the Billabong Board unanimously recommends that, in the absence of a Superior Proposal and subject to the Independent Expert opining at all times prior to the Second Court Date that the Scheme is in the best interests of Billabong Shareholders (other than Excluded Shareholders), Billabong Shareholders (other than Excluded Shareholders) vote in favour of the Scheme at the Scheme Meeting;
  - (ii) the Scheme Booklet will include a statement by the Billabong Board to the effect that each director of Billabong will, in the absence of a Superior Proposal and subject to the Independent Expert opining at all times prior to the Second Court Date that the Scheme is in the best interests of Billabong Shareholders (other than Excluded Shareholders), vote (or procure the voting of) all Billabong Shares held or controlled by him or her in favour of the Scheme at the Scheme Meeting; and
  - (iii) a director of Billabong does not change, withdraw or modify his or her recommendation under paragraph (a)(i) or statement under paragraph (a)(ii) or in the Billabong announcement referred to in clause 11.1 or make a recommendation or statement that is inconsistent with such recommendation or statement.
- (b) Paragraph (a) will cease to apply in either of the following circumstances:
- (i) the Independent Expert opines either prior to the despatch of the Scheme Booklet or prior to the Scheme Meeting to the effect that the Scheme is not in the best interests of Billabong Shareholders; or
  - (ii) Billabong receives a Competing Proposal that constitutes a Superior Proposal.

## 8 Representations and Warranties

### 8.1 Boardriders Representations and Warranties

Boardriders represents and warrants to Billabong (in its own right and separately as trustee or nominee for each of the other Billabong Parties) that each Boardriders Representation and Warranty is true and correct.

### 8.2 Billabong Representations and Warranties

- (a) Subject to clause 8.2(d), Billabong represents and warrants to Boardriders (in its own right and separately as trustee or nominee for each of the other Boardriders Parties) that each Billabong Representation and Warranty is true and correct.
- (b) Boardriders acknowledges and agrees that the Billabong Representations and Warranties and the Indemnities are given subject to those matters which:
- (i) are expressly provided for in this deed;
  - (ii) are fairly disclosed in the Due Diligence Material or in the Disclosure Letter;
  - (iii) would have been fairly disclosed to Boardriders had Boardriders conducted searches of public records maintained by:

- (A) ASIC on 20 November 2017;
  - (B) the register established under the *Personal Property Securities Act 2009* (Cth) on 17 November 2017;
  - (C) the High Court of Australia, Federal Court of Australia and the Supreme Courts of each state and territory in Australia on 20 November 2017 and 28 November 2017 (inclusive); and
  - (D) IP Australia on 20 November 2017 to 22 November 2017 (inclusive) and 28 November 2017; or
- (iv) are within the actual knowledge of Boardriders as at the date of this deed, which for these purposes will be taken to include (and be limited to) the facts, matters and circumstances of which the following individuals are actually aware as at the date of this deed:
- (A) David Tanner;
  - (B) Pierre Agnes;
  - (C) Thomas Chambolle; and
  - (D) Ilene Eskenazi.
- (c) Subject to clause 8.2(d), Billabong indemnifies Boardriders against, and must pay Boardriders on demand the amount of, any losses, liabilities, damages, costs, charges or expenses suffered or incurred by Boardriders or any of its Related Entities as a result of, or in connection with, a breach of a Billabong Representation and Warranty.
- (d) Notwithstanding any provision to the contrary in this deed:
- (i) Boardriders agrees that it will not be entitled to make, and that it will not make, and irrevocably waives any right it may have to make, any Warranty or Indemnity Claim, except to the extent:
    - (A) required to permit a Claim under the W&I Policy (if any) and then only on the basis that Billabong will have no liability whatsoever for such Claim; or
    - (B) such Claim (which is made against Billabong) arises as a result of fraud by Billabong or such Claim (which is made against a director of Billabong as at the date of this deed) arises as a result of fraud by that director;
  - (ii) Boardriders covenants in favour of Billabong that, prior to the Scheme becoming Effective and subject to Boardriders taking out a W&I Policy, it will:
    - (A) not do anything which causes any right of the insured under the W&I Policy not to have full force and effect upon its terms;
    - (B) not novate or assign its rights under the W&I Policy other than where permitted by the terms of the W&I Policy; and
    - (C) comply with the terms of the W&I Policy relating to deliverables required to satisfy conditions in the W&I Policy;
  - (iii) Boardriders will ensure that any W&I Policy includes terms to the effect that:
    - (A) the insurer irrevocably waives its rights to bring any claim against any Billabong Party by way of subrogation, claim for contribution or otherwise, except claims by way of subrogation against:

- (1) Billabong to the extent that the relevant loss arose out of fraud by Billabong; or
- (2) a director of Billabong at the date of this deed to the extent that the relevant loss arose out of fraud by that director,  
and only to the extent of the rights of recovery relating directly to fraud by Billabong or the director (as applicable); and
- (B) Boardriders acknowledges that each Billabong Party is entitled to directly enforce such waivers and that in respect of the waivers Boardriders contracts in its own right and as agent of each Billabong Party;
- (iv) Boardriders acknowledges and agrees that:
  - (A) there is no excess or any other amount payable by any Billabong Party under the W&I Policy (if any);
  - (B) sub-paragraph (i) above applies notwithstanding whether or not it takes out a W&I Policy; and
  - (C) in the event that it takes out a W&I Policy, it will promptly provide Billabong with a copy of such policy; and
- (v) Billabong acknowledges and agree that:
  - (A) Boardriders is under no obligation to take out a W&I Policy; and
  - (B) if Boardriders takes out a W&I Policy and provides a copy of such policy to it, it shall keep the terms of such policy confidential in accordance with the Confidentiality Deed.

### 8.3 Timing of representations and warranties

Unless expressed to be given at a particular time (in which case it is given at that time), each Boardriders Representation and Warranty and each Billabong Representation and Warranty is given:

- (a) at the date of this deed; and
- (b) at 8am on the Second Court Date.

### 8.4 Survival of representations

Each Boardriders Representation and Warranty and Billabong Representation and Warranty:

- (a) is severable; and
- (b) survives the termination of this deed.

## 9 Tax indemnity

Subject to clause 8.2(d), Billabong indemnifies Boardriders against, and must pay Boardriders on demand the amount of, any losses, liabilities, damages, costs, charges or expenses attributable to:

- (a) Tax or Duty payable by a member of the Billabong Group (whether payable before, on or after implementation of the Scheme) as a result of a Tax Demand to the extent that such Tax or Duty relates to:
  - (i) any period, or part period, up to and including implementation of the Scheme; or
  - (ii) any act, transaction, event or omission, or any misstatement, executed, performed or made on or prior to implementation of the Scheme,

excluding any Duty payable by Boardriders under clause 18.3;

- (b) the loss or limitation, including any reduction in the rate of use, of any tax attributes of the Billabong Group at the implementation of the Scheme due to prior changes in the control or ownership of the Billabong Group; or
- (c) Tax Costs incurred by or on behalf of a member of the Billabong Group to the extent that such Tax Costs arise from or relate to any of the matters for which Billabong may be liable under paragraph (a) or paragraph (b),

in each case except to the extent that Billabong's liability is limited or qualified under clause 8.2(b).

## **10 Releases**

### **10.1 Billabong Parties**

- (a) Without limiting Boardriders' rights under clause 13, Boardriders releases its rights against, and agrees with Billabong that it will not make a Claim against, any Billabong Party (other than Billabong) in connection with:
  - (i) any breach of any representation, covenant and warranty of Billabong in this deed; or
  - (ii) any disclosure made (at any time) by any Billabong Party that contains any statement which is false or misleading whether in content or by omission,except to the extent the relevant Billabong Party has not acted in good faith or has acted fraudulently or has engaged in wilful misconduct.
- (b) This clause 10.1 is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. Billabong receives and holds the benefit of this clause as trustee for each other Billabong Party.

### **10.2 Boardriders Parties**

- (a) Billabong releases its rights against, and agrees with Boardriders that it will not make a Claim against, any Boardriders Party (other than Boardriders) in connection with:
  - (i) any breach of any representation, covenant and warranty of Boardriders in this deed; or
  - (ii) any disclosure made (at any time) by any Boardriders Party that contains any statement which is false or misleading whether in content or by omission,except to the extent that the relevant Boardriders Party has not acted in good faith or has acted fraudulently or has engaged in wilful misconduct.
- (b) This clause 10.2 is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. Boardriders receives and holds the benefit of this clause as trustee for each other Boardriders Party.

## **11 Public Announcements**

### **11.1 Announcement of the Transaction**

Immediately after the execution of this deed, Billabong and Boardriders must each issue a public announcement in a form previously agreed to in writing between the parties. The Billabong announcement must include:

- (a) a unanimous recommendation by the directors of Billabong to Billabong Shareholders (other than Excluded Shareholders) consistent with that set out in clause 7(a)(i); and



- (b) a statement consistent with that set out in clause 7(a)(ii), although such statement will also be subject to the Independent Expert opining that the Scheme is in the best interests of Billabong Shareholders (other than Excluded Shareholders).

## 11.2 Other public announcements

Prior to making any public announcement or disclosure of or in relation to the Transaction or any other transaction the subject of this deed or the Scheme, each party must, to the extent reasonably practicable and lawful, consult with the other party as to the timing, form and content of that announcement or disclosure.

## 12 Exclusivity

### 12.1 Termination of existing discussions

Billabong warrants that, as at the time of execution of this deed, it is not in any negotiations or discussions, and that it has ceased any existing negotiations or discussions, in respect of any Competing Proposal (or which may reasonably be expected to lead to a Competing Proposal) with any Third Party.

### 12.2 No shop restriction

During the Exclusivity Period, except with the prior written consent of Boardriders, Billabong must not, and must ensure that none of its Representatives or agents, solicit, invite, encourage or initiate any Competing Proposal or any enquiries, negotiations or discussions with any Third Party in relation to, or that would reasonably be expected to lead to, a Competing Proposal, or communicate any intention to do any of those things.

### 12.3 No talk restriction

During the Exclusivity Period, Billabong must not, and must ensure that none of its Representatives or agents, enter into, continue or participate in negotiations or discussions with, or enter into any agreement or understanding with, any Third Party in relation to, or that would reasonably be expected to lead to, a Competing Proposal unless:

- (a) the Billabong Board, acting in good faith, determines (after having taken written advice from its external financial and legal advisers) that, where there is a Competing Proposal, the Competing Proposal is, or may reasonably be expected to lead to, a Superior Proposal having regard to the steps which the Billabong Board proposes to take; and
- (b) the Billabong Board, acting in good faith, determines (after having taken written advice from its external legal advisers) that failing to respond to that Competing Proposal would, or would be likely to, constitute a breach of the Billabong Board's fiduciary or statutory duties.

### 12.4 No due diligence

Without limiting the general nature of clause 12.3, during the Exclusivity Period Billabong must not, and must ensure that its Representatives and agents do not, make available to any Third Party, or permit any Third Party to receive, any non-public information relating to any member of the Billabong Group in connection with such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal, unless:

- (a) the Billabong Board, acting in good faith, determines (after having taking written advice from its external financial and legal advisers) that:
  - (i) where there is a Competing Proposal, the Competing Proposal is, or may reasonably be expected to lead to, a Superior Proposal having regard to the steps which the Billabong Board proposes to take; and

- (ii) failing to respond to that Competing Proposal would, or would be likely to, constitute a breach of the Billabong Board's fiduciary or statutory duties; and
- (b) before Billabong provides such information, the Third Party has entered into a written agreement in favour of Billabong regarding the use and disclosure of the confidential information and that restricts the Third Party's ability to solicit the employees of any member of the Billabong Group.

## 12.5 Notification by Billabong

During the Exclusivity Period, Billabong must promptly notify Boardriders if it receives in writing any Competing Proposal, which notice must include the material terms of the Competing Proposal and must include the identity of the Third Party making the Competing Proposal.

## 12.6 Response to Competing Proposal

- (a) Billabong must:
  - (i) not, and must procure that its Representatives do not, enter into any legally binding agreement, arrangement or understanding to implement a Competing Proposal; or
  - (ii) ensure that no director of Billabong withdraws, changes or modifies his or her recommendation or voting intention (as set out in clause 7(a)(i) or 7(a)(ii), as applicable) in response to a Competing Proposal or publicly recommends, supports or endorses a Competing Proposal,unless:
  - (iii) the Competing Proposal is a Superior Proposal; and
  - (iv) Billabong has provided Boardriders with all material terms of the Competing Proposal (including the identity of the Third Party making the Competing Proposal) and 5 Business Days have elapsed since, during which either:
    - (A) Boardriders has not proposed an amendment to the Scheme (**Boardriders Counter Proposal**); or
    - (B) Boardriders has delivered a Boardriders Counter Proposal to Billabong which the Billabong Board, acting in good faith, determines (after having taken written advice from its external financial and legal advisers) is not more favourable to Billabong Shareholders than the Competing Proposal.

Billabong's obligations under this paragraph (a) apply in respect of each new Competing Proposal and any material variation or amendment to a Competing Proposal.

- (b) If the Billabong Board determines that a Boardriders Counter Proposal is more favourable to Billabong Shareholders than the Competing Proposal, then Billabong and Boardriders must use their best endeavours to agree the amendments to this deed and the Scheme necessary to reflect the Boardriders Counter Proposal, and once agreed Billabong must ensure that the Billabong Board unanimously recommends the Boardriders Counter Proposal to Billabong Shareholders and does not recommend the applicable Competing Proposal.
- (c) In the event that Boardriders makes a Boardriders Counter Proposal, Billabong must procure that the Billabong Board considers such proposal as soon as practicable.

## 12.7 Normal provision of information

Nothing in this clause prevents a party from:

- (a) providing information to its Representatives;

- (b) providing information to any Government Agency;
- (c) providing information to its auditors, customers, financiers, joint venturers and suppliers acting in that capacity in the ordinary course of business;
- (d) providing information required to be provided by law, including to satisfy its obligations of disclosure under the ASX Listing Rules or to any Government Agency; or
- (e) making presentations to brokers, portfolio investors, analysts and other third parties in the ordinary course of business.

## 13 Break Fee

### 13.1 Background

This clause 13 has been agreed to in circumstances where:

- (a) Billabong believes the implementation of the Scheme will provide significant benefits to it and its shareholders, and acknowledges that, if Boardriders enters into this deed and the Scheme is subsequently not implemented, Boardriders will have incurred significant costs, including significant opportunity costs;
- (b) Boardriders requested provision be made for the relevant payment outlined in this clause 13, without which it would not have entered into this deed;
- (c) Billabong's board of directors believes that it is appropriate to agree to the payment referred to in this clause 13 to secure Boardriders' entry into this deed; and
- (d) Billabong has received separate legal advice in relation to this deed and the operation of this clause 13.

The parties acknowledge and agree that the costs actually incurred by Boardriders as referred to in paragraph (a) will be of such nature that they cannot be accurately ascertained, but that the Break Fee is a genuine and reasonable pre-estimate of the minimum cost and loss that would actually be suffered by Boardriders.

### 13.2 Payment of Break Fee

Subject to clause 13.3 and 13.6, Billabong must pay Boardriders the Break Fee if:

- (a) at any time before the End Date or, if earlier, the date the deed is terminated under clause 14, any director of Billabong makes a public statement:
  - (i) withdrawing or adversely changing or modifying their recommendation that Billabong Shareholders (other than Excluded Shareholders) vote in favour of the Scheme at the Scheme Meeting;
  - (ii) that they will or may not vote (or procure the voting of) all Billabong Shares held or controlled by him or her in favour of the Scheme at the Scheme Meeting; or
  - (iii) supporting or endorsing a Competing Proposal,other than in circumstances where the Independent Expert concludes that the Scheme is not in the best interests of Billabong Shareholders (except in circumstances where the Independent Expert reaches that conclusion as a result of a Competing Proposal);
- (b) at any time before the End Date or, if earlier, the date the deed is terminated under clause 14, a Competing Proposal is announced by a Third Party and, within one year after that occurring, the Third Party or an associate of the Third Party:
  - (i) completes in all material respects a transaction of the kind referred to in the definition of Competing Proposal; or

- (ii) has a relevant interest in at least 50% of Billabong Shares; or
- (c) Boardriders terminates this deed under clause 14.1(a)(i).

### 13.3 Payment conditions

- (a) Notwithstanding the occurrence of any event under clause 13.2, no amount is payable under that clause if the Scheme becomes Effective.
- (b) Billabong can only ever be liable to pay the Break Fee once.

### 13.4 Timing of payment

If the Break Fee is payable under this clause 13, Billabong must pay the Break Fee without set-off or withholding within 5 Business Days of receipt of a demand for payment from Boardriders.

### 13.5 Nature of payment

The amount payable by Billabong to Boardriders under clause 13.2 is an amount to compensate Boardriders for:

- (a) advisory costs (including costs of Advisers other than success fees);
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses; and
- (d) opportunity costs incurred in pursuing the Transaction or in not pursuing other alternative acquisitions or strategic initiatives which could have been developed to further business and objectives,

incurred by Boardriders.

### 13.6 Compliance with law

This clause 13 imposes obligations on Billabong only to the extent that the performance of all or part of those obligations:

- (a) does not constitute unacceptable circumstances as declared by the Australian Takeovers Panel; and
- (b) is not determined to be unlawful by a court,

subject to all proper avenues of appeal and review, judicial and otherwise, having been exhausted.

The parties must not make, or cause or permit to be made, any application to the Australian Takeovers Panel or a court for or in relation to a declaration or determination of a kind referred to in paragraph (a) or (b).

### 13.7 Limitation of liability

Notwithstanding any other provision of this deed:

- (a) the maximum aggregate liability of Billabong to Boardriders under or in connection with this deed including in respect of any breach of this deed will be the amount of the Break Fee
- (b) a payment by Billabong of the Break Fee in accordance with clause 13.2 represents the sole and absolute liability of Billabong to Boardriders under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by Billabong to Boardriders in connection with this deed; and

- (c) the amount of the Break Fee payable to Boardriders under this clause 13 shall be reduced by the amount of any loss or damage recovered by Boardriders in relation to a breach of any other clause of this deed.

## 14 Termination

### 14.1 General rights

- (a) Either party may terminate this deed by written notice to the other at any time before 8am on the Second Court Date:
  - (i) if:
    - (A) the other is in material breach of any provision of this deed (including any representation and warranty given by the other, but excluding the Additional Warranties, not being true and correct in a material respect), taken in the context of the Transaction as a whole;
    - (B) the party wishing to terminate has given written notice to the other setting out the relevant circumstances and stating an intention to terminate this deed; and
    - (C) the relevant circumstances continue to exist for 5 Business Days from the time the notice of intention to terminate is given (or any shorter period ending at 5pm on the Business Day before the Second Court Date),  
provided that, notwithstanding anything to the contrary, Boardriders may not terminate this deed due to any failure by Billabong to:
      - (1) notify Boardriders of an Additional Warranty being or becoming untrue or incorrect in accordance with clause 6.2(a)(viii); or
      - (2) comply with its obligations in clauses 6.6(a) to 6.6(d), except to the extent that such non-compliance is the proximate cause of Boardriders' failure to obtaining financing for the Transaction; or
  - (ii) in the circumstances set out in, and in accordance with, clause 3.6(b).
- (b) Boardriders may terminate this deed by written notice to Billabong at any time before 8am on the Second Court Date if any director of Billabong has changed, withdrawn or adversely modified its recommendation that Billabong Shareholders vote in favour of the Scheme at the Scheme Meeting or has recommended or made a statement supporting or endorsing a Competing Proposal.
- (c) Without limiting Billabong's obligations under clauses 7 and 12.6, Billabong may terminate this deed by written notice to Boardriders at any time before 8am on the Second Court Date if a majority of the Billabong Board withdraws its recommendation that Billabong Shareholders vote in favour of the Scheme at the Scheme Meeting, and, if required to pay the Break Fee as a result of such withdrawal, Billabong has paid Boardriders the Break Fee.

### 14.2 Automatic termination

Without limiting any other term of this deed, this deed will terminate automatically if, at the Scheme Meeting, Billabong Shareholders do not pass the resolution to approve the Scheme in accordance with the requirements of section 411(4)(a)(ii) of the Corporations Act.

### 14.3 Effect of termination

If this deed is terminated by a party under clauses 3.6(b) or 14.1 or pursuant to clause 14.2, this deed will be of no force or effect, without any liability or obligation on the part of any party, other

than in relation to rights and obligations that accrued before termination and the provisions of this clause 14 and of clauses 1, 8.4, 9, 11, 13, 15, 16, 17 and 18, which will remain in force after the termination.

#### 14.4 Termination by written agreement

The parties may terminate this deed by another written agreement between them.

### 15 Confidentiality

Each party agrees and acknowledges that it is bound by the terms of the Confidentiality Deed save that the terms of this deed will prevail over the Confidentiality Deed to the extent of any inconsistency.

### 16 GST

#### 16.1 Recovery of GST

If GST is or becomes payable, or notionally payable, on a supply made under or in connection with this deed, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**) as calculated by the party making the supply (the **Supplier**) in accordance with the GST law. Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time and in the same manner that the other consideration for the supply is provided. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

#### 16.2 Liability net of GST

Notwithstanding any other provision in this deed, where any indemnity, reimbursement or similar payment under this deed is based on any cost, expense or other liability incurred by a party, it may be reduced by any input tax credit entitlement, or notional input tax credit entitlement, of that party (or its representative member) in relation to the relevant cost, expense or other liability.

#### 16.3 Adjustment events

If an adjustment event occurs in relation to a supply under or in connection with this deed, the GST Amount will be recalculated in accordance with the GST law to reflect that adjustment and an appropriate payment will be made between the parties and the Supplier shall issue an adjustment note to the recipient within 10 Business Days after becoming aware of the occurrence of the adjustment event.

#### 16.4 Survival

This clause will continue to apply after expiration or termination of this deed.

#### 16.5 Definitions

Unless the context requires otherwise, words used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) have the same meaning in this clause.

### 17 Notices

Any notice, demand, consent or other communication (a **Notice**) given or made under this deed:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient:



respect to the Financing Source Parties without the prior written consent of the Financing Sources.

## **18.2 Assignment**

Subject to the following sentence, a party cannot assign, charge, encumber or otherwise deal with at law or in equity any of its rights or obligations under this deed, or attempt or purport to do so, without the prior consent of the other party. Boardriders may assign this deed for collateral security purposes to any lender to Boardriders or its affiliates provided that no assignment to any such lender shall affect Boardriders' obligations under this deed or increase Billabong's obligations under this deed. This deed shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, and any reference to a party hereto shall also be a reference to the successors and permitted assigns of such party.

## **18.3 Costs and stamp duty**

Each party must bear its own costs arising out of the negotiation, preparation and execution of this deed. All stamp duty (including fines, penalties and interest) payable on or in connection with this deed and any instrument executed under or any transaction evidenced by this deed must be borne by Boardriders.

## **18.4 Counterparts**

This deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

## **18.5 Entire agreement**

This deed and the Confidentiality Deed contain the entire agreement between the parties with respect to their subject matter. This deed and the Confidentiality Deed set out the only conduct relied on by the parties and supersede all earlier conduct and prior agreements and understandings between the parties in connection with their subject matter.

## **18.6 Further assurances**

Each party must do anything necessary (including executing agreements and documents) to give full effect to this deed and the transactions contemplated by it.

## **18.7 Governing law, jurisdiction and enforcement**

- (a) This deed is governed by the laws of New South Wales. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground; provided, that notwithstanding the foregoing, each of the parties hereto agrees that all claims or causes of action (whether at law, in equity, in contract, in tort or otherwise) against any of the Financing Sources in any way relating to the Debt Financing, shall be governed by, and construed in accordance with, and enforced under the laws of the State of New York without giving regard to conflicts or choice of law principles that would result in the application of any law other than the law of the State of New York.
- (b) Notwithstanding anything in this deed to the contrary, but subject to the next sentence, each of the parties hereto agrees that (i) it will not bring or support any action, cause of action, claim, cross-claim or third-party claim of any kind or description, whether in law or in equity, whether in contract or in tort or otherwise, against the Financing Source Parties, in any way relating to this deed or any of the transactions contemplated by this deed, including but not limited to any dispute arising out of or relating in any way to the Debt Commitment Letters, the Debt Financing or the definitive agreements executed in connection therewith or the performance thereof, in any forum other than the Supreme



Court of the State of New York, County of New York, or, if under applicable law exclusive jurisdiction is vested in the federal courts, the United States District Court for the Southern District of New York (and, in each case, appellate courts thereof) and (ii) any such action, cause of action, claim, cross-claim or third-party claim shall be governed by the laws of the State of New York. Billabong further agrees that it shall not, and shall cause its affiliates and its and their direct and indirect unitholders not to, bring or support any action, cause of action, claim, cross-claim or third-party claim of any kind or description, whether in law or in equity, whether in contract or in tort or otherwise, against any Financing Source Party, in any way relating to this deed or the transactions contemplated hereby, including any dispute arising out of or relating in any way to the Debt Commitment Letters, the Debt Financing or the definitive agreements executed in connection therewith or the performance thereof. Notwithstanding anything herein to the contrary, no Financing Source Party shall have any liability or obligation to Billabong, any of its affiliates or any of its or their direct or indirect securityholders relating to or arising out of this deed or the Debt Commitment Letters or in respect of any oral representation made or alleged to be have been made in connection herewith or therewith, whether in equity or at law, in contract, in tort or otherwise, and Billabong shall not seek to, and shall cause its affiliates and its and their direct and indirect securityholders not to seek to, recover any money damages (including consequential, special, indirect or punitive damages, or damages on account of a willful and material breach) or obtain any equitable relief from or with respect to any Financing Source Party.

#### **18.8 Waiver of Jury Trial**

Notwithstanding anything herein to the contrary, each party to this deed hereby irrevocably waives, to the fullest extent permitted by law, all rights of trial by jury in any action, proceeding or counterclaim (whether based upon contract, tort or otherwise) against any financing source arising out of or relating to this deed, the scheme, the debt financing or any of the other transactions contemplated hereby or thereby.

#### **18.9 Parties in Interest**

The parties hereto agree that the provisions of this clause 18.9 and clauses 18.1, 18.2, 18.7 and 18.8 shall be enforceable against all parties to this deed by each Financing Source Parties.

#### **18.10 Process Agent**

Boardriders irrevocably appoints Gilbert + Tobin of Level 35, 200 Barangaroo Avenue, Barangaroo, New South Wales, 2000, to receive on its behalf service of process issued out of the courts of New South Wales or courts exercising jurisdiction in New South Wales in relation to any dispute, claim, legal action or proceeding arising out of or in any way related to this deed and related non-contractual matters, and agrees that service of any process or documents on the agent will be sufficient service on it.

#### **18.11 No merger**

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

#### **18.12 No waiver**

A failure to exercise or a delay in exercising any right, power or remedy under this deed does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

### **18.13 Severability of provisions**

Any provision of this deed that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this deed nor affect the validity or enforceability of that provision in any other jurisdiction.

**Schedule 1 – Boardriders Representations and Warranties**

- 1       **(Status)** It is a corporation duly incorporated and validly existing under the laws of the place of its incorporation.
- 2       **(Power)** It has the power to enter into and perform its obligations under this deed to carry out the transactions contemplated by this deed.
- 3       **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into and the performance of this deed by it and to carry out the transactions contemplated by this deed.
- 4       **(Documents binding)** This deed is its valid and binding obligation enforceable in accordance with its terms.
- 5       **(Transactions permitted)** The execution and performance by it of this deed and each transaction contemplated by this deed did not and will not violate any provision of:
  - (a)       a law or treaty or a judgment, ruling, order or decree of a Government Agency binding on it or any of its related bodies corporate; or
  - (b)       its constituent documents.
- 6       **(Solvency)** No member of the Boardriders Group is affected by an Insolvency Event.
- 7       **(Scheme Booklet)** At the time Billabong commenced sending the Scheme Booklet to Billabong Shareholders (other than Excluded Shareholders), the Boardriders Information contained in the Scheme Booklet (in the form consented to by Boardriders) is true and correct in all material respects, complies with all applicable laws and does not contain any statement which is misleading or deceptive in any material respect (whether by omission or otherwise).
- 8       **(Funding)**
  - (a)       One or more members of the Boardriders Group (**Relevant Boardriders Entities**) are a party to the Debt Commitment Letters, pursuant to which the Initial Lenders (as defined therein) have agreed, subject to the terms and conditions thereof, to provide the debt amounts set forth therein. Boardriders has delivered to Billabong true, complete and correct copies of the executed Debt Commitment Letters, in each case, as in effect on the date hereof. Such Debt Commitment Letters are a legal, valid and binding obligation of the Relevant Boardriders Entities.
  - (b)       The debt financing committed pursuant to the Debt Commitment Letters is collectively referred to in this Agreement as the **Debt Financing**. Such Debt Financing is of an amount sufficient to satisfy all of Boardriders' payment obligations under this deed, as and when those payment obligations become due, including paying the Scheme Consideration on the Implementation Date and any expenses of Boardriders in connection with the consummation of the transactions contemplated hereby, and for any proposed repayment or refinancing of any outstanding indebtedness of the Boardriders Group or the Billabong Group in connection with the transactions contemplated hereby.
  - (c)       Each Debt Commitment Letter:
    - (i)       has not been terminated, modified or rescinded, and no event has occurred which with notice, lapse of time or both, would result in a default under that Debt Commitment Letter; and
    - (ii)       is enforceable in accordance with its terms, and none of the Relevant Boardriders Entities are in default thereunder.

**Schedule 2 – Billabong Representations and Warranties**

- 1 **(Status)** It (and each other member of the Billabong Group) is a corporation duly incorporated and validly existing under the laws of the place of its incorporation.
- 2 **(Power)** It has the power to enter into and perform its obligations under this deed to carry out the transactions contemplated by this deed.
- 3 **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into and performance of this deed by it and to carry out the transactions contemplated by this deed.
- 4 **(Deed binding)** This deed is its valid and binding obligation enforceable in accordance with its terms.
- 5 **(Transactions permitted)** The execution and performance by it of this deed and each transaction contemplated by this deed did not and will not violate any provision of:
  - (a) a law or treaty or a judgment, ruling, order or decree of a Government Agency binding on it or any of its related bodies corporate; or
  - (b) its constitution or other constituent documents.
- 6 **(Capital structure)** Billabong has 198,079,110 ordinary shares and the Performance Rights and Options listed in Schedule 4, and no other securities, issued and outstanding at the date of this deed. No member of the Billabong Group is subject to any obligation (including any contingent obligation) to issue or have transferred to any person securities in or of it or any other member of the Billabong Group other than ordinary shares to be issued under the terms of the Performance Rights and Options over ordinary shares listed in Schedule 4 that Billabong has issued and outstanding at the date of this deed.
- 7 **(Continuous disclosure):**
  - (a) it has complied in all material respects with its continuous disclosure obligations under ASX Listing Rule 3.1; and
  - (b) as at the date of this deed, it is not withholding any information from public disclosure in reliance on ASX Listing Rule 3.1A (other than the information in relation to the Transaction).
- 8 **(Scheme Booklet)** At the time Billabong commenced sending the Scheme Booklet to Billabong Shareholders, the information contained in the Scheme Booklet (other than the Boardriders Information and the Independent Expert's Report) is true and correct in all material respects, complies with all applicable laws and does not contain any statement which is misleading or deceptive in any material respect (whether by omission or otherwise).
- 9 **(Solvency)** No member of the Billabong Group is affected by an Insolvency Event.
- 10 **(Compliance with laws)** Each member of the Billabong Group has complied in all material respects with applicable laws and regulations and holds all material licences, authorisations and permits necessary for them to conduct their business as presently conducted and is not in breach of, or default under, any such licences, authorisations or permits.
- 11 **(Compliance with material contracts)** No member of the Billabong Group is in breach of, or default under, any material provision of a contract or arrangement to which it is a party that is material to the Billabong Group.
- 12 **(Due Diligence Material)** The Due Diligence Material has been collated and prepared in good faith, and Billabong is not aware of any information contained in the Due Diligence Material that is false or misleading in any material respect (including by omission). Billabong has not intentionally withheld information from disclosure to Boardriders which could reasonably be expected to be

material to Boardriders' evaluation of the Billabong Group and the merits of the Transaction (including full details of all fees, costs and expenses which Billabong (or any other member of the Billabong Group) has paid or agreed to pay, or may become liable to pay, to Advisers in connection with the Transaction). For the avoidance of doubt, Billabong makes no representation or warranty whatsoever as to the adequacy or sufficiency of the Due Diligence Material for the purpose of the Boardriders Sub(s) (as applicable) acquiring the Scheme Shares or for Boardriders' funding of that acquisition, which are matters of which Boardriders has to satisfy itself.

13 **(Change of control)** So far as Billabong is aware, the document included at Annexure D to the Disclosure Letter (**Change of Control List**) contains a complete and accurate list of each Third Party to whom a member of the Billabong Group is required to give notice, or from whom a member of the Billabong Group is required to obtain consent or approval, in connection with this deed or the transactions contemplated by it (including in respect of the change in control of Billabong resulting from implementation of the Scheme), except where the failure to give such notice to or obtain such consent or approval from (as applicable) the relevant Third Party could not reasonably be expected to give rise to a material liability on the part of any member of the Billabong Group.

14 **(Billabong Group)**

14.1 The structure diagram in Schedule 5 includes details of all members of the Billabong Group and is true and accurate in all respects.

14.2 No member of the Billabong Group holds shares, options, units, securities or interests in, or is a member of, any company, trust, partnership, incorporated or unincorporated joint venture or association, or other entity (other than an entity identified in Schedule 5).

15 **(Financial information)**

15.1 The Accounts:

- (a) comply with applicable statutory requirements and were prepared in accordance with the Accounting Standards;
- (b) give a true and fair view of the financial position and the assets and liabilities of the Billabong Group as at the Accounts Date;
- (c) are not misleading or deceptive or likely to mislead or deceive (in each case whether by omission or otherwise); and
- (d) are not affected by any unusual, abnormal, extraordinary or non-recurring items.

15.2 The Management Accounts (having regard to the purpose for which they were prepared):

- (a) fairly represent and show a materially accurate view of:
  - (i) the financial position and state of affairs of the Billabong Group as at the date to which they have been prepared; and
  - (ii) the financial performance of the Billabong Group for the period in respect of which they have been prepared;
- (b) are not misleading or deceptive or likely to mislead or deceive (in each case whether by omission or otherwise); and
- (c) have been prepared in good faith and with reasonable care and diligence.

16 **(Conduct of business since Accounts Date)**

16.1 Since the Accounts Date, the Billabong Group has conducted its businesses and operations:

- (a) in the ordinary course;

- (b) in accordance with legal and contractual obligations; and
- (c) in a manner generally consistent (subject to any applicable laws, regulations and regulatory approvals) with the manner in which each such business and operation had been conducted in the 12 month period prior to the Accounts Date.

16.2 Between the Accounts Date and the date of this deed:

- (a) no member of the Billabong Group undertook any actions which would have resulted in a breach of clause 6.1(c) had it been operative during that period; and
- (b) no Billabong Material Adverse Change occurred.

## 17 (Material Contracts and other arrangements)

17.1 All contracts, agreements and arrangements that could reasonably be considered material to the Billabong Group (including all contracts, agreements and arrangements of a kind described in clause 6.1(c)(iii)(A)) (**Material Contracts**) have been fairly disclosed in the Due Diligence Material, and the copies of such Material Contracts included in the Due Diligence Material are current, accurate and complete (and include any and all amendments, variations, supplements, addendums, annexures, appendices, extensions and/or renewals in respect of such Material Contracts).

17.2 Each Material Contract is valid, binding and enforceable upon and against the parties thereto.

17.3 No member of the Billabong Group has received or given any notice in respect of any actual, alleged or potential breach of any Material Contract or the termination or intended termination of any Material Contract, nor is Billabong aware of any facts, matters or circumstances which may result in such a notice being given.

17.4 No member of the Billabong Group is in default, or would be in default but for the requirements of notice or lapse of time, under any Material Contract, and Billabong is not aware of any grounds for termination, rescission, avoidance or repudiation of any Material Contract.

17.5 No member of the Billabong Group is a party to any agreement or arrangement that:

- (a) is not on arm's length terms;
- (b) was not entered into in the ordinary course of business; or
- (c) contains a non-compete undertaking or exclusivity restriction.

## 18 (Financing Arrangements)

18.1 Other than as fairly disclosed in the Due Diligence Material, there are no:

- (a) agreements or arrangements entered into by any member of the Billabong Group for the borrowing of money or the incurrence of any debt or other financial indebtedness (whether contingent or otherwise), or the granting of Encumbrances or security;
- (b) debentures, bonds, notes or similar debt instruments issued by any member of the Billabong Group (whether by one instrument or by all of the instruments in a series);
- (c) guarantees, letters of comfort, indemnities or other commitments of financial support which have been given or issued in favour of any Third Party in respect of an obligation or liability of any member of the Billabong Group, and no member of the Billabong Group has requested that any bank or other financial institution give or issue any such guarantee, letter of comfort, indemnity or other commitment of financial support;
- (d) bank guarantees, letters of credit, trade instruments or similar credit support which have been issued in respect of, or at the request of, any member of the Billabong Group or any arrangements related thereto (including cash-backing);

- (e) interest rate swaps, foreign currency forward contracts or other derivative contracts to which any member of the Billabong Group is a party or by which any member of the Billabong Group is bound; or
  - (f) financing arrangements that restrict the sale or disposal of any member of the Billabong Group (or any assets thereof).
- 18.2 No member of the Billabong Group has given any guarantee, letter of comfort or other commitments of financial support, or granted any Encumbrance, in respect of any obligation or liability of any Third Party.
- 18.3 No calls or demands have been made under, or in respect of, any of the financing or security arrangements to which any member of the Billabong Group is a party or by which any member of the Billabong Group (or any assets thereof) is bound (including, for the avoidance of doubt, arrangements of a kind described in clause 18.1 or 18.2 of this Schedule 2) (such arrangements, **Financing Arrangements**).
- 18.4 So far as Billabong is aware:
- (a) no action has been taken or threatened by any person to enforce any Encumbrance of any kind over any assets of any member of the Billabong Group; and
  - (b) there are no facts, matters or circumstances that would or may entitle any person to take such action.
- 18.5 There is no existing or unremedied material breach of, nor any default, event of default, cancellation event, review event, prepayment event or similar event currently subsisting under, any Financing Arrangements.
- 19 **(Customer and supplier relationships)** No member of the Billabong Group has been notified by any wholesale customer or supplier that such customer or supplier (as applicable) intends to cease or alter the nature of its commercial or business dealings with the Billabong Group (or any member thereof), where the cessation or alteration of such commercial or business dealings could be reasonably expected to have a material adverse effect on the operational or financial performance of the Billabong Group (taken as a whole).
- 20 **(Properties)**
- 20.1 The Due Diligence Material includes:
- (a) reasonable particulars of each parcel of real property to which a member of the Billabong Group holds freehold title (all such parcels of real property, the **Owned Properties**); and
  - (b) copies of all agreements or other documents pursuant to which a member of the Billabong Group leases (or sub-leases), licences, occupies or otherwise uses any parcel of real property (all such agreements and other documents, the **Property Leases**, and all such parcels of real property, the **Leased Properties**), and the copies of such Property Leases included in the Due Diligence Material are current, accurate and complete (and include any and all amendments, variations, supplements, addendums, annexures, appendices, extensions and/or renewals in respect of such Property Leases).
- 20.2 No member of the Billabong Group has any interest in land other than the interests in the Owned Properties and the Leased Properties (together, the **Properties**).
- 20.3 No member of the Billabong Group is party to any agreement or arrangement in relation to the ownership (including purchase or sale), occupation, lease, licence or use of any real property other than the Properties.
- 20.4 Each of the Property Leases is valid, binding, enforceable and subsisting, and (where necessary to be binding and enforceable against successors in title) registered.

- 20.5 No member of the Billabong Group has received:
- (a) any notice to vacate or notice to quit in respect of any of the Properties;
  - (b) any notice in respect of the compulsory acquisition or resumption of any of the Properties (or any part thereof);
  - (c) any notice requiring material work to be done or expenditure to be made in respect of any of the Properties;
  - (d) any notice in respect of any contemplated, pending or threatened condemnation or change to the planning, zoning or other ordinances in respect of any of the Properties;
  - (e) any notice in respect of any actual, alleged or potential breach of any Property Lease or the termination or intended termination of any Property Lease; or
  - (f) any order, direction, notice or proposal from any Government Agency affecting or in respect of any of the Properties or the use thereof,

nor is Billabong aware of any facts, matters of circumstances which may result in any such notice, order, direction or proposal being given.

- 20.6 No member of the Billabong Group is in default, or would be in default but for the requirements of notice or lapse of time, under any Property Lease, and Billabong is not aware of any grounds for termination, rescission, avoidance or repudiation of any Property Lease.
- 20.7 The relevant members of the Billabong Group have paid all rent, fees, rates and other amounts payable by them in respect of the Properties (including under the Property Leases).
- 20.8 The relevant members of the Billabong Group have exclusive occupation and right of quiet enjoyment in respect of each of the Properties and none of the Properties is subject to any sub-lease, licence, tenancy or right of occupation in favour of any person other than a member of the Billabong Group.
- 20.9 None of the Properties is subject to any restrictive covenant or exception or reservation which may adversely affect its use.
- 20.10 So far as Billabong is aware:
- (a) there are no disputes, Claims or actions relating to any of the Properties or the use thereof; and
  - (b) there is no intention on the part of any counterparty to a Property Lease to:
    - (i) terminate the Property Lease;
    - (ii) not renew or extend the Property Lease at expiry or only renew or extend the Property Lease at expiry on terms materially more favourable to such counterparty than the current terms; or
    - (iii) seek to increase the rent, fees, rates or other amounts payable by the relevant member(s) of the Billabong Group under the Property Lease (whether at expiry of the Property Lease or otherwise).

## 21 (Environment)

- 21.1 So far as Billabong is aware, there are no facts, matters or circumstances which may give rise to any liability on the part of any member of the Billabong Group under or in respect of any law or regulation concerning or relating to the protection of the environment (including air, water, land, flora, fauna, ecosystems and man) (**Environmental Law**).



- 21.2 No member of the Billabong Group has received notice under or in respect of any Environmental Law (including notice of any actual or alleged breach of any Environmental Law), nor is Billabong aware of any facts, matters or circumstances which may result in such a notice being given.
- 21.3 The Billabong Group has not treated, stored, disposed of, arranged for or permitted the disposal of, transported, handled, manufactured, distributed, exposed any person to, or released any hazardous materials, or owned or operated any property or facility which is or has been contaminated by any such hazardous materials, so as to give rise to any current or future liabilities pursuant to any Environmental Laws.
- 21.4 The Billabong Group has not assumed, undertaken, provided an indemnity with respect to, or otherwise become subject to, any liability of any other person relating to Environmental Laws.

## 22 (Assets)

- 22.1 All the tangible assets of the Billabong Group are:
- (a) the absolute property of a member of the Billabong Group free and clear of all Encumbrances or used by a member of the Billabong Group under a contract pursuant to which such member of the Billabong Group is entitled to use the relevant asset(s) on the terms and conditions of such contract;
  - (b) not the subject of any lease or hire purchase agreement or agreement for purchase on deferred terms;
  - (c) in the exclusive possession of a member of the Billabong Group, its agent or nominee;
  - (d) not the subject of any agreements or arrangements to dispose or not dispose or that otherwise restrict their use or disposal.
- 22.2 The Billabong Group owns, or has the right to use, all of the assets that are necessary for the carrying on of the businesses and operations of the Billabong Group as such businesses and operations are currently carried on.
- 22.3 No member of the Billabong Group has received any notice, order or direction from any Government Agency or Third Party in respect of any of its assets or the use of such assets, nor is Billabong aware of any facts, matters or circumstances which may result in such a notice being given.
- 22.4 Each item of plant and equipment owned or used by the Billabong Group:
- (a) is capable of performing the function for which it is intended to be used;
  - (b) has been properly serviced throughout its life;
  - (c) is in good repair and condition and satisfactory working order for its age;
  - (d) has been maintained in accordance with industry best practice standards; and
  - (e) complies with all applicable laws and standards and has not been repaired or modified in a way which would adversely impact a warranty provided by a supplier of that item of plant and equipment.
- 23 (Intellectual Property Rights)
- 23.1 The Due Diligence Material fairly discloses reasonable particulars of all Intellectual Property Rights owned or used by any member of the Billabong Group (**Business Intellectual Property**), as well as any terms and conditions attaching to the use of the Business Intellectual Property.
- 23.2 In respect of the Business Intellectual Property that is owned by a member of the Billabong Group:

- (a) such Business Intellectual Property is valid, subsisting and enforceable, and free and clear of all Encumbrances;
  - (b) no member of the Billabong Group has licensed, assigned or otherwise disposed of or allowed to lapse any right, title or interest in such Business Intellectual Property;
  - (c) no member of the Billabong Group is obliged to grant a licence, assignment or other right in respect of such Business Intellectual Property to any Third Party;
  - (d) the relevant members of the Billabong Group have taken all necessary steps to obtain and maintain appropriate registrations for such Business Intellectual Property (to the extent such Business Intellectual Property is registrable), including the payment of all applicable application and renewal fees;
  - (e) the Billabong Group has taken all reasonable steps to record and protect such Business Intellectual Property, to the extent that it is unregistrable;
  - (f) the terms on which the Business Intellectual Property is licensed within the Billabong Group does not compromise or otherwise adversely affect the validity, subsistence or enforceability of any of the Business Intellectual Property; and
  - (g) so far as Billabong is aware:
    - (i) there are no Claims, challenges, disputes or proceedings that have been brought or threatened by any Third Party or Government Agency in relation to such Business Intellectual Property that may adversely affect the right to use, enforce or assign or licence such Business Intellectual Property, including opposition proceedings, non-use proceedings, or amendment, rectification, revocation or cancellation proceedings, and no member of the Billabong Group has received notice of, nor are there any facts, matters or circumstances that could rise to, any such Claims, challenges, disputes or proceedings; and
    - (ii) no Third Party:
      - (A) has infringed, attacked or opposed, in the 5 years prior to the date of this deed, or is infringing, attacking or opposing, as at the date of this deed, such Business Intellectual Property;
      - (B) has threatened to allege or has alleged in the 6 years prior to the date of this deed, or is threatening to allege or is alleging as at the date of this deed, that any such Business Intellectual Property infringes Intellectual Property Rights owned by or licensed to that Third Party; or
      - (C) has any right to use, assign or licence any such Business Intellectual Property, or any right which would otherwise restrict or have the potential to restrict the use by the Billabong Group (or any member thereof) of such Business Intellectual Property.
- 23.3 A member of the Billabong Group has the exclusive right, enforceable against its employees, consultants and independent contractors, to claim full ownership of and all rights in and title to all Intellectual Property Rights generated by those persons in the course of, or in connection with, their employment or engagement with or by the Billabong Group. The Billabong Group has taken reasonable steps, including implementing appropriate training and policies, to ensure that such Intellectual Property Rights do not breach or infringe any Intellectual Property Rights of Third Parties or breach any obligation of confidence owed to any Third Party.
- 23.4 The use of the Business Intellectual Property by or on behalf of the Billabong Group does not:
- (a) breach or infringe any Intellectual Property Rights of any Third Party;

- (b) breach any obligation of confidence owed to any Third Party; or
  - (c) breach any law, regulation, rule or policy in force in any jurisdiction,
- where such breach or infringement or material risk of breach or infringement will, or is reasonably likely to, have a material adverse effect on the operational or financial performance of the Billabong Group (taken as a whole).
- 23.5 In respect of Business Intellectual Property that is used but not owned by the Billabong Group, a member of the Billabong Group has a current licence to use such Business Intellectual Property and:
- (a) such licence is valid, binding and enforceable and includes rights to sub-license to other members of the Billabong Group and to Third Parties;
  - (b) no member of the Billabong Group is in breach of such licence; and
  - (c) the licensor has not given a notice to terminate such licence nor, so far as Billabong is aware, does the licensor intend to give such notice.
- 23.6 The Intellectual Property Rights owned by the Billabong Group or used by the Billabong Group under valid, binding, enforceable and sub-licensable licences from Third Parties together comprise all of the Intellectual Property Rights necessary for the carrying on of the businesses and operations of the Billabong Group as such businesses and operations are currently carried on.
- 23.7 There are no royalties, fees, damages, compensation or other amounts payable by any member of the Billabong Group in connection with the use of Intellectual Property Rights owned by Third Parties.
- 23.8 The Billabong Group has implemented and enforces an employee social media policy that:
- (a) provides that a member of the Billabong Group, and not any employee or contractor, owns and controls the Social Media Accounts and all associated information and content, including all relationships, interactions and communications with fans, followers, visitors, commentators, users and customers, and all associated goodwill and opportunities;
  - (b) requires all employees and contractors to relinquish to the Billabong Group all passwords and log-in information for the Social Media Accounts upon termination of employment or engagement and at any other time upon request; and
  - (c) does not permit any Third Parties, including distributors or licensees, to access the Social Media Accounts, either by obtaining the relevant passwords and log-in information or otherwise.
- 23.9 The use of the Social Media Accounts by the Billabong Group:
- (a) does not breach or infringe any Intellectual Property Rights of any Third Party;
  - (b) does not breach any law, regulation, rule or policy in force in any jurisdiction;
  - (c) complies with and has complied with all terms and conditions, terms of use, terms of service and other agreements and contracts applicable to such Social Media Accounts.
- 24 **(Employees and contractors)**
- 24.1 The Due Diligence Material fairly discloses accurate details of the commencement date, position title, employing entity, salaries and wages, Fair Labor Standards Act classification (if any), participation (if any) in an applicable incentive arrangement, applicable allowances, applicable enterprise agreement (if any), modern award coverage (if any), and accrued long service leave, annual leave, leave loading and personal leave for each Employee as at the relevant dates specified in such disclosure.

- 24.2 No member of the Billabong Group has given a commitment (whether legally binding or otherwise) to increase or supplement the wages, salaries, incentives, annual leave and leave loading, long service leave, personal/carer's leave or any other remuneration, compensation, gratuities or benefits of any Employee beyond the amounts and entitlements specified in the Due Diligence Material.
- 24.3 Each member of the Billabong Group complies with its obligations under any law relating to Employees (including employment and industrial laws, anti-discrimination laws, and work health and safety laws), industrial agreements and awards, and with all codes of conduct and practice relevant to conditions of service and to the relations between it and Employees employed by it.
- 24.4 Each member of the Billabong Group has kept adequate and suitable records regarding the service of its Employees and, in respect of each member of the Billabong Group incorporated in Australia, such records meet such member of the Billabong Group's record keeping obligations under the *Fair Work Act 2009* (Cth) (if any).
- 24.5 No member of the Billabong Group is a party to any collective bargaining agreement, collective bargaining relationship, workplace agreement or other contract with a trade union or industrial organisation, labor union, labor organization, works council, group of employees or individual employees in respect of Employees and their employment and no industrial awards, collective bargaining agreements or workplace agreements apply to any Employees.
- 24.6 No member of the Billabong Group has been involved in any labor or industrial dispute with any union or industrial organization, labor organization, works council, group of employees or Employee at any time within the 3 years preceding the date of this deed.
- 24.7 There is no actual or pending or (so far as Billabong is aware) threatened Claim, demand, legal proceedings or cause of action by an Employee against any member of the Billabong Group and, so far as Billabong is aware, there are no facts, matters or circumstance which may give rise to any such Claim, demand, charge, complaint, audit, investigation, legal proceeding or cause of action.
- 24.8 The Due Diligence Material fairly discloses full details of all Claims, legal proceedings or causes of action made against a member of the Billabong Group by current or past Employees during the 3 year period prior to the date of this deed.
- 24.9 No member of the Billabong Group has made any offer of work to, or any appointment of, an individual (or any company controlled by an individual as a senior executive, or as an independent contractor) for a term of 12 months or more or for payment of \$100,000 or more per annum, that remains capable of acceptance and that cannot be terminated without penalty on less than 1 months' notice.
- 24.10 No member of the Billabong Group is a party to any written employment or service agreement with any senior executive other than those agreements disclosed in full in the Due Diligence Material.
- 24.11 No Employee is, or may become, entitled to any bonus, compensation, payment or other benefit:
- (a) in connection with this deed or the transactions contemplated hereby; or
  - (b) of an amount or value exceeding three times that Employee's base salary which is triggered by a transaction or occurrence, or by the termination or cessation of that Employee's employment with the relevant member of the Billabong Group.
- 24.12 No member of the Billabong Group operates or has adopted, or has resolved or agreed to operate or adopt, any incentive plan in which Employees participate or may participate.

- 24.13 Full details of all complaints, recommendations, investigations or Claims relating to health and safety issues made or carried out in the last 3 years and affecting any member of the Billabong Group or any Employees have been fairly disclosed in the Due Diligence Material.
- 24.14 The members of the Billabong Group have complied with all their obligations to make superannuation or pension contributions which they are required to make on behalf of Employees.
- 24.15 The prescribed minimum level of superannuation support for each Employee has been provided by each member of the Billabong Group so as not to incur a Superannuation Guarantee Charge liability.
- 24.16 There are no overdue contributions due on the part of any member of the Billabong Group or any Employee that are outstanding and unpaid.
- 24.17 Provisions have been made by each member of the Billabong Group for any outstanding and unpaid benefits currently due to an Employee or his or her dependants or beneficiaries.
- 24.18 No member of the Billabong Group contributes to any defined benefit fund in respect of the Employees and no member of the Billabong Group is liable to contribute in respect of any defined benefit fund.
- 24.19 Each member of the Billabong Group:
- (a) has not been subject to a Work Safety Authority inspection in the last 3 years;
  - (b) has not at any time received an improvement notice or prohibition notice from a Work Safety Authority in respect of work health and safety; and
  - (c) is not currently subject to an investigation or prosecution by a Work Safety Authority and, so far as Billabong is aware, no facts, matters or circumstances exist which may give rise to any such investigation or prosecution.
- 24.20 Each member of the Billabong Group:
- (a) has workers compensation insurance in place, and has paid its workers compensation insurance up to date; and
  - (b) is not the subject of any current workers compensation claim and Billabong is not aware of any future claim or any facts, matters or circumstances which may give rise to a future claim, and reasonable details of all workers compensation claims during the last 3 years have been fairly disclosed in the Due Diligence Material.
- 24.21 Each member of the Billabong Group has complied with all applicable legislation, including Tax Laws and any agreement binding on it, in respect of independent contractors.
- 24.22 No independent contractor engaged by a member of the Billabong Group (nor any of the personnel of an independent contractor) is an employee of any member of the Billabong Group (or is or was entitled to be treated as one) at law.
- 24.23 The Disclosure Letter contains a complete and correct list of each material U.S. Employee Benefit Plan. All material documents relating to the establishment, funding and administration of the U.S. Employee Benefit Plans have been provided in the Due Diligence Materials. Each U.S. Employee Benefit Plan has been established, funded, administered and maintained, in form and operation, in all material respects in accordance with its terms and the applicable requirements of ERISA, the Code and other applicable laws. All contributions, premiums or other payments from the Billabong Group that are due have been paid on a timely basis with respect to each U.S. Employee Benefit Plan. Each U.S. Employee Benefit Plan that is intended to meet the requirements of a "qualified plan" under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service or is in the form of a prototype document

that is the subject of a favorable opinion letter from the Internal Revenue Service, and no events have occurred that could reasonably be expected to adversely affect the qualification of such plan. No member of the Billabong Group maintains, sponsors, contributes to or has any current or contingent liability or obligation under or with respect to, (i) any plan that is or was subject to Title IV of ERISA or Section 412 of the Code or (ii) any "multiemployer plan" (as such term is defined under Section 3(37) of ERISA) subject to Title IV of ERISA. No U.S. Employee Benefit Plan provides (whether now or in the future) post-employment or post-termination health, life or other welfare benefits other than as required under Section 4980B of the Code or any similar applicable law. There do not exist any pending claims (other than routine claims for benefits), suits, actions, disputes, audits or investigations with respect to any U.S. Employee Benefit Plan. No member of the Billabong Group has any liability (whether or not assessed) under Sections 4980D or 4980H of the Code.

- 24.24 Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby (alone or in conjunction with any other event) will give rise to the payment of any amount that would not be deductible by Boardriders, the Billabong Group or any of their respective affiliates by reason of Section 280G of the Code or any amount that could, individually or in combination with any other such payment, constitute an "excess parachute payment", as defined in Section 280G(b)(1) of the Code.
- 24.25 Neither the Billabong Group nor any of its affiliates, has any obligation to "gross-up" or otherwise indemnify any individual for the imposition of the excise tax under Section 4999 of the Code or under Section 409A of the Code.
- 24.26 Each arrangement subject to Section 409A of the Code (if any) is in compliance in all respects therewith such that no material Taxes or interest will be due and owing after the consummation of the transactions contemplated in this Agreement in respect of such arrangement failing to be in compliance therewith.
- 24.27 Except as would not result in any material losses for any member of the Billabong Group, each member of the Billabong Group has paid all wages, salaries, bonuses, commissions, wage premiums, fees, expense reimbursement, severance, and other compensation that have become due and payable to its employees, consultants, independent contractors, and other individual service providers pursuant to any law, contract, or policy.
- 24.28 In the past 3 years, no member of the Billabong Group has implemented any plant closing or mass layoff implicating the Worker Adjustment and Retraining Notification Act or similar law (**WARN**), nor are any such actions contemplated, planned, or announced. No member of the Billabong Group has any outstanding liability under WARN.
- 25 **(Information technology)**
- 25.1 The data, records and information technology and telecommunications systems, hardware and software owned or validly licensed (under a current, enforceable licence) by the Billabong Group (collectively, the **Systems**) comprise all the data, records and information technology and telecommunications systems, hardware and software necessary for the carrying on of the businesses and operations of the Billabong Group as such businesses and operations are currently carried on.
- 25.2 All reasonable precautions have been taken to preserve the security and integrity of the Systems and the data and information stored on them, and, so far as Billabong is aware, there has been no unauthorised access to the Systems or any of the data or information stored on them.
- 25.3 No action is necessary to enable Systems to continue to be used by the Billabong Group to the same extent and in the same manner as they are used as at the date of this deed.

- 25.4 No member of the Billabong Group is in breach of any agreement under which a member of the Billabong Group is licensed to use Systems where such breach may result in any member of the Billabong Group ceasing to be entitled to use those Systems.
- 25.5 So far as Billabong is aware, the software utilised by the Billabong Group:
- (a) is free of material defects and complies with all applicable laws; and
  - (b) is capable of being used for the functions and purposes for which it was designed and/or for which it is currently utilised by the Billabong Group.
- 26 **(Litigation and disputes)**
- 26.1 No member of the Billabong Group is, at the date of this deed, a party to or the subject of any investigation, action, proceeding, dispute, Claim, demand, notice, order, direction, declaration, inquiry, arbitration, mediation, dispute resolution or litigation that will or may have a material adverse effect on the operational or financial performance, or the reputation, of the Billabong Group (taken as a whole) (**Material Proceedings**).
- 26.2 So far as Billabong is aware, there are no outstanding settlements, judgments, decrees, awards, orders or other decisions of any court, quasi-judicial body or Government Agency (including any Competition Authority) and no Material Proceedings against a member of the Billabong Group are pending or threatened and Billabong is not aware of any facts, matters or circumstances that may give rise to a Material Proceeding.
- 26.3 No member of the Billabong Group has given any undertaking or assurance (whether legally binding or otherwise) to any court or Government Agency (including any Competition Authority) under any Antitrust Law.
- 26.4 There are no unsatisfied or outstanding judgments, awards, orders, decrees, Claims or demands against any member of the Billabong Group.
- 27 No member of the Billabong Group has any liability any injury or death to individuals or property as a result of the use of any product of the Billabong Group and no Claim has been made or (so far as Billabong is aware) asserted at any time during the 3 years prior to the date of this deed that a member of the Billabong Group has any such liability.
- 28 **(Insurance)**
- 28.1 The Due Diligence Material fairly discloses reasonable particulars of all current insurance policies and cover notes taken out in respect of the Billabong Group (or a member thereof) or the businesses or operations conducted thereby (or any such business or operation) (**Insurances**).
- 28.2 Each Insurance is in full force and effect in accordance with its terms and all applicable premiums have been paid by the due date for payment.
- 28.3 So far as Billabong is aware, nothing has been done or omitted to be done:
- (a) that would make any Insurance void or voidable or that would permit an insurer to cancel the policy or refuse or materially reduce a claim or materially increase the premium payable under any Insurance or otherwise alter the terms of the policy; or
  - (b) by a member of the Billabong Group so as to make void or voidable any Insurance or to permit an insurer to refuse or reduce a current claim by a member of the Billabong Group under any Insurance.
- 28.4 As at the date of this deed:
- (a) there are no outstanding claims made by a member of the Billabong Group or any person on its behalf under any Insurance or an insurance policy previously taken out by or for the benefit of any member of the Billabong Group; and

- (b) so far as Billabong is aware, there are no threatened or pending claims under any Insurance and there are no facts, matters or circumstances which could give rise to an entitlement to make a claim under any Insurance.
- 28.5 The members of the Billabong Group have notified insurers of all relevant claims, facts, matters and circumstances as required by the notification provisions under each Insurance.
- 28.6 No member of the Billabong Group has made a claim under any Insurance that has been rejected or denied by the insurer.
- 28.7 Each member of the Billabong Group has in place all insurances required by law or contract to be taken out by it, subject to deductibles.
- 29 **(Taxes and Duties)**
- 29.1 Any Tax or Duty arising under any Tax Law payable:
- (a) in respect of any transaction, income or assets of a member of the Target Group for all periods up to the Implementation Date;
- (b) in respect of any event, omission or instrument executed or performed on or prior to the Implementation Date; and
- (c) in respect of payments made by a member of the Billabong Group to another person that must be withheld from that payment prior to the Implementation Date,
- will have been so withheld (if applicable) and paid prior to the Implementation Date in accordance with the requirements of the relevant Tax Law.
- 29.2 Each member of the Billabong Group has complied with all material obligations imposed on them by any Tax Law or as requested by any Government Agency.
- 29.3 Each member of the Billabong Group has maintained proper and adequate records to enable it to comply in all material respects with its obligations to:
- (a) prepare and submit any applications, information, notices, computations, returns and payments required in respect of any Tax Law;
- (b) prepare any accounts necessary for compliance with any Tax Law; and
- (c) retain necessary records as required by any Tax Law.
- 29.4 Each member of the Billabong Group has up to and including the Implementation Date submitted any necessary applications, information, notices, computations and returns to the relevant Government Agency in respect of any Tax or Duty.
- 29.5 So far as Billabong is aware, any information, notice, computation and return that has been submitted by any member of the Billabong Group to a Government Agency in respect of any Tax or Duty:
- (a) discloses all material facts required to be disclosed under any Tax Law; and
- (b) is not misleading in any material particular.
- 29.6 Billabong is not aware of any current, pending or threatened Tax or Duty audit, reviews or investigation relating to any member of the Billabong Group.
- 29.7 There are no disputes between any member of the Billabong Group and any Government Agency in respect of any Tax or Duty.
- 29.8 No member of the Billabong Group will have a franking or imputation account deficit immediately at or any time after the Implementation Date as a result of any act, transaction or omission relating to periods prior to the Implementation Date. No act or omission of any member of the



- Billabong Group at or before the Implementation Date will cause any member of the Billabong Group to be liable for franking tax or a similar Tax at or after the Implementation Date.
- 29.9 There will not be any franking debit to the franking account of any member of the Billabong Group that relates to a transaction or arrangement entered into at or before the Implementation Date.
- 29.10 The Head Company has complied with and maintained documentation regarding the application of section 205-15(4) of the ITAA 1997 to its franking account.
- 29.11 No member of the Billabong Group has ever (i) had any taxable presence outside the country in which it is a tax resident or (ii) received notice that it may be subject to Tax in a jurisdiction where it does not currently file Tax Returns or pay Tax.
- 29.12 All transactions and other dealings between the Billabong Group and related parties for the purposes of the Tax Law have been (and can be demonstrated to have been) conducted at arm's length.
- 29.13 No debt owed by any member of the Billabong Group has been, or has been agreed to be, released, waived, forgiven or otherwise extinguished in circumstances which would have attracted any Tax or the operation of the debt forgiveness rules or limited recourse debt rules under the Tax Law.
- 29.14 No member of the Billabong Group has entered into or been a party to any transaction which contravenes any anti-avoidance or integrity provisions of any Tax Law.
- 29.15 Any ruling, determination or election requested, received or made by any member of the Billabong Group in respect of Tax or Duty:
- (a) has been fairly disclosed in the Due Diligence Material; and
  - (b) has at all times been complied with in all material respects by that member of the Billabong Group.
- 29.16 No agreement extending the period for assessment or collection of any Tax or Duty of any member of the Billabong Group has been executed or filed with any Government Agency.
- 29.17 All registrations required to be maintained by any member of the Billabong Group with any Government Agency in relation to Tax or Duty are and have at all times been maintained by that member of the Billabong Group.
- 29.18 Each member of the Billabong Group has at all relevant times appointed a public officer where required under the applicable Tax Laws.
- 29.19 No member of the Billabong Group has entered into or been a party to an arrangement, agreement or indemnity whereby it is liable to reimburse or indemnify another party in respect of Tax or Duty, other than pursuant to customary gross up clauses, and no member of the Billabong Group has any liability for Taxes of another person as a transferee or successor.
- 29.20 No member of the Billabong Group has sought, obtained or is taken to have obtained any form of relief or deferral from Tax in respect of the transfer of an asset, where such relief or deferral will be clawed back as a result of the entry into this deed or implementation of the Scheme.
- 29.21 No member of the Billabong Group has a tainted share capital account or a share capital account that is taken to be tainted under any Tax Law and no member of the Billabong Group has taken any action, up to and including the Implementation Date, that would cause such member of the Billabong Group's share capital account to be a tainted share capital account, nor has an election been made at any time up to and including the Implementation Date, to untaint any member of the Billabong Group's share capital account.
- 29.22 No member of the Billabong Group has made any election or made any choice under Division 230 of the ITAA 1997.

- 29.23 No member of the Billabong Group has been in breach of the benchmark franking percentage rules.
- 29.24 Billabong has been the Head Company of the Billabong Consolidated Group at all times since 1 July 2002.
- 29.25 The Tax Sharing Agreement is valid under the Tax Law.
- 29.26 The Billabong Consolidated Group is not and has never been a MEC Group for the purposes of Part 3-90 of the ITAA 1997.
- 29.27 No member of the Billabong Group has been a member of a Consolidated Group other than the Billabong Consolidated Group.
- 29.28 No tax attributes of the Billabong Group as at the implementation of the Scheme are subject to any losses, limitations or restrictions due to prior changes in the control or ownership of the Billabong Group.
- 29.29 No member of the Billabong Group has participated in a reportable transaction under US Tax Law.
- 29.30 No member of the Billabong Group is a party to any document, instrument, contract, agreement, deed or transaction in respect of which it is or will become liable to pay GST in circumstances where such member of the Billabong Group has no express entitlement to increase the consideration payable under the document, instrument, contract, agreement, deed or transaction or otherwise seek reimbursement so that such member of the Billabong Group retains the amount it would have retained but for the imposition of GST.
- 29.31 Each member of the Billabong Group:
- (a) that is required to be registered for GST under the GST Law is so registered;
  - (b) has complied in all respects with the GST Law;
  - (c) is not in default of any obligation to make or lodge any payment or GST return or notification under the GST Law;
  - (d) has adequate systems established for it to ensure it complies with the GST Law; and
  - (e) where it has the right to require another party to any such agreement or arrangement to pay to it an amount on account of GST, has enforced that right.
- 29.32 The members of the Billabong Group have only been members (if at all) of the Billabong GST Group and will continue to be members of the Billabong GST Group at all times until the Implementation Date.
- 29.33 No member of the Billabong Group:
- (a) has paid any amount on account of, or in respect of, GST to any entity which it was not contractually required to pay;
  - (b) has ever been a party to an indirect tax sharing agreement or an indirect tax funding agreement;
  - (c) is, and has never been, a member (including a joint venture operator) of a GST joint venture; or
  - (d) has any amended assessments to which an extended or refreshed period of review could apply under section 155-70 of Schedule 1 to the TAA in respect of GST.
- 29.34 Billabong as the representative member of the Billabong GST Group has met all of its GST obligations in respect of any period or part period up to and including the Implementation Date in accordance with the requirements of the GST Law.

- 29.35 All documents, instruments, contracts, agreements, deeds or transactions which are liable to Duty, or necessary to establish the title of each member of the Billabong Group to an asset, have had Duty paid in full in accordance with all applicable Tax Laws, and there is no requirement to upstamp on account of an interim assessment.
- 29.36 No event has occurred, or will occur, as a result of anything provided for in this deed, or as a result of this deed itself, as a result of which any Duty from which a member of the Billabong Group may have obtained an exemption or other relief may become payable on any document, instrument, contract, agreement, deed or transaction.
- 29.37 No member of the Billabong Group has distributed stock of another person, or has had its stock distributed by another person, in a transaction that was purported or intended to be governed in whole or in part by Sections 355 or 361 of the Code within the 3 years prior to the date of hereof.
- 29.38 No member of the Billabong Group will be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Effective Date as a result of any: (i) change in, or use of an improper, method of accounting for a taxable period ending on or prior to the Effective Date, (ii) "closing agreement" as described in section 7121 of the Code, as amended (or any corresponding or similar provision of state, local, or non-U.S. income Tax Law) executed on or prior to the Effective Date, (iii) instalment sale or open transaction disposition made on or prior to the Effective Date, (iv) prepaid amount received on or prior to the Effective Date, or (v) election under the Code, as amended, section 108(i).
- 30 **(Specific compliance matters)** No member of the Billabong Group or past or present director, officer, employee or agent or other person acting on behalf of any member of the Billabong Group is currently or has in the past 5 years been directly or indirectly:
- (a) engaged in any activity that would violate any privacy or data protection laws, labour laws, anti-money laundering laws, anti-bribery laws or anti-corruption laws, including the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the Australian laws implemented pursuant to the OECD Anti-Bribery Convention, in each case in any jurisdiction (such laws, the **Relevant Laws**), including having:
- (i) offered, promised or provided a benefit to another with the intention to induce a person to act improperly, illegally or in breach of trust or reward a person for acting improperly, illegally or in breach of trust;
- (ii) participated in any form of corruption, bribery or collusion involving illegal or dishonest behaviour;
- (iii) given or authorized or agreed to give, offered, promised, provided, solicited, requested or accepted kickbacks, bribes, secret commissions or facilitation payments, or unlawful rebates or discounts; or
- (iv) given or authorized or agreed to give, offered, promised or made an unlawful contribution or any money or thing of value to a politician, political cause or public official of any kind, including any Officer or employee of any Government Agency or any person, nor provided any benefit that is, or may be deemed to be, illegal under any Relevant Laws;
- (b) a Sanctioned Person, organized, resident, or located in a Sanctioned Country, engaging in any dealings or transactions with any Sanctioned Person or in any Sanctioned Country, to the extent such activities violate Sanctions Laws or Ex-Im Laws, or in violation of Sanctions Laws, Ex-Im Laws, or U.S. anti-boycott laws (such laws, the **Trade Control Laws**);

- (c) the subject of any allegation, investigation, notice, inquiry or proceeding regarding any offence or alleged offence or wrongdoing under any Relevant Laws or Trade Control Laws, and so far as Billabong is aware:
    - (i) no such allegation, investigation, inquiry or proceeding has been threatened or is pending; and
    - (ii) there are no facts, matters or circumstances which are reasonably likely to give rise to any such allegation, investigation, notice, inquiry or proceeding; or
  - (d) the subject of any voluntary or involuntary disclosure to a Government Agency, regarding any offence or alleged offence or wrongdoing under any Relevant Laws or Trade Control Laws, and so far as Billabong is aware:
    - (i) no such voluntary or involuntary disclosure is to a Government Agency pending; and
    - (ii) there are no facts, matters or circumstances which are reasonably likely to give rise to any such voluntary or involuntary disclosure to a Government Agency.
- 31 **(Disclosure Letter)** The Disclosure Letter has been collated and prepared in good faith, and Billabong is not aware of any information contained in the Disclosure Letter that is false or misleading in any material respect (including by omission).

**Schedule 3 – Billabong Prescribed Occurrences**

- 1 Billabong converting all or any of its shares into a larger or smaller number of shares.
- 2 Any member of the Billabong Group resolves to reduce its share capital in any way.
- 3 Any member of the Billabong Group:
  - (a) enters into a buy-back agreement; or
  - (b) resolves to approve the terms of a buy-back agreement under the Corporations Act.
- 4 Any member of the Billabong Group issues shares or other securities to a person , or grants an option over or a right to receive its shares or other securities, or agrees to make such an issue or grant such an option or right.
- 5 Any member of the Billabong Group issues, or agrees to issue, convertible notes or any other instrument or security convertible into shares or securities in or of any member of the Billabong Group.
- 6 Billabong disposes, or agrees to dispose, of the whole or a substantial part of its business or property.
- 7 Billabong grants, or agrees to grant, a security interest in or over the whole or a substantial part of its business or property.
- 8 Any member of the Billabong Group resolves to be wound up.
- 9 A liquidator or provisional liquidator of any member of the Billabong Group is appointed.
- 10 A court makes an order for the winding up of any member of the Billabong Group.
- 11 An administrator of any member of the Billabong Group is appointed under section 436A, 436B or 436C of the Corporations Act.
- 12 Any member of the Billabong Group executes a deed of company arrangement.
- 13 A receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of any member of the Billabong Group.

**Schedule 4 – Options and Performance Rights****Part A: Options issued under the Incentive Plan**

Option Holder	Number of options held	
	Market-Priced Options	Premium Priced Options
Ingrid Anderson	27,300	27,300
Ashley Audette	60,150	60,150
Ernest Bendeman	24,950	24,950
Susan Branch	88,450	88,450
Paul Burdekin	67,020	156,380
Brian Cassaro	38,050	38,050
Carol Cogan	54,350	54,350
Cathey Curtis	58,150	58,150
Ajai Datta	52,850	52,850
Lydie Dougnac	15,050	15,050
Bryan Easterman	35,400	35,400
Neil Fiske	771,330	1,799,770
Brooke Flamson (Montijo)	21,250	21,250
Reynald Gautier	28,350	28,350
Nigel Gibb	20,050	20,050
Scott Govenlock	57,650	57,650
Scott Greasley	15,950	15,950
Jeremy Hale	72,800	72,800
Scott Hargreaves	40,450	40,450
Jan Holzer	20,050	20,050
Deanna Jackson	36,400	36,400
Michelle Jenkins	20,200	20,200
David Keay	67,250	67,250
Jean Kress	30,200	30,200
Brad Lancaster	65,750	65,750
Christie Lockyer	19,600	19,600
Richard Mallon	51,900	51,900
Deke Marcus	23,550	23,550
Peter Myers	125,940	293,860
Jason Neely	54,500	54,500
Shannan North	246,840	575,960
Mara Pagotto	68,580	160,020
Leila Heydari-Pajo	46,500	46,500
Scott Payne	32,300	32,300
Stacy Reece	64,450	64,450
Allison Roberts	40,450	40,450
Stuart Roberts	41,300	41,300

Jean-Louis Rodrigues	59,340	138,460
Johnny Schillereff	127,350	297,150
Jason Shelton	50,550	50,550
Katherine Singer	65,750	65,750
Elizabeth Stockstill	29,000	29,000
Eric Thomas	40,450	40,450
Greg Tomlinson	65,100	65,100
Mark Weber	78,350	78,350
Tracey Wood	44,200	44,200
Michael Yerkes	64,650	150,850
<b>TOTAL</b>	<b>3,230,050</b>	<b>5,271,450</b>

**Part B: Options issued other than under the Incentive Plan**

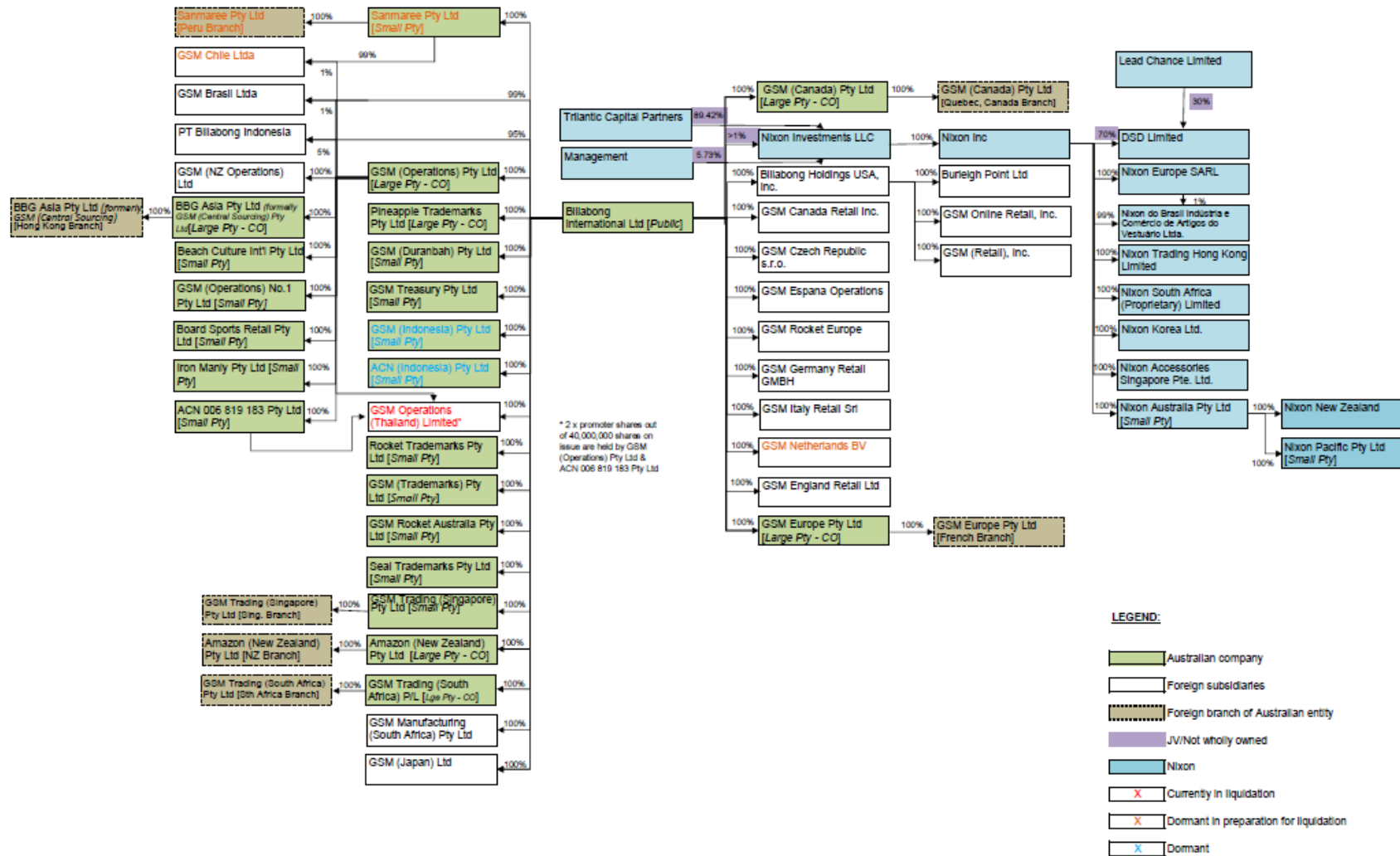
<b>Option Holder</b>	<b>Number of Options held</b>
Patrick Tenore	240,000
ACP Burleigh Holdings, LLC	1,549,526
FS Investment Corporation	3,451,216
FS Investment Corporation II	3,451,216
Centerbridge BV	2,958,185
Oaktree BV	2,958,186
<b>TOTAL</b>	<b>14,608,329</b>

**Part C: Performance Rights**

<b>Executive Incentive Plan Rights</b>	
<b>Right holder</b>	<b>Number of rights held</b>
Kadima Lonji	25,128
Richard Mallon	28,780
Felipe Motta	10,764
Peter Myers	110,232
Jason Neely	29,795
Shannan North	217,362
Mara C Pagotto	60,378
Stacy Reece	36,658
Jean-Louis Rodrigues	52,928
Johnny Schillereff	112,131
Jason Shelton	28,752
Katherine Singer	37,377
Gregory Tomlinson	37,018
Sally Tullett	10,837
Frank Voit	42,773
Mark Weber	44,565
Tracey Wood	24,979
Ajai Datta	29,183
Paul Burdekin	58,646
Scott Govenlock	32,581
David Keay	21,499
Ernest Bendeman	15,562
Jeremy Hale	31,052
Susan Branch	50,315
Carol Cogan	30,908
Cathey Curtis	33,064
Brad Lancaster	37,377
Neil Fiske	679,255
Jim Howell	648,568
<b>TOTAL</b>	<b>2,578,467</b>

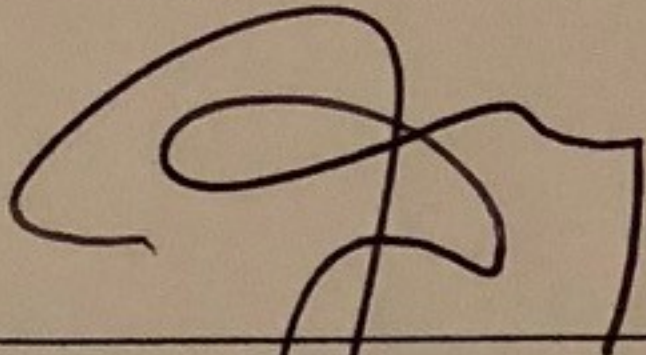


Schedule 5 – Billabong Group Structure Diagram



**Executed and delivered as a deed**

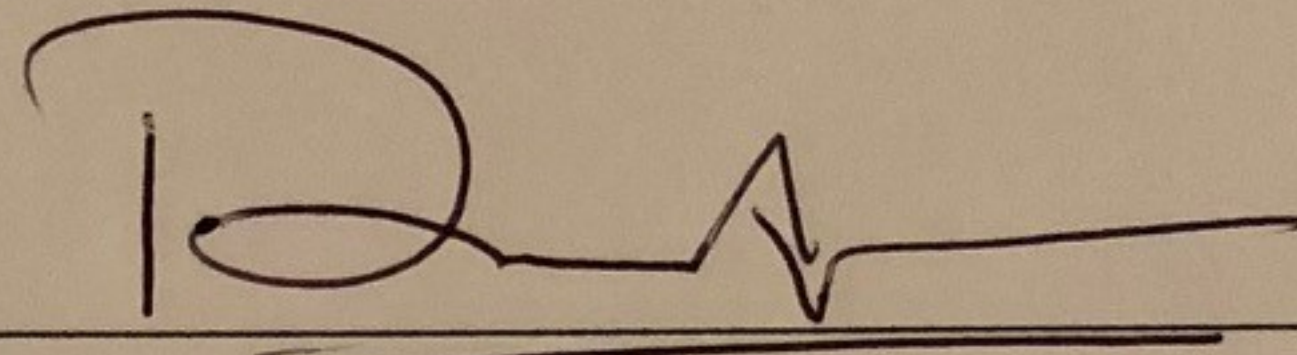
**Signed Sealed and Delivered by Boardriders, Inc.** in the presence of:



Signature of Witness

Joelle HONTAS

Name of Witness



Signature of Authorised Signatory

PIERRE AGNES

Name of Authorised Signatory

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **Billabong International Limited:**

\_\_\_\_\_  
Director Signature

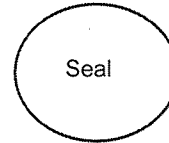
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

**Executed and delivered as a deed**

**Signed Sealed and Delivered by Boardriders, Inc.** in the presence of:



\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Name of Authorised Signatory

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **Billabong International Limited:**

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

Ian Pollard

Kim Anderson

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Annexure A – Form of Scheme**

**Scheme of Arrangement** under Part 5.1 of the Corporations Act.

<b>Parties</b>	
1.	<b>Billabong International Limited</b> (ACN 084 923 946) registered in Queensland of 1 Billabong Place, Burleigh Heads QLD 4220 ( <b>Billabong</b> ); and
2.	Each holder of Billabong Shares recorded in the Billabong Share Register at the Scheme Record Date (other than holders of Excluded Shares) (each a <b>Scheme Shareholder</b> and together the <b>Scheme Shareholders</b> ).

## **1 Definitions and interpretation**

### **1.1 Definitions**

The meanings of the terms used in this scheme of arrangement are set out below.

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

**ASX** means ASX Limited (ACN 008 624 691) or, as the context requires, the financial market known as the Australian Securities Exchange operated by it.

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

**Billabong Registry** means Computershare Investor Services Pty Limited (ABN 48 078 279 277) or any replacement provider of share registry services to Billabong.

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

**Billabong Shareholders** means each person who is registered as the holder of Billabong Shares from time to time.

**Billabong Share Register** means the register of members of Billabong maintained in accordance with the Corporations Act.

**Boardriders** means Boardriders, Inc. of 5600 Argosy Avenue, Building 100, Huntington Beach, California 92649, United States of America.

**Boardriders Group** means Boardriders and each of its related bodies corporate (excluding, at any time, Billabong and its subsidiaries to the extent that Billabong and its subsidiaries are subsidiaries of Boardriders at that time). A reference to a **member of the Boardriders Group** is a reference to Boardriders or any such related body corporate but does not include any Oaktree Entity.

**Boardriders Sub** means [each of] [insert name of BidCo] [and [insert name of second Boardriders Sub, if applicable]].

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

**CHES** means the clearing house electronic subregister system for the electronic transfer of securities operated by ASX Settlement Pty Limited (ABN 49 008 504 532).

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

**Court** means the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act agreed to in writing between the parties.

**Court Order** means the order of the Court approving this scheme under section 411(4)(b) of the Corporations Act.

**Deed Poll** means the deed poll dated [ ] 2018 executed by Boardriders in favour of the Scheme Shareholders.

**Effective** means the coming into effect under section 411(10) of the Corporations Act of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to this scheme.

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

**End Date** means the 'End Date' determined in accordance with the Scheme Implementation Deed.

**Excluded Share** means a Billabong Share held by any person on behalf of, or for the benefit of, Boardriders or any of its Related Entities (which, for the avoidance of doubt, as at the date of this deed includes the Billabong Shares held by Oaktree BV).

**Excluded Shareholder** means a holder of Excluded Shares.

**Implementation Date** means the fifth Business Day after the Scheme Record Date or such other date agreed to in writing between the parties, provided that if such date falls on:

- (a) a Monday; or
- (b) a day that is a public holiday in the United States of America and on which commercial banks in that place are closed (such day, a **U.S. Holiday**) or the day after a U.S. Holiday,

the 'Implementation Date' shall be the next Business Day on which neither (a) or (b) above apply. It is understood that the reference to a "day" in the United States of America shall refer to the day preceding the applicable day in Australia (by way of example, only, February 28th in Australia shall be February 27th in the United States of America).

**Marketable Parcel** means a marketable parcel as defined by the ASX Operating Rules.

**Oaktree BV** means OCM Clean Wave Holdings B.V..

**Oaktree Entity** means Oaktree Capital Management, L.P. and each of its affiliates (including Oaktree BV).

**Registered Address** means, in relation to a Billabong Shareholder, the address shown in the Billabong Share Register.

**Related Entity** has the meaning given in the Corporations Act. For the avoidance of doubt, Boardriders Related Entities include the members of the Boardriders Group and the Oaktree Entities.

**[Relevant Proportion]** means:

- (a) in respect of [insert name of BidCo], [%] of the Scheme Shares; and
- (b) in respect of [insert name of second Boardriders Sub, if applicable], [%] of the Scheme Shares.]

**Scheme Booklet** means the scheme booklet sent to holders of Billabong Shares on or about [ ] 2018.

**Scheme Consideration** means \$1 per Scheme Share.

**Scheme Implementation Deed** means the Scheme Implementation Deed dated [ ] January 2018 between Boardriders and Billabong.

**Scheme Meeting** means the meeting of Billabong Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act.

**Scheme Record Date** means 7pm on the fifth Business Day after the Effective Date or such other time and date agreed to in writing between the parties.

**Scheme Shares** means the Billabong Shares on issue as at the Scheme Record Date other than the Excluded Shares.

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

**Trust Account** means an Australian dollar denominated trust account operated by the Trustee, to be held on trust for the Scheme Shareholders, except that any interest on the amounts deposited (less bank fees and other charges) will be to Boardriders' account.

**Trustee** means Billabong as trustee for the Scheme Shareholders.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause or schedule is a reference to a clause of or schedule to this deed.
- (f) A reference to an *agreement* or *document* (including a reference to this scheme) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this deed or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document.
- (g) A reference to a party to this deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (j) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (k) A reference to *dollars* and *\$* is to Australian currency.
- (l) All references to time are to Sydney, Australia time.
- (m) Mentioning anything after *includes*, *including*, *for example*, or similar expressions, does not limit what else might be included.
- (n) Nothing in this deed is to be interpreted against a party solely on the ground that the party put forward this deed or a relevant part of it.

- (o) A reference to *associate, control* (by an entity of another entity), *officer, related body corporate, relevant interest, subsidiary* or *voting power* is to that term as it is defined in the Corporations Act.

### 1.3 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

### 1.4 Listing requirements included as law

A listing rule or business rule of a financial market will be regarded as a *law*, and a reference to such a rule is to be taken to be subject to any waiver or exemption granted to a party.

## 2 Preliminary

### 2.1 Billabong

- (a) Billabong is a public company limited by shares, registered in Victoria and admitted to the official list of ASX.
- (b) Billabong Shares are officially quoted on ASX. At [x], [198,079,110] Billabong Shares were on issue.

### 2.2 Consequence of this scheme becoming Effective

If this scheme becomes Effective:

- (a) it will override the constitution of Billabong, to the extent of any inconsistency;
- (b) Boardriders must (pursuant to its obligations under the Deed Poll) pay or procure payment of the Scheme Consideration in the manner contemplated by clause 5 below; and
- (c) all the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares, will be transferred to the Boardriders Sub(s), and Billabong will enter the Boardriders Sub(s) in the Billabong Share Register as the holder(s) of the Scheme Shares with the result that Billabong will become a wholly-owned indirect subsidiary of Boardriders.

## 3 Conditions

- (a) This scheme is conditional on:
  - (i) all the conditions precedent in clause 3.1 of the Scheme Implementation Deed (other than the condition in clause 3.1(d)) having been satisfied or waived in accordance with the terms of the Scheme Implementation Deed by 8am on the Second Court Date;
  - (ii) the Court making orders approving this scheme under section 411(4)(b) of the Corporations Act, including with such alterations made or required by the Court under section 411(6) of the Corporations Act as are acceptable to Boardriders and Billabong (each acting reasonably);
  - (iii) such other conditions imposed by the Court under section 411(6) of the Corporations Act, as are acceptable to Boardriders and Billabong (each acting reasonably), having been satisfied; and
  - (iv) 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) (and, if applicable, section

411(6)) of the Corporations Act in relation to this scheme on or before the End Date.

- (b) The satisfaction of the conditions referred to in clause 3(a) is a condition precedent to the operation of clauses 4 and 5.
- (c) This scheme will lapse and be of no further force or effect if:
  - (i) the Effective Date does not occur on or before the End Date or any later date as the Court, with the consent of Boardriders and Billabong, may order; or
  - (ii) the Scheme Implementation Deed is terminated before implementation of this scheme on the Implementation Date.

## **4 Implementation**

### **4.1 Lodgement of Court orders**

Billabong must lodge with ASIC copies of any Court orders under section 411 of the Corporations Act approving this scheme by 5pm on the Business Day the Court approves this scheme or by 5pm on the Business Day on which the Court orders are entered, whichever is the later.

### **4.2 Transfer of Scheme Shares**

On the Implementation Date:

- (a) subject to the payment of the Scheme Consideration to the Trust Account in accordance with clause 5.3(a), the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares at the Implementation Date, will be transferred to the Boardriders Sub(s) [in the Relevant Proportions], without the need for any further act by any Scheme Shareholder (other than acts performed by Billabong or its officers as agent and attorney of the Scheme Shareholders under clause 8.5 or otherwise) by:
  - (i) Billabong delivering to the Boardriders Sub(s) a duly completed and executed share transfer form to transfer all the Scheme Shares to the Boardriders Sub(s) [in the Relevant Proportions]; and
  - (ii) the Boardriders Sub(s) duly executing such transfer form and delivering it to Billabong for registration; and
- (b) immediately after receipt of the transfer form in accordance with paragraph (a)(ii), Billabong must enter the name of the Boardriders Sub(s) in the Billabong Share Register in respect of the [Relevant Proportions of the] Scheme Shares.

## **5 Scheme Consideration**

### **5.1 Amount of Scheme Consideration**

Subject to clause 5.2, each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder.

### **5.2 Joint holders**

In the case of Scheme Shares held in joint names, the relevant Scheme Consideration is payable to and must be sent to the holder whose name appears first in the Billabong Share Register at the Scheme Record Date or where the joint holders have nominated a bank account under clause 5.3(c)(ii), the amount must be deposited directly to the nominated bank account of the joint holders.



### 5.3 Scheme Consideration

- (a) Boardriders must (pursuant to its obligations under the Deed Poll) before 12 noon on the Implementation Date pay or procure payment to the Trust Account of an amount at least equal to the aggregate amount of Scheme Consideration.
- (b) As soon as practicable following implementation of this Scheme on the Implementation Date, the Trustee must pay from the Trust Account to each Scheme Shareholder such amount of cash as is due to that Scheme Shareholder as Scheme Consideration in respect of that Scheme Shareholder's Scheme Shares. Boardriders will not have any responsibility or liability for any such payment.
- (c) The amounts referred to in paragraph (b) must be paid to each Scheme Shareholder by the Trustee doing any of the following at its election:
  - (i) sending (or procuring the Billabong Registry to send) the relevant amount to the Scheme Shareholder's Registered Address by cheque in Australian currency drawn out of the Trust Account; or
  - (ii) depositing (or procuring the Billabong Registry to deposit) the relevant amount into an account with any Australian ADI (as defined in the Corporations Act) notified to Billabong (or the Billabong Registry) by an appropriate authority from the Scheme Shareholders.
- (d) If there is any surplus in the amount held by the Trustee in the Trust Account, that surplus must be paid by the Trustee to Boardriders as soon as practicable following the satisfaction of the Trustee's obligations under this clause 5.3.
- (e) If any amount is required under any Australian law or by any Australian government or any Australian governmental, semi-governmental or judicial entity or authority to be:
  - (i) withheld from an amount payable under paragraph (b) and paid to that entity or authority; or
  - (ii) retained by the Trustee out of an amount payable under paragraph (b),its payment or retention by the Trustee (or the Billabong Registry) will constitute the full discharge of the Trustee's obligations under this clause 5.3 with respect to the amount so paid or retained until it is no longer required to be retained.
- (f) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 7 of the *Unclaimed Money Act 1995* (NSW)).
- (g) Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of Boardriders.

## 6 Dealings in Billabong Shares

- (a) To establish the identity of the Scheme Shareholders, dealings in Billabong Shares will only be recognised if:
  - (i) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Billabong Share Register as the holder of the relevant Billabong Shares on or before the Scheme Record Date; and
  - (ii) in all other cases, registrable transmission applications or transfers in respect of those dealings are received on or before the Scheme Record Date at the place where the Billabong Share Register is kept and such transmission applications or transfers are registered on or before the Scheme Record Date.

- (b) Billabong must register registrable transmission applications or transfers of the kind referred to in clause 6(a) on the Scheme Record Date (provided that for the avoidance of doubt nothing in this clause 6(b) requires Billabong to register a transfer that would result in a Billabong Shareholder holding a parcel of Billabong Shares that is less than a Marketable Parcel).
- (c) Billabong will not accept for registration or recognise for any purpose any transmission application or transfer in respect of Billabong Shares received after the Scheme Record Date.
- (d) For the purpose of determining entitlements to the Scheme Consideration, Billabong must maintain the Billabong Share Register in accordance with the provisions of this clause 6 until the Scheme Consideration has been paid to the Scheme Shareholders. The Billabong Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (e) From the Scheme Record Date until registration of the Boardriders Sub(s) in respect of all Scheme Shares under clause 4, no Billabong Shareholder may deal with Billabong Shares in any way except as set out in this scheme and any attempt to do so will have no effect.
- (f) All statements of holding for Billabong Shares will cease to have effect from the Scheme Record Date as documents of title in respect of those shares (other than statements of holding in favour of any member of the Boardriders Group and its successors in title). As from the Scheme Record Date, each entry current at that date on the Billabong Share Register (other than entries in respect of any member of the Boardriders Group and its successors in title) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Billabong Shares relating to that entry.
- (g) As soon as possible after the Scheme Record Date and in any event at least four Business Days before the Implementation Date, Billabong will ensure that details of the names, Registered Addresses and holdings of Billabong Shares for each Scheme Shareholder are available to Boardriders in the form Boardriders reasonably requires.

## **7 Quotation of Billabong Shares**

- (a) Billabong must apply for suspension of trading on ASX in Billabong Shares to occur from the close of trading on the Effective Date.
- (b) Billabong must apply:
  - (i) for termination of the official quotation of Billabong Shares on ASX; and
  - (ii) to have itself removed from the official list of ASX,in each case with effect from the Business Day immediately following the Implementation Date.
- (c) Billabong must use its best endeavours to ensure that such termination of official quotation and removal from the official list does not occur before the Implementation Date.

## **8 General Scheme Provisions**

### **8.1 Consent**

If the Court proposes to approve this scheme subject to any alterations or conditions, Billabong may, by its counsel or solicitors, consent on behalf of all persons concerned (including Scheme Shareholders) to those alterations or conditions to which Boardriders has consented in writing.

## 8.2 Agreement of Scheme Shareholders

- (a) Each of the Scheme Shareholders agrees to the transfer of their Scheme Shares in accordance with this scheme and agrees to the variation, cancellation or modification of the rights attached to their Billabong Shares constituted by or resulting from this scheme.
- (b) Each of the Scheme Shareholders acknowledges that this scheme binds Billabong and all Scheme Shareholders (including those who do not attend the Scheme Meeting or do not vote at that meeting or vote against this scheme at the Scheme Meeting).
- (c) Each of the Scheme Shareholders irrevocably consents to Billabong and Boardriders doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of this scheme and the transactions contemplated by it.

## 8.3 Warranties by Scheme Shareholders

Each Scheme Shareholder is deemed to have warranted to Boardriders and, to the extent enforceable, appointed and authorised Billabong as its agent to warrant to Boardriders that:

- (a) all of its Scheme Shares which are transferred to the Boardriders Sub(s) under this scheme will, on the date on which they are so transferred, be free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind (including any security interests within the meaning of the *Personal Properties Securities Act 2009* (Cth)), and from any restrictions on transfer of any kind (whether legal or otherwise);
- (b) all of its Scheme Shares which are transferred to the Boardriders Sub(s) under this scheme will, on the date on which they are so transferred, be fully paid; and
- (c) it has full power and capacity to sell and to transfer its Scheme Shares (together with all rights and entitlements attaching to such shares) to the Boardriders Sub(s).

## 8.4 Beneficial entitlement to Billabong Shares

- (a) Immediately upon the provision of the Scheme Consideration by the Trustee in accordance with clauses 5.3(b) and 5.3(c), the Boardriders Sub(s) will be beneficially entitled to the Scheme Shares transferred to [it/them] under this scheme pending registration by Billabong of the Boardriders Sub(s) in the Billabong Share Register as the holder[s] of the Scheme Shares.
- (b) To the extent permitted by law, the Scheme Shares (including the rights and entitlements attaching to such shares) will, at the time of transfer to the Boardriders Sub(s), vest in the Boardriders Sub(s) free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind (including any security interests within the meaning of the *Personal Properties Securities Act 2009* (Cth)), and from any restrictions on transfer of any kind (whether legal or otherwise).

## 8.5 Authority given to Billabong

- (a) Each Scheme Shareholder, without the need for any further act, irrevocably appoints Billabong and all of its directors, secretaries and officers (jointly and severally) as its attorney and agent for the purpose of executing any document necessary and taking any other necessary or desirable steps to give effect to this scheme including executing a share transfer or transfers in relation to that Scheme Shareholder's Scheme Shares as contemplated by clause 4.2 and giving consent under clause 8.2(c).
- (b) Billabong accepts such appointment on its own behalf and on behalf of all of its directors, secretaries and officers.

## 8.6 Appointment of sole proxy

Immediately upon the provision of the Scheme Consideration by the Trustee in accordance with clauses 5.3(b) and 5.3(c), and until Billabong registers the Boardriders Sub(s) as the holder(s) of all the Scheme Shares in the Billabong Share Register, each Scheme Shareholder:

- (a) is deemed to have irrevocably appointed Boardriders as its attorney and agent (and directed Boardriders in such capacity) to appoint any director, officer, secretary or agent nominated by Boardriders as its sole proxy and, where applicable, corporate representative to attend shareholders' meetings of Billabong, exercise the votes attaching to the Scheme Shares registered in its name and sign any Billabong Shareholders' resolutions, and no Scheme Shareholder may attend or vote at any of those meetings or sign or vote on any resolutions (whether in person, by proxy or by corporate representative) other than as pursuant to this clause 8.6(a);
- (b) must take all other actions in the capacity of a registered holder of Scheme Shares as Boardriders reasonably directs; and
- (c) acknowledges and agrees that, in exercising the powers referred to in clause 8.6(a), Boardriders and any director, officer, secretary or agent nominated by Boardriders under clause 8.6(a) may act in the best interests of Boardriders as the intended registered holder [(or the agent of the intended registered holder)] of the Scheme Shares.

## 9 General

### 9.1 Stamp duty

Boardriders must (pursuant to its obligations under the Deed Poll) pay all stamp duty payable in connection with the transfer of the Scheme Shares to the Boardriders Sub(s).

### 9.2 Definition of 'sending'

For the purposes of clause 5 the expression 'sending' means, in relation to each Scheme Shareholder:

- (a) sending by ordinary pre-paid post or courier to the Registered Address of that Scheme Shareholder as at the Scheme Record Date; or
- (b) delivery to the Registered Address of that Scheme Shareholder as at the Scheme Record Date by any other means at no cost to the recipient.

### 9.3 Notices

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this scheme is sent by post to Billabong, 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 the place where Billabong's Share Registry is kept.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such a notice by any Billabong Shareholder may not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

### 9.4 Governing law and jurisdiction

This scheme is governed by the laws of New South Wales. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there.

**9.5 Further assurances**

Billabong must do all things necessary or desirable (including executing agreements and documents) to give full effect to this scheme and the transactions contemplated by it.

**Annexure B – Deed Poll****Date****Deed Poll** by

1. **Boardriders, Inc.** of 5600 Argosy Avenue, Building 100, Huntington Beach, California 92649, United States of America (**Boardriders**).

**in favour of** the **Scheme Shareholders**.

**Recitals**

- |   |   |
|---|---|
| A | On [ ] January 2018, Boardriders and Billabong entered into the Scheme Implementation Deed to provide for the implementation of the Scheme.                         |
| B | The effect of the Scheme will be to transfer all Scheme Shares to the Boardriders Sub(s) (as applicable) in return for the Scheme Consideration.                    |
| C | Boardriders enters this deed poll to covenant in favour of Scheme Shareholders to pay or procure payment of the Scheme Consideration in accordance with the Scheme. |

**It is declared** as follows.

**1 Definitions and interpretation****1.1 Definitions**

The following definitions apply unless the context requires otherwise.

**Scheme Implementation Deed** means the scheme implementation deed dated [ ] January 2018 between Boardriders and Billabong.

**Trustee** means Billabong as trustee for the Scheme Shareholders.

**1.2 Terms defined in Scheme Implementation Deed**

Words defined in the Scheme Implementation Deed and not in this deed poll have the same meaning in this deed poll as in the Scheme Implementation Deed unless the context requires otherwise.

**1.3 Incorporation by reference**

The provisions of clauses 1.2, 1.3 and 1.4 of the Scheme Implementation Deed form part of this deed poll as if set out at length in this deed poll but with 'deed poll' substituted for 'deed' and with any reference to 'party' being taken to include the Scheme Shareholders and not include Billabong.

**1.4 Nature of this deed poll**

Boardriders acknowledges that this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not a party to it.

## 2 Conditions

### 2.1 Conditions

Boardriders' obligations under clause 3 are subject to all conditions precedent to the Scheme being satisfied or waived.

### 2.2 Termination

Boardriders' obligations under this deed poll will automatically terminate and this deed poll will be of no further force or effect if:

- (a) the Scheme Implementation Deed is terminated in accordance with its terms; or
- (b) the Scheme is not Effective by the End Date,

unless Billabong and Boardriders otherwise agree.

### 2.3 Consequences of termination

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

- (a) Boardriders is released from its obligations to further perform this deed poll; and
- (b) Scheme Shareholders retain the rights they have against Boardriders in respect of any breach of this deed poll which occurred before it terminated.

## 3 Scheme Consideration

- (a) Subject to clause 2, Boardriders undertakes in favour of each Scheme Shareholder to procure the provision of the Scheme Consideration to each Scheme Shareholder in accordance with the terms of the Scheme.
- (b) The obligation of Boardriders to procure the provision of the Scheme Consideration under paragraph (a) will be satisfied if, on or before 12 noon on the Implementation Date, Boardriders does those things contemplated of it under clause 5.3(a) of the Scheme.

## 4 Warranties

Boardriders represents and warrants to each Scheme Shareholder that:

- (a) **(status)** it is a corporation duly incorporated and validly existing under the laws of the place of its incorporation;
- (b) **(power)** it has the power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) **(corporate authorisations)** it has taken all necessary corporate action to authorise the entry into and performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) **(documents binding)** this deed poll is its valid and binding obligation enforceable in accordance with its terms;
- (e) **(transactions permitted)** the execution and performance by it of this deed poll and each transaction contemplated by this deed poll did not and will not violate in any respect a provision of:
  - (i) a law or treaty or a judgment, ruling, order or decree of a Government Agency binding on it; or
  - (ii) its constitution or other constituent documents; and

- (f) **(solvency)** it is solvent and no resolutions have been passed nor has any other step been taken or legal action or proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets.

## 5 Continuing Obligations

This deed poll is irrevocable and, subject to clause 2, remains in full force and effect until Boardriders has fully performed its obligations under it.

## 6 Notices

Any notice, demand or other communication (a **Notice**) to Boardriders in respect of this deed poll:

- (a) must be in writing and signed by the sender or a person duly authorised by it;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or email to the address or email address below:

Address: 5600 Argosy Avenue, Building 100, Huntington Beach, California  
92649, United States of America

Email: llene.Eskenazi@boardriders.com

Attention: llene Eskenazi

- (c) will be conclusively taken to be duly given or made:
- (i) in the case of delivery in person, when delivered;
- (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
- (iii) in the case of delivery by email, the earlier of:
- (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
- (B) the time that the email is first opened or read by the intended recipient, or an employee or officer of the intended recipient; and
- (C) two hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, during that two hour period, an automated message that the email has not been delivered,

but if the result is that a Notice would be taken to be given or made:

- (iv) on a day that is not a business day in the place to which the Notice is sent or is later than 5pm (local time) it will be taken to have been duly given or made at the start of business on the next business day in that place; or
- (v) before 9am (local time) on a business day in the place to which the Notice is sent, then it will be taken to have been duly given or made at 9am (local time) on that business day in that place.



## **7 General Provisions**

### **7.1 Amendment**

This deed poll may be amended only by another deed poll entered into by Boardriders and then only if the amendment is agreed to by Billabong in writing and the Court indicates that the amendment would not itself preclude approval of the Scheme.

### **7.2 Assignment**

The rights of each Scheme Shareholder under this deed poll are personal and cannot be assigned, charged, encumbered or otherwise dealt with at law or in equity without the prior written consent of Boardriders.

### **7.3 Cumulative rights**

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

### **7.4 Governing law and jurisdiction**

This deed poll is governed by the laws of New South Wales. In relation to it and related non-contractual matters Boardriders irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

### **7.5 Further assurances**

Boardriders must do anything necessary (including executing agreements and documents) to give full effect to this deed and the transactions contemplated by it.

### **7.6 No waiver**

If a Scheme Shareholder does not exercise a right arising from a breach of this deed poll at a given time, it may, unless it has waived that right in writing, exercise the right at a later point in time.

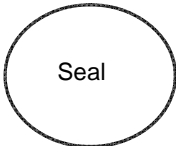
### **7.7 Stamp duty**

Boardriders must:

- (a) pay or procure the payment of all stamp duty (including fines, penalties and interest) in respect of the Scheme and this deed poll, the Scheme Implementation Deed, the performance of this deed poll, the Scheme Implementation Deed and each transaction effected by or made under the Scheme, this deed poll and the Scheme Implementation Deed; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 7.7(a).

**Executed and delivered as a deed poll**

**Signed Sealed and Delivered** by Boardriders, Inc. in the presence of:



\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Name of Authorised Signatory

## **Annexure C – Competition Approvals**

1. Australia
2. United States of America
3. Japan
4. Austria
5. Germany
6. South Africa

**Annexure D – Timetable**

<b>Event</b>	<b>Date for completion of the step</b>
Announcement and signing of this deed	5 January 2018
Boardriders submits FIRB application	Mid January 2018
Boardriders submits all applications/ notifications in respect of Competition Approvals	Mid January 2018
Billabong submits draft Scheme Booklet to ASIC	Mid January 2018
Boardriders to execute Deed Poll	Prior to the First Court hearing
First Court hearing	Early February 2018
Billabong sends Scheme Booklet to Billabong Shareholders	Mid February 2018
Deadline for receipt of proxy forms for Scheme Meeting	Mid March 2018
Time and date for determining eligibility to vote at Scheme Meeting	Mid March 2018
Scheme Meeting	Mid to late March 2018
Second Court hearing	Early April 2018
Effective Date	Early April 2018
Scheme Record Date	Early to mid April 2018
Implementation Date	Mid April 2018

**Annexure E – Option cancellation deed**