



**ASX and Media Release – 21 February 2019**

## **Gazal Board unanimously recommends 100% acquisition proposal by PVH Corp.**

Gazal Corporation Limited (“Gazal”) today announces that it has entered into a Scheme Implementation Agreement (“SIA”) with Sunshine B Pty Ltd (“PVH Bidco”), an indirect wholly owned subsidiary of PVH Corp. (“PVH”), pursuant to which PVH Bidco proposes to acquire by way of a scheme of arrangement all of the Gazal shares PVH does not already own for A\$6.00 cash per share (“PVH Proposal”). In addition, Gazal expects to pay a dividend of approximately A\$0.17 per share<sup>1</sup> on or before implementation of the scheme of arrangement. PVH, a New York Stock Exchange-listed company, is one of the world’s largest apparel companies and owns iconic American brands, including *CALVIN KLEIN*, *TOMMY HILFINGER*, *Van Heusen*, *ARROW* and *IZOD*. PVH currently indirectly owns approximately 21% of Gazal’s outstanding shares, through a subsidiary PVH Services (UK) Limited.

The offer price of A\$6.00 per share represents a 39.2% premium to Gazal’s closing share price of A\$4.31 on 20 February 2019, a 48.3% premium to Gazal’s volume-weighted average price of A\$4.05 for the 3 months to 20 February 2019, and a 39.2% premium to Gazal’s volume weighted average price of A\$4.31 for the period since 18 January 2019 when Gazal released EBITDA guidance for the year ended 2 February 2019.

Gazal Executive Chairman, Michael Gazal, said: “The Board of Gazal is pleased to announce the PVH Proposal to Gazal shareholders. Over recent years, Gazal has undergone a major transformation and our strategy to increase focus on PVH Brands Australia, Gazal’s joint venture with PVH, has delivered strong results and increased shareholder value. The PVH Proposal reflects the strength of the Gazal business and offers shareholders a compelling liquidity event.”

Gazal independent non-executive director, Graham Paton, said: “This is an attractive proposal which would deliver a significant premium to Gazal’s current and historical share prices. Gazal has enhanced the market position of PVH’s flagship brands in Australia, including *CALVIN KLEIN* and *TOMMY HILFINGER*, and laid a strong platform for the future growth of the business. PVH is the natural long-term owner of the business and the strength of the PVH Proposal reflects the aptitude and commitment of the Gazal management team.”

### **Conditions of the PVH Proposal**

The PVH Proposal is subject to customary conditions, including: approvals by the requisite majority of Gazal shareholders and the Court, no material adverse change, no prescribed occurrence or material

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<sup>1</sup> Gazal’s final FY18 dividend will be confirmed after the finalisation of its audited financial statements for the year ended 2 February 2019

**Gazal Corporation Limited ABN 57 004 623 474**

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breach of warranty, as well as approval from Australia's Foreign Investment Review Board. The SIA includes terms and conditions customary for a scheme of arrangement in Australia, including exclusivity arrangements and provisions for payment of a break fee of A\$2.7 million in certain circumstances.

The PVH Proposal is also conditional on certain key executives of Gazal and PVH Brands Australia maintaining ongoing equity interests for a two year period following implementation of the PVH Proposal. Accordingly, Michael Gazal (Executive Chairman), Patrick Robinson (Managing Director and Chief Executive Officer) and two other senior management executives (collectively the "Key Management Shareholders") are required to reinvest approximately 25% of their economic interests in Gazal<sup>2</sup> to take up a small shareholding of approximately 6.4% (in aggregate) in the immediate holding company of PVH Bidco, and enter into new employment agreements. The Key Management Shareholders have each informed Gazal that it is their present intention to enter into these arrangements if shareholders approve the PVH Proposal and subject to all other necessary approvals being obtained. Further details will be provided in the scheme booklet which will be sent to shareholders in April 2019.

Should the PVH Proposal receive all necessary approvals and proceed to implementation, Gazal will divest its Banksmeadow property pursuant to a sale and lease-back arrangement with a large Australian industrial real estate fund.

Details of the conditions to the PVH Proposal and other agreed terms are set out in the SIA, a copy of which is attached to this announcement.

### **Independent Expert**

Deloitte Corporate Finance Pty Ltd has been appointed as independent expert to prepare a report opining on whether the PVH Proposal is in the best interests of Gazal shareholders. The independent expert's report will be included in the scheme booklet to be sent to Gazal shareholders.

### **Board Recommendation**

Each of the independent non-executive directors and each of the executive directors of Gazal recommends that Gazal shareholders vote in favour of the PVH Proposal, in the absence of a 'superior proposal'<sup>3</sup> and subject to the independent expert concluding that the PVH Proposal is in the best interests of Gazal shareholders. Subject to these same qualifications, each of Gazal's directors intends to vote all Gazal shares that they hold or control in favour of the PVH Proposal.

### **Timetable**

Gazal shareholders do not need to take any action at the present time.

Gazal shareholders will receive a scheme booklet in relation to the PVH Proposal in April 2019. This will include a more detailed explanation of the PVH Proposal, including the reasons for the unanimous recommendation by Gazal's directors, along with a copy of the independent expert's report. A meeting of Gazal shareholders is anticipated for May 2019 to consider the PVH Proposal, with implementation to occur in May/June 2019. These dates are indicative and subject to change.

Gazal will keep the market informed in accordance with its continuous disclosure obligations.

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<sup>2</sup> Economic interests include direct and indirect interests in shares and performance rights

<sup>3</sup> 'Superior proposal' is defined in the SIA

## **Advisers**

Gazal is being advised by Grant Samuel Corporate Finance as financial adviser and Johnson Winter & Slattery as legal adviser.

## **Further Information**

For media and investor related queries please contact Tim Allerton at City Public Relations on 0412 715 707.

## **About Gazal**

Based in Sydney and listed on the ASX, Gazal is a leading apparel supplier and retailer in Australasia. The Company jointly owns and manages PVH Brands Australia Pty Limited, a joint venture company ("the JV") with PVH Corp. (NYSE: PVH) one of the largest branded lifestyle apparel companies in the world. The JV licenses and operates PVH's iconic lifestyle apparel brands led by *CALVIN KLEIN* and *TOMMY HILFINGER* as well as other licensed and JV owned brand names such as *Van Heusen*, *Pierre Cardin*, *Bracks* and *Nancy Ganz*.

## **About PVH**

With a history going back over 135 years, PVH has excelled at growing brands and businesses with rich American heritages, becoming one of the largest apparel companies in the world. We have over 36,000 associates operating in over 40 countries and nearly \$9 billion in annual revenues. PVH owns the iconic *CALVIN KLEIN*, *TOMMY HILFINGER*, *Van Heusen*, *IZOD*, *Arrow*, *Speedo\**, *Warner's*, *Olga* and *Geoffrey Beene* brands, as well as the digital-centric *True & Co.* intimates brand, and markets a variety of goods under these and other nationally and internationally known owned and licensed brands.

\*The *Speedo* brand is licensed for North America and the Caribbean in perpetuity from Speedo International Limited.

**Gazal Corporation Limited**

**Sunshine B Pty Ltd**

# **Scheme Implementation Agreement**

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## Scheme Implementation Agreement

Date 21 February 2019

### Parties

- 1 **Gazal Corporation Limited** (ABN 57 004 623 474) (**Target**)  
Address: 3-7 McPherson Street, Banksmeadow NSW 2019  
Email: peter.wood@gazal.com.au (with a copy to damian.reichel@jws.com.au)  
Contact: Peter Wood
- 2 **Sunshine B Pty Ltd** (ACN 631 685 553) (**Bidder**)  
Address: c/o Clifford Chance, Level 16, 1 O'Connell Street, Sydney 2000  
Email: markfischer@pvh.com (with a copy to andrew.crook@cliffordchance.com)  
Contact: Mark D. Fischer

### Recitals

- A The Target and the Bidder have agreed that the Target will propose a scheme of arrangement under Part 5.1 of the Corporations Act between the Target and its shareholders, pursuant to which the Bidder will acquire all of the ordinary shares in the Target not already held by or on behalf of the Bidder Group.
- B The Target and the Bidder have agreed to implement the Scheme upon and subject to the terms and conditions of this document.
- C The Target and the Bidder have agreed certain other matters in connection with the Scheme as set out in this document.

### Operative part

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#### 1 Definitions and interpretation

##### 1.1 Definitions

The following definitions apply in this document, unless the context requires otherwise.

**Agreed Announcements** means the public announcement to be issued by the Target (**Target Agreed Announcement**) and the public announcement to be released by the Bidder Group (**Bidder Agreed Announcement**), each in the form agreed by the parties.

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

**ASIC Review Period** means the period from the date on which a draft of the Scheme Booklet is submitted by the Target to ASIC to the date on which ASIC confirms that it has no objection to the form of the Scheme Booklet.

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

**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.

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



**Banksmeadow Sale Contract** means the document titled 'Contract for the sale and purchase of land 2018 edition' in relation to 3-7 McPherson Street, Banksmeadow (Lot 11 DP 776766) signed by Gazal Apparel Pty. Limited on or about the date of this document.

**Bidder Deal Team** means the following Representatives of the Bidder:

- (a) Emanuel Chirico;
- (b) Michael Shaffer;
- (c) Dana Perlman;
- (d) Mark Fischer; and
- (e) Lina Yoo.

**Bidder Group** means the Bidder and its Related Bodies Corporate, not including the JV Group.

**Bidder Indemnified Party** means each member of the Bidder Group and their respective Representatives.

**Bidder Parent** means Sunshine A Pty Ltd (ACN 631 684 770).

**Bidder Parent Employment Agreement** means, in respect of each Key Manager, a new employment agreement with the Target or JVCo (as applicable), substantially in the form agreed by the Bidder and the Target on or about the date of this document (and initialled by or on behalf of the parties for identification purposes only).

**Bidder Parent Share** means a fully paid ordinary share in the Bidder Parent.

**Bidder Scheme Booklet Information** means all information in the Scheme Booklet (or in any update to the Scheme Booklet released by the Target) regarding any member of the Bidder Group, which has been approved by the Bidder in accordance with clause 4.

**Bidder Warranty** means each representation and warranty set out in clause 7.2.

**Board** means, in respect of a body corporate, the board of directors of that body corporate in place from time to time.

**Break Fee** means \$2,700,000.

**Business Day** has the meaning given in the ASX Listing Rules.

**Change of Control Contracts** means those contracts so identified in the Disclosure Letter.

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

- (a) any person or persons (other than a member of the Bidder Group) would, 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 Target 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, 19.9% or more of the Target Shares; or

- (iii) acquire control of the Target within the meaning of section 50AA of the Corporations Act or otherwise acquire or merge with the Target, 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) the Target would be required to not proceed with the Scheme or as a result of which the Scheme otherwise would not proceed,

but does not include any transaction or arrangement outlined in the Banksmeadow Sale Contract or any proposal, offer or expression of interest (not amounting to a binding agreement or arrangement) relating to the potential sale and lease-back of the Target Group's premises at Banksmeadow, Sydney.

**Confidentiality Agreement** means the Confidentiality Agreement dated 11 September 2018 between PVH Corp. and the Target.

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

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

**Court** means the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act as agreed by the Target and the Bidder in writing.

**Data Room** means the online Ansarada data room for 'Project Sunshine' at <https://dataroom.ansarada.com/Pro-Sunshine>, containing information relating to the Target Group as at 5:00pm on the day prior to the date of this document.

**Deed Poll** means a deed poll substantially in the form of Annexure 2 (or in such other form as is agreed in writing between the Target and the Bidder).

**Disclosure Letter** means the letter entitled "Disclosure Letter" given by the Target to the Bidder prior to the date of this document and signed by the authorised officers of the Target and the Bidder.

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

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

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

**End Date** means six months after the date of this document or such other date as the Target and the Bidder agree in writing.

**Equity Commitment Deed Poll** means the signed equity commitment deed poll provided to the Bidder and the Target on the date of this document.

**Excluded Shareholder** means:

- (a) any member of the Bidder Group that holds Target Shares; and
- (b) any other person to the extent they hold Target Shares on behalf of, or for the benefit of, any member of the Bidder Group,

which for the avoidance of doubt, as at the date of this document, includes PVH Services (UK) Limited.

**Exclusivity Period** means the period commencing on the date of this document and ending on the earlier of:

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

**Existing Debt Facilities** means existing debt facilities with Westpac in relation to the Target Group.

**Extended Target Group** means the Target and its Related Bodies Corporate, and the JV Group.

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

**First Court Date** means the first day on which the application made to the Court for orders under section 411(1) of the Corporations Act convening the Scheme Meeting is, or is to be, heard or, if the application is adjourned for any reason, the first day on which the adjourned application is heard.

**FY19** means the financial year ended 1 February 2020.

**FY20** means the financial year ended 30 January 2021.

**General Target Shareholders** means the Target Shareholders other than the Key Management Shareholders and the Excluded Shareholders.

**Governmental Agency** means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity in any jurisdiction. It includes ASIC, ASX (and any other stock exchange) and the Takeovers Panel and any self-regulatory organisation established under statute.

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

**Implementation** means the implementation of the Scheme in accordance with its terms following it becoming Effective.

**Implementation Date** means the fifth Business Day following the Record Date, or such other date agreed by the Target and Bidder in writing.

**Independent Expert** means such person as the Target appoints to prepare the Independent Expert's Report in accordance with clause 4.1(b).

**Independent Expert's Report** means a report that accompanies the Scheme Booklet by the Independent Expert stating whether or not in its opinion the Scheme is fair and reasonable to, and in the best interests of, the Target Shareholders, and setting out reasons for those opinions, and includes any update or supplement to that report.

**Insolvency Event** means, for a person:

- (a) being in liquidation or provisional liquidation or administration;
- (b) having a controller or analogous person appointed to it or any of its property,

- (c) an application being made to a court to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property (or such an application being granted);
- (d) the holder of an Encumbrance, or any agent on its behalf, appointing a controller or taking possession of any of the person's property;
- (e) an application being made to a court for an order for its winding up (or such an order being made);
- (f) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (g) being unable to pay its debts when they fall due or otherwise insolvent;
- (h) becoming an insolvent under administration, or entering into a compromise or arrangement with, or assignment for the benefit of, any of its creditors; or
- (i) anything analogous to any of the foregoing events any jurisdiction other than Australia.

**JVCo** means PVH Brands Australia Pty Limited (ACN 165 485 290).

**JVCo Performance Right** means a performance right issued by JVCo.

**JV Group** means JVCo and its Subsidiaries.

**Key Management Shareholders** means:

- (a) the Key Managers and their spouses;
- (b) any person directly or indirectly controlled by a Key Manager or their spouse; and
- (c) any other person to the extent they hold Target Shares on behalf of, or for the benefit of, a person in paragraph (a) or (b).

**Key Manager** means each of Michael Gazal, Patrick Robinson, Guy Griffiths and Craig Barnett.

**KMS Scheme Share** means a Scheme Share owned by a Key Management Shareholder.

**Material Contracts** means those contracts so identified in the Disclosure Letter.

**Officer** means, in relation to an entity, any director, company secretary or employee of that entity.

**Permitted Target Dividend** means one dividend payment of an amount per Target Share not exceeding the Permitted Target Dividend Amount, which is paid by the Target to Target Shareholders on or before the Implementation Date, and which may be franked to the extent determined by the Target's Board.

**Permitted Target Dividend Amount** means an amount equal to  $(80\% \times A / B) - C$ , where:

- (a) **A** means the consolidated net profit after tax of the Target and its controlled entities, according to their audited financial accounts for the financial year ended 2 February 2019;
- (b) **B** means the number of Target Shares on issue at the time the Target's Board determines to pay or declares (as applicable) a final dividend in respect of the financial year ended 2 February 2019; and

(c) **C** means \$0.10.

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

**Public Registers** means the following publicly searchable (whether or not on payment of a fee) files and registers to the extent relating to members of the Extended Target Group:

- (a) ASX online announcements released by the Target in the previous three years before the date of this document;
- (b) ASIC and the New Zealand Companies Office online records as at 14 February 2019;
- (c) the High Court and Federal Court in Australia as at 5 December 2018;
- (d) the Supreme Court in Queensland as at 4 December 2018;
- (e) the Supreme Courts in Western Australia, South Australia and Tasmania as at 5 December 2018;
- (f) the Supreme Court in New South Wales as at 7 December 2018;
- (g) the Supreme Court, Court of Appeal and High Court in New Zealand, as at 10 December 2018;
- (h) the Personal Property Securities Registers of Australia or New Zealand as at 14 February 2019;
- (i) IP Australia as at 14 February 2019; and
- (j) Intellectual Property Office of New Zealand as at 14 February 2019.

**Record Date** means 7pm (Sydney time) on the fifth Business Day following the Effective Date or such other date as the Target and the Bidder agree in writing.

**Regulator's Draft** means the draft of the Scheme Booklet provided, or to be provided, to ASIC pursuant to section 411(2) of the Corporations Act.

**Related Body Corporate** has the meaning given in the Corporations Act and for the purpose of applying that definition, and except as otherwise contemplated by this document, JVCo will not be considered to be a Subsidiary of either the Target or the Bidder Parent (or the Bidder).

**Relevant Governmental Agency** has the meaning in clause 2.5(a) but excludes the Court.

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

**Relevant Number** in respect of:

- (a) Michael Gazal, means 4,504,464;
- (b) Patrick Robinson, means 253,460;
- (c) Guy Griffiths, means 103,850; and
- (d) Craig Barnett, means 81,751.

**Representative** means, in relation to a party:

- (a) a Related Body Corporate of the party; or
- (b) an Officer of the party or any of the party's Related Bodies Corporate; or

- (c) an adviser, consultant, agent or representative of the party or any adviser, consultant, agent or representative of the party's Related Bodies Corporate,

treating each member of the JV Group as being a Related Body Corporate of the Target.

**Rollover Share** in respect of a Key Management Shareholder means a KMS Scheme Share that the Key Management Shareholder has nominated for transfer to the Bidder pursuant to the Scheme in consideration of the issue of Bidder Parent Shares pursuant to the SSD, as contemplated by clauses 2.1(h) and 4.11.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act to be made between the Target and the Scheme Shareholders substantially in the form of Annexure 1, subject to any alterations or conditions (whether proposed by a party or required by the Court) which are agreed in writing by the Target and the Bidder.

**Scheme Booklet** means the explanatory statement to be approved by the Court and despatched by the Target to Target Shareholders, and which includes, amongst other things, the Scheme and an explanatory statement under section 412 of the Corporations Act.

**Scheme Consideration** means the consideration to be provided or procured by the Bidder to Scheme Shareholders in consideration for the transfer of the Scheme Shares held by Scheme Shareholders to the Bidder as follows:

- (a) in the case of General Target Shareholders: \$6.00 per Scheme Share; and
- (b) in the case of each Key Management Shareholder:
  - (i) \$6.00 per Scheme Share for the Key Management Shareholder's KMS Scheme Shares which are not Rollover Shares; and
  - (ii) Bidder Parent Shares equal to the number of KMS Scheme Shares (if any) that the Key Management Shareholder has nominated as Rollover Shares.

**Scheme Meeting** means the meeting(s) of the Target Shareholders (or any class of them) to be ordered by the Court to be convened pursuant to section 411(1) of the Corporations Act in respect of the Scheme.

**Scheme Share** means a Target Share on issue and not held by an Excluded Shareholder as at the Record Date.

**Scheme Shareholder** means a Target Shareholder as at the Record Date other than an Excluded Shareholder.

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

**SSD** means a Subscription and Shareholders Deed, substantially in the form agreed by the Target and the Bidder on or about the date of this document (and initialled by or on behalf of their authorised officers for identification purposes only), which may be entered into by the Bidder Parent, PVH Services (UK) Limited, one or more Key Management Shareholders and one or more Key Managers, as contemplated by clauses 2.1(h) and 4.11.

**Standard Tax Condition** means any tax-related conditions which are in the form, or substantially in the form, of those set out in Attachment B of FIRB's Guidance Note 47 *Tax Guidance* (in the form released on 13 August 2018).

**Subject Information** has the meaning given in clause 9.5(c).

**Subsidiary** has the meaning given in the Corporations Act and except as otherwise contemplated by this document, JVCo will not be considered to be a Subsidiary of either the Target or the Bidder Parent (or the Bidder).

**Superior Proposal** means a bona fide Competing Proposal in respect of the Target received by the Target after the date of this document from a third party who is not an Associate of the Extended Target Group, which the Board of the Target determines, acting in good faith and in order to satisfy their fiduciary or statutory duties (and after consulting with the Target's financial advisers and having taken written advice from the Target's legal advisers and having taken into account any factors considered relevant):

- (a) is capable of being valued and consummated in a timely manner; and
- (b) would, if consummated substantially in accordance with its terms, result in a transaction more favourable to the Target Shareholders than the Scheme,

taking into account all terms and conditions of the Competing Proposal including any timing considerations, conditions precedent and the identity, financial standing and reputation of the proponent.

**Target Deal Team** means the following Representatives of the Target:

- (a) Michael Gazal;
- (b) Patrick Robinson;
- (c) Craig Barnett;
- (d) Guy Griffiths; and
- (e) Peter Wood.

**Target Due Diligence Information** means all information relating to the Scheme or the Extended Target Group:

- (a) provided to the Bidder Group and its Representatives in writing before the date of this document, including information provided prior to the date referred to in paragraph (d) of the definition of "Confidential Information" in the Confidentiality Agreement, in each case as contained in the Data Room; or
- (b) that is contained in the Public Registers.

**Target Group** means the Target and its Related Bodies Corporate, not including the JV Group.

**Target Indemnified Party** means each member of the Extended Target Group and their respective Representatives.

**Target Independent Directors** means the directors of the Target who are not Key Managers.

**Target Material Adverse Change** means any event, change or circumstance which has occurred on or after the date of this document that, individually or in the aggregate with other such events, changes or circumstances of a similar kind or category, has or would, with the lapse of time, be reasonably likely to result in:

- (a) a diminution in the consolidated net tangible assets of the Target Group (determined in accordance with clause 1.3) by at least \$11,400,000;

- (b) a diminution in the consolidated annual earnings before interest, tax, depreciation and amortisation of the Target Group (determined in accordance with clause 1.3) for FY19 or FY20 (or both) of at least \$3,700,000,

except any such event, change or circumstance:

- (c) resulting from or arising in connection with:
  - (i) any disruption to the financial markets or economic conditions of any relevant jurisdiction including but not limited to Australia, New Zealand, the United States of America, Europe and China;
  - (ii) any change in applicable accounting standards, principles or standard interpretations that are required to be implemented by applicable law or regulation;
  - (iii) any adoption, implementation or change in applicable law or policy, or any interpretation of applicable law or policy, by any Governmental Agency (including in relation to any Tax) that has been publicly announced by that Governmental Agency;
  - (iv) any change in global, national or regional political conditions (including the outbreak of war or acts of terrorism); or
  - (v) any climatic or other natural event or condition (including any weather conditions and any natural disaster) or other act of God, war (whether or not declared), terrorism or civil unrest,

in each case, excluding any change, event, circumstance, occurrence or matter which has a materially disproportionate effect on the Target Group compared to other participants in the industries in which the Target Group operates;

- (d) expressly required or permitted by this document or the Scheme (including for the avoidance of doubt, the Permitted Target Dividend);
- (e) relating to the reasonable costs and expenses incurred by the Target associated with this document and the Scheme, including all reasonable fees payable to external advisers of Target in accordance with clause 6.5(j);
- (f) fairly disclosed in the Disclosure Letter;
- (g) to the extent resulting from or arising directly in connection with any act or omission of any member of the Bidder Group; or
- (h) in relation to which any member of the Bidder Group has consented in writing, such consent not to be unreasonably withheld.

**Target Performance Right** means a performance right issued by the Target and for the avoidance of doubt does not include a JVCo Performance Right.

**Target Prescribed Event** means any of the following:

- (a) the Target converts all or any of its shares into a larger or smaller number of shares;
- (b) any member of the Extended Target Group resolves to reduce its share capital in any way or reclassifies, splits, combines, redeems, repurchases or buys back (or enters into a buy-back agreement or resolves to enter into a buy-back agreement) directly or indirectly any of its shares;



- (c) the Target declares any dividend or pays, makes or incurs any liability to pay any distribution whether by way of dividend, capital distribution, bonus or other share of its profits or assets to its members, other than the Permitted Target Dividend;
- (d) any member of the Extended Target Group issues shares, or grants an option over its shares, or agrees to make such an issue or grant such an option other than in accordance with the terms of any Target Performance Right;
- (e) any member of the Extended Target Group issues, or agrees to issue, securities convertible into shares or debt securities or enters into any new debt facility, or amends or extends the terms of any existing debt facility;
- (f) the constitution of the Target or any other member of the Extended Target Group is amended, repealed or replaced;
- (g) any member of the Extended Target Group disposes, or agrees to dispose, of the whole or a substantial part of the Extended Target Group's business or property;
- (h) any member of the Extended Target Group creates, or agrees to create, any Encumbrance over the whole or a substantial part of its business or property other than an Encumbrance arising by operation of law or legislation securing that obligation; or
- (i) an Insolvency Event occurs in relation to the Target or any member of the Extended Target Group,

provided that a Target Prescribed Event shall not include any event, change or circumstance:

- (j) permitted or required by this document or the Scheme;
- (k) fairly disclosed in the Disclosure Letter; or
- (l) in relation to which any member of the Bidder Group has consented in writing, not to be unreasonably withheld.

**Target Register** means the register of members of the Target.

**Target Scheme Booklet Information** means information included in the Scheme Booklet (or in any update or supplement to the Scheme Booklet released by the Target) other than:

- (a) the Bidder Scheme Booklet Information; and
- (b) the Independent Expert's Report.

**Target Share** means a fully paid ordinary share in the Target.

**Target Shareholder** means a person who is recorded in the Target Register as the holder of the Target Shares at the time of the relevant inquiry or as at the referenced date.

**Target Warranty** means each representation and warranty set out in clause 7.1.

**Tax** means any tax, levy, impost, charge, duty (including stamp and transaction duties) or similar liability paid, payable or assessed as being payable by any Governmental Agency together with any fines, penalties and interest in connection with them.

**Timetable** means the indicative timetable agreed between the Target and the Bidder in writing for the purpose of this definition, subject to any modifications as the Target and Bidder may agree in writing.

**Transaction** means the acquisition of the Scheme Shares by the Bidder through implementation of the Scheme in accordance with the terms of this document.

**Unsolicited Competing Proposal** means any bona fide approach by a third party of sufficient financial standing and reputation in respect of a Competing Proposal not solicited in breach of this document.

**Warranty Claim** means any claim arising out of a breach of a Target Warranty or Bidder Warranty (as applicable).

## 1.2 *Interpretation*

In this document, the following rules of interpretation apply unless a contrary intention appears.

- (a) Any heading, index, table of contents or marginal note is for convenience only and does not affect the interpretation of this document.
- (b) The singular includes the plural and vice versa.
- (c) A person includes an individual, body corporate, firm, partnership, joint venture, unincorporated body and Governmental Agency.
- (d) A reference to:
  - (i) a person includes that person's successors, heirs, executors, permitted substitutes and permitted assigns;
  - (ii) a clause, schedule, attachment, annexure or exhibit is to a clause of, or a schedule, attachment, annexure or exhibit to, this document;
  - (iii) this document or another document includes that document as amended, varied, supplemented, novated or replaced from time to time and any schedule, attachment, annexure or exhibit to that document;
  - (iv) "agreement" includes an undertaking, deed, contract or other legally enforceable arrangement, whether or not in writing, and a reference to "document" includes an agreement (as so defined) in writing or any certificate, notice, instrument or other document of any kind;
  - (v) legislation or a provision of legislation includes all regulations, orders or instruments issued under that legislation or provision and any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision;
  - (vi) "include", "including" and "for example", and similar expressions, when introducing a list of items, does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
  - (vii) dollars or \$ is to Australian dollars;
  - (viii) time is to the time in Sydney, New South Wales; and
  - (ix) "fairly disclosed" in relation to a matter is to such matter being disclosed in sufficient detail to enable a reasonable person experienced in the industry in which the Extended Target Group operates or transactions similar to the Scheme to identify the nature and scope of the relevant matter.
- (e) Where a word or expression is defined or given meaning, another grammatical form has a corresponding meaning.

- (f) A provision of this document must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this document or the inclusion of the provision in this document.
- (g) Where an act would be required to be done (including the payment of any money), or a time limit or period would expire, on a day that is not a Business Day, the act must be done or the limit or period will expire, on the following Business Day.
- (h) A period of time expressed to commence:
  - (i) before or after a given day, or before or after the day of an act or event, is to be calculated exclusive of that day; and
  - (ii) on a given day, or on the day of an act or event, is to be calculated inclusive of that day.

### **1.3 Accounting matters**

For the purpose of the definition of 'Target Material Adverse Change' in clause 1.1, in determining whether there is a diminution in either the consolidated net tangible assets of the Target Group or the consolidated annual earnings before interest, tax, depreciation and amortisation of the Target Group:

- (a) (for the avoidance of doubt) take the Target Group's 50% share in the JV Group into account, including 50% of the JV Group's earnings before interest, taxes, depreciation and amortisation;
- (b) do not include any diminution in the value of the Target Group's 50% share in the JV Group (accounted for using the equity method) to the extent that such diminution results solely from an impairment in relation to the JV Group which has been agreed by the Board of a member of the JV Group (with the nominees of the Bidder Group voting in favour);
- (c) allow for the positive impact of any event, change or circumstance that occurs after the date of this document that had not been budgeted for by the Target or JVCo as at the date of this document, and individually or in the aggregate with other such events, changes or circumstances of a similar kind or category, has or would, with the lapse of time, be reasonably likely to result in a positive effect on the relevant measure;
- (d) apply the accounting policies and practices applied by the Target as at 28 September 2018.

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## **2 Conditions precedent**

### **2.1 Conditions precedent**

Subject to this clause 2, the obligations of the parties to proceed to Implementation of the Scheme do not become binding, and the Scheme will not become Effective, unless each of the following conditions precedent is satisfied or is waived in accordance with clause 2.2:

#### **Conditions precedent for the benefit of all parties**

- (a) **(Shareholder approval of Scheme)** before 8am on the Second Court Date, the Target Shareholders approve the Scheme by the requisite majorities under section 411(4)(a)(ii) of the Corporations Act;

- (b) **(Court approval)** the Court makes orders under section 411(4)(b) of the Corporations Act approving the Scheme on the Second Court Date;
- (c) **(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 the FATA to the Transaction, and that notice is not subject to any conditions or is subject only to any Standard Tax Condition and/or any conditions that the Bidder considers to be acceptable (acting reasonably); or
  - (ii) becomes precluded by passage of time from making any order or decision under Division 2 of Part 3 of the FATA in respect of the Transaction;
- (d) **(ASIC and ASX)** before 8am on the Second Court Date, ASIC and ASX issue or provide all reliefs, waivers, confirmations, exemptions, consents or approvals, and have done all other acts, necessary, or which the Target and the Bidder agree are desirable, to implement the Scheme or any other matter expressly permitted by, or specified in, this document; and such reliefs, waivers, confirmations, exemptions, consents, approvals or other acts (as the case may be) have not been withdrawn, suspended or revoked at 8am on the Second Court Date;
- (e) **(No restraints)** no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition issued by any court of competent jurisdiction or Governmental Agency preventing the Scheme is in effect as at 8am on the Second Court Date;

#### Conditions precedent for the benefit of the Target

- (f) **(Independent Expert)** the Independent Expert's Report concludes that the Scheme is fair and reasonable to, and in the best interests of, the Target Shareholders on or before the date the Scheme Booklet is lodged with ASIC, and the Independent Expert does not withdraw that conclusion or otherwise subsequently determines that the Scheme is not in the best interests of Target Shareholders before 8am on the Second Court Date;
- (g) **(Bidder Warranties)** the representations and warranties of the Bidder set out in clause 7.2 of this document are true and correct in all material respects as at the dates at which they are expressed to be given;

#### Conditions precedent for the benefit of the Bidder

- (h) **(Key Management Shareholders' entry into SSD)** by 5pm on the Business Day before the Second Court Date:
  - (i) at least one Key Management Shareholder of each Key Manager respectively signs the SSD and thereby agrees (or in total between them, agree) to subscribe for their Relevant Number of Bidder Parent Shares; and
  - (ii) each Key Manager has signed their respective Bidder Parent Employment Agreements,
 in each case subject to the Scheme becoming Effective;
- (i) **(No Target Prescribed Events)** no Target Prescribed Event occurs between the date of this document and 8am on the Second Court Date;

- (j) **(No Target Material Adverse Change)** no Target Material Adverse Change occurs between the date of this document and 8am on the Second Court Date; and
- (k) **(Target Warranties)** the representations and warranties of the Target set out in clause 7.1 of this document are true and correct in all material respects as at the dates at which they are expressed to be given.

## **2.2 Benefit and waiver of conditions precedent**

- (a) The conditions precedent in clauses 2.1(a) to 2.1(e) are for the benefit of each of the parties. Any breach or non-fulfilment of any of the conditions precedent in clauses 2.1(a) to 2.1(c) cannot be waived. Any breach or non-fulfilment of the condition precedent in clauses 2.1(d) and 2.1(e) may only be waived with the written consent of the Target and the Bidder.
- (b) The conditions precedent in clauses 2.1(f) and 2.1(g) are for the sole benefit of the Target, and any breach or non-fulfilment of any of those conditions precedent may only be waived by the Target giving its written consent.
- (c) The conditions precedent in clauses 2.1(h) to 2.1(k) are for the sole benefit of the Bidder, and any breach or non-fulfilment of any of those conditions precedent may only be waived by the Bidder giving its written consent.
- (d) A party entitled to waive the breach or non-fulfilment of a condition precedent pursuant to this clause 2.2 may do so in its absolute discretion and, subject to the other party agreeing to abide by the conditions, may do so subject to conditions.
- (e) If a party waives the breach or non-fulfilment of a condition precedent in accordance with clause 2.2, that waiver will preclude it from suing the other party for any breach of this document constituted by the same event which gave rise to the breach or non-fulfilment of the condition precedent.
- (f) A waiver of a breach or non-fulfilment in respect of one condition precedent does not constitute:
  - (i) a waiver of breach or non-fulfilment of any other condition precedent resulting from the same events or circumstances; or
  - (ii) a waiver of breach or non-fulfilment of that condition precedent resulting from any other events or circumstances.

## **2.3 Reasonable endeavours and notification**

- (a) Without prejudice to any other obligations of the parties under this document, but subject to the other provisions of this document:
  - (i) each of the parties must use their reasonable endeavours to satisfy, or procure the satisfaction of, the conditions precedent in clauses 2.1(a) to 2.1(f);
  - (ii) the Bidder must use its reasonable endeavours to satisfy, or procure the satisfaction of, the condition precedent in clause 2.1(g);
  - (iii) no party is required to use any endeavours to satisfy, or procure the satisfaction of, the condition precedent in clause 2.1(h);
  - (iv) the Target and (to the extent relating to the JV Group) the Bidder, must use their reasonable endeavours to satisfy, or procure the satisfaction of, the conditions precedent in clauses 2.1(i) to 2.1(k),

in each case to the extent within their reasonable power as soon as practicable after the date of this document (and procure that each such condition precedent continues to be satisfied), in any event with a view to the Effective Date occurring on the date specified in the Timetable.

- (b) The parties must:
- (i) promptly inform each other of a failure to satisfy a condition precedent or any breach of this document, of any circumstance which may result in any of the conditions precedent not being satisfied or capable of being satisfied or which is reasonably likely (in the reasonable opinion of the Target) to result in a material breach of this document;
  - (ii) promptly advise each other in writing of the satisfaction of a condition precedent;
  - (iii) each give the Court on the Second Court Date a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its own knowledge) whether or not all of the conditions precedent in clause 2.1 (other than the condition precedent in clause 2.1(b)) have been satisfied or waived in accordance with this document; and
  - (iv) give each other a draft of the certificate to be provided by it under clause 2.3(b)(iii) by 5pm on the day that is two Business Days prior to the Second Court Date, and must provide to each other on the Second Court Date a copy of the final certificate or other evidence provided to the Court.

## **2.4 Condition precedent not satisfied or waived**

- (a) If:
- (i) any condition precedent has not been fulfilled or waived in accordance with clause 2.2 by the time or date specified in clause 2.1 for satisfaction of the condition precedent; or
  - (ii) there is an act, omission, event, occurrence or circumstance which will prevent a condition precedent from being satisfied by the time or date specified in clause 2.1 for its satisfaction or, if no time or date is specified, by the End Date (and the non-fulfilment of a waivable condition precedent that would otherwise occur has not already been waived in accordance with this document),
- either the Bidder or the Target may serve notice on the other of them and then the Target and the Bidder will consult in good faith with a view to determining whether:
- (iii) the Scheme may proceed by way of alternative means or methods;
  - (iv) to extend the relevant time or date for satisfaction of the condition precedent;
  - (v) to adjourn or change the date of an application to the Court; or
  - (vi) to extend the End Date.
- (b) If the Target and the Bidder are unable to reach agreement under clause 2.4(a) within five Business Days following the delivery of the notice (or any shorter period ending at 5pm on the day before the Second Court Date), either of them may terminate this document by notice in writing to the other, provided that:

- (i) there has been no failure by that party to comply with its obligations under this document, 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; and
- (ii) the relevant condition precedent is for its benefit (whether solely or jointly with another party).

## 2.5 **Communications regarding regulatory approvals**

To the extent permitted by law and each party's respective legal obligations and without limiting clause 2.3:

- (a) as soon as practicable after the date of this document, the parties must cooperate in good faith to develop a plan for communications with Governmental Agencies (other than with respect to the Foreign Investment Review Board) that are required to be approached for the purpose of procuring the satisfaction of any condition precedent (each a **Relevant Governmental Agency**);
- (b) each party must provide any Relevant Governmental Agency with all information reasonably required by the Relevant Governmental Agency in connection with the Scheme;
- (c) each party:
  - (i) subject to the requirements of the Relevant Governmental Agency, shall have the right to be present and make submissions at or in relation to any proposed meeting by the other party or its advisers with a Relevant Governmental Agency in relation to the Scheme (other than with respect to the Foreign Investment Review Board) and except to the extent that such meeting involves the discussion of commercially sensitive information); and
  - (ii) must promptly provide copies to the other parties of any written communication sent to or received from a Relevant Governmental Agency in connection with the Scheme (except to the extent that such written communication contains commercially sensitive information of the party in correspondence with the Relevant Governmental Agency); and
- (d) notwithstanding any other provision of this document, for the purposes of obtaining any approval of a Relevant Governmental Agency, none of the parties is required to agree to any conditions or to provide or to agree to provide any written undertakings to a Relevant Governmental Agency except to the extent that such conditions or undertakings are not reasonably likely to have any material adverse impact on that party or the Scheme.

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## 3 **Scheme**

### 3.1 **Outline of Scheme**

Subject to the terms and conditions of this document, the Target must propose and implement the Scheme, under which, on the Implementation Date, all of the Scheme Shares will be transferred to the Bidder and the Scheme Shareholders will be entitled to receive for each Target Share the Scheme Consideration.

### 3.2 **No amendment to the Scheme without consent**

- (a) Subject to clause 3.2(b), the Target must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme (each a **Scheme Amendment**) without the prior written consent of the Bidder (such consent not to be unreasonably withheld unless in circumstances where it would be reasonably likely to have a material adverse impact on the Scheme, the Bidder Group or any member of the Extended Target Group).
- (b) The Target must use reasonable endeavours to obtain the written consent of the Bidder to any proposed Scheme Amendment. If it would be impracticable to obtain the consent of the Bidder to a Scheme Amendment that is immaterial to the Scheme as a whole, clause 3.2(a) does not apply, but the Target must consult reasonably in good faith with the Bidder's legal counsel prior to consenting to any Scheme Amendment. However, nothing in this clause 3.2 requires the Target to seek an adjournment of the Scheme Meeting or any Court hearing to obtain the consent of the Bidder to, or consult with the Bidder's legal counsel if it would be reasonably impracticable in the circumstances in relation to, a Scheme Amendment that is immaterial to the Scheme as a whole.

### 3.3 **Scheme Consideration**

Subject to the Scheme becoming Effective, the Bidder undertakes to the Target that in consideration of the transfer of each of the Scheme Shares held by Scheme Shareholders to the Bidder under the Scheme, it will accept the transfer and provide or procure the provision of the Scheme Consideration in accordance with the Scheme.

### 3.4 **Entitlement to dividends**

The Target may pay to the Target Shareholders the Permitted Target Dividend prior to the Implementation Date.

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## 4 **Implementation of the Scheme**

### 4.1 **Target's obligations**

The Target must take all necessary or reasonably advisable steps to propose and implement the Scheme as soon as is reasonably practicable and use all reasonable endeavours to do so in accordance with the Timetable, including taking each of the following steps:

- (a) **(Target Agreed Announcement)** make the Target Agreed Announcement in accordance with clause 12.1;
- (b) **(Independent Expert)** provide all assistance and information reasonably requested by the Independent Expert to enable it to finalise the Independent Expert's Report on a timely basis;
- (c) **(preparation of Scheme Booklet)**
  - (i) prepare the Scheme Booklet, to ensure that it complies with the requirements of the Corporations Act, the ASX Listing Rules and all ASIC Regulatory Guides applicable to members' schemes of arrangement under Part 5.1 of the Corporations Act, except in respect of the Bidder Scheme Booklet Information; and
  - (ii) make available to the Bidder the first substantive draft of the Scheme Booklet, all material redrafts of the Scheme Booklet that are provided to



senior management of the Target or the Target Board for their approval or verification and the proposed Regulator's Draft of the Scheme Booklet (including any draft of a report by the Independent Expert but excluding those sections containing the Independent Expert's opinions or conclusions) that the Target proposes to submit to ASIC, in a timely manner allowing the Bidder a reasonable opportunity to review and comment on such drafts (in no event less than 3 Business Days, unless otherwise agreed with the Bidder), and consult with the Bidder in relation to the content of those drafts, and consider in good faith, for the purpose of amending those drafts, comments from the Bidder and its advisers on those drafts received on a timely basis. Nothing in this clause 4.1(c) limits the rights or obligations of the Bidder under clauses 4.2(c) and 4.5 in respect of Bidder Scheme Booklet Information;

- (d) **(lodgement of draft Scheme Booklet with ASIC)** at least 14 days before the First Court Date, provide the Regulator's Draft to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act, and liaise with ASIC during the ASIC Review Period;
- (e) **(ASIC Review Period)** during the ASIC Review Period, keep the Bidder promptly informed of any matters raised by ASIC in relation to the Scheme Booklet (and any resolution of those matters), consult in good faith with the Bidder in relation to the proposed response to ASIC, and use reasonable endeavours, with the co-operation of the Bidder, to resolve any such matters;
- (f) **(ASIC indication of intent)** apply to ASIC for a letter indicating whether it intends to appear before the Court on the First Court Date;
- (g) **(approval of Scheme Booklet)** as soon as practicable after the end of the ASIC Review Period, procure that a meeting of the Board of the Target is convened to approve the Scheme Booklet and also to approve an application to the Court for orders that the Scheme Meeting be convened by the despatch of the Scheme Booklet to the Target Shareholders;
- (h) **(Court direction)** apply to the Court for orders under section 411(1) of the Corporations Act directing the Target to convene the Scheme Meeting;
- (i) **(Court documents)** promptly prepare all documents necessary for the Court proceedings (including any appeals) relating to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) in accordance with all applicable laws, and provide the Bidder with a reasonable opportunity (which in the case of the substantive written submissions to the Court, must be at least 3 Business Days) to review and comment on the settled drafts of those documents which the Target proposes to lodge with the Court and (acting reasonably and in good faith) take into account, for the purpose of amending those drafts, any comments from the Bidder and its Representatives on those drafts;
- (j) **(representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act;
- (k) **(despatch Scheme Booklet)** promptly after, and provided that, the approvals and orders in clauses 4.1(g) and 4.1(h) have been received, request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act and then despatch a copy of

the Scheme Booklet to each Target Shareholder and to all other persons entitled to receive notice of the Scheme Meeting;

- (l) **(update the Scheme Booklet)** if, after the Scheme Booklet has been sent to Target Shareholders, the Target becomes aware of information that is:
  - (i) not included in the Scheme Booklet and is material for disclosure to Target Shareholders in deciding whether to approve the Scheme or required to be disclosed to Target Shareholders under any applicable law; or
  - (ii) misleading or deceptive in a material respect in the form and context in which it appears in the Scheme Booklet,

inform Target Shareholders of the information in an appropriate and timely manner, in accordance with applicable law. The Target must consult in good faith with the Bidder as to the content of any supplementary disclosure before it is made to Target Shareholders, provide the Bidder with a reasonable opportunity to review and comment on such disclosure (at least 3 Business Days where there is new or materially amended Bidder Scheme Booklet Information, unless otherwise agreed with the Bidder) before it is made, and consider in good faith any comments provided by or on behalf of the Bidder;
- (m) **(Scheme Meeting)** convene the Scheme Meeting in accordance with the Court order;
- (n) **(section 411(17)(b) statement)** apply to ASIC for the production of a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (o) **(Court approval)** subject to all conditions precedent in clause 2.1, other than 2.1(b), being satisfied or waived in accordance with this document, apply to the Court for an order approving the Scheme in accordance with section 411(4)(b) and, if applicable, section 411(6) of the Corporations Act;
- (p) **(lodge copy of Court order, etc)** lodge with ASIC an office copy of the order approving the Scheme in accordance with section 411(10) of the Corporations Act as soon as practicable after the Court makes such order, and in any event by no later than 4pm on the first Business Day after the date on which the Court makes the order;
- (q) **(Target Register)** promptly provide to the Bidder a copy of the Target Register and all other information as reasonably requested by the Bidder from time to time in relation to the Scheme, the Target Group or Target Shareholders (including proxy voting information); and
- (r) **(implementation)**
  - (i) use reasonable endeavours to ensure that ASX suspends trading in the Target Shares with effect from the close of trading on the Effective Date;
  - (ii) close the Target Register as at the Record Date to determine who are Scheme Shareholders and their entitlements to the Scheme Consideration as at the Record Date;
  - (iii) subject to the Bidder satisfying its obligations under clause 3.3, execute proper instruments of transfer of, and register all transfers of, the Scheme Shares to the Bidder on the Implementation Date; and

- (iv) promptly do all other things contemplated by or necessary to lawfully give effect to the Scheme and the orders of the Court approving the Scheme and ensure the Scheme is effected in accordance with all applicable laws and regulations;
- (s) **(promotion)** subject to the proper performance by the directors of the Target of their fiduciary and statutory duties and provided that nothing in this paragraph requires the provision by any member of the Extended Target Group or its Representatives of any information in breach of any obligation of confidentiality or any law, during the period from the date of this document to the Implementation Date, the Target will co-operate with the Bidder in its efforts to promote the merits of the Scheme, including, where agreed to be appropriate, the parties acting reasonably:
  - (i) through communications with the Target Shareholders; or
  - (ii) holding meetings between Representatives of the Target and key Target Shareholders at the reasonable request of the Bidder; and
- (t) **(ASX listing)**
  - (i) use its reasonable endeavours to ensure that the Target Shares continue to be quoted on ASX until the close of business on the Implementation Date; and
  - (ii) not request ASX to remove the Target from the official list of ASX until on or after the Implementation Date in accordance with the directions of the Bidder.

## 4.2 **Obligations of Bidder**

Subject to the terms and conditions of this document, the Bidder must take all necessary or reasonably advisable steps to assist the Target to propose and implement the Scheme as soon as is reasonably practicable and use all reasonable endeavours to do so in accordance with the Timetable, including the Bidder taking each of the following steps:

- (a) **(preparation of Scheme Booklet)**
  - (i) provide to the Target such information regarding the Bidder Group as is required to ensure that the Scheme Booklet complies with the requirements of the Corporations Act, the ASX Listing Rules and all ASIC Regulatory Guides applicable to members' schemes of arrangement under Part 5.1 of the Corporations Act;
  - (ii) provide to the Target such assistance as the Target may reasonably request in order to adapt such information for inclusion in the Scheme Booklet;
  - (iii) provide the Target with drafts of the Bidder Scheme Booklet Information in a timely manner and, acting reasonably in good faith and take into account all reasonable comments from the Target and its Representatives on those drafts; and
  - (iv) as soon as practicable after delivery, review drafts of the Scheme Booklet prepared by the Target and provide any comments on those drafts;
- (b) **(Independent Expert information)** provide all assistance and information reasonably requested by the Target or by the Independent Expert in connection with the preparation of the Independent Expert's Report;

- (c) **(confirmation of Bidder Scheme Booklet Information)** as soon as reasonably practicable after receipt from the Target of a proposed Regulator's Draft, either:
  - (i) confirm in writing to the Target that the Bidder Scheme Booklet Information in the form and context in which it appears in the proposed Regulator's Draft is not misleading or deceptive and does not contain any material omission; or
  - (ii) provide the Target with the textual changes required to ensure that the Bidder Scheme Booklet Information in the form and context in which it appears in the proposed Regulator's Draft is not misleading or deceptive and does not contain any material omission;
- (d) **(ASIC Review Period)** provide reasonable assistance to the Target in connection with resolving any matter raised by ASIC regarding the Scheme Booklet or the Scheme during the ASIC Review Period;
- (e) **(approval of Scheme Booklet)** as soon as practicable after the end of the ASIC Review Period, procure that a meeting of its Board is convened to approve those sections of the Scheme Booklet that comprise the Bidder Scheme Booklet Information as being in a form appropriate for despatch to the Target Shareholders;
- (f) **(updates to Scheme Booklet)** if, after the Scheme Booklet has been sent to Target Shareholders, the Bidder becomes aware of information that is:
  - (i) not included in the Bidder Scheme Booklet Information and is material for disclosure to Target Shareholders in deciding whether to approve the Scheme or required to be disclosed to Target Shareholders under any applicable law; or
  - (ii) contained in the Bidder Scheme Booklet Information and that is misleading or deceptive in a material respect in the form and context in which it appears in the Scheme Booklet,

the Bidder must advise the Target so that the Target can determine whether any supplementary disclosure to Target Shareholders is required in accordance with (and subject to the terms of) clause 4.1(l);
- (g) **(Deed Poll)** execute, and procure that the Bidder Parent executes, the Deed Poll before 8am on the First Court Date;
- (h) **(Court representation)** if requested by the Target, be (and procure that the Bidder Parent be) represented by counsel at the Court hearings convened for the purposes of sections 411(1), 411(4)(b) and 411(6) of the Corporations Act, at which, through their counsel, they 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 document and the Scheme;
- (i) **(Scheme Consideration)** if the Scheme becomes Effective, provide the Scheme Consideration in accordance with the Deed Poll and the Scheme;
- (j) **(share transfer)** if the Scheme becomes Effective, accept a transfer of the Scheme Shares as contemplated by clause 3.3 and execute proper instruments of transfer of the Scheme Shares to the Bidder in accordance with the Scheme; and
- (k) **(other)** do, and procure that the Bidder Parent does, all things lawfully within its power that are reasonably necessary to give effect to the Scheme and the orders of the Court approving the Scheme.

#### **4.3 Timetable**

The parties will use their reasonable endeavours to ensure that each step in the Timetable is met expeditiously by the date set out in the Timetable (to the extent within their control) and will consult with each other regularly and co-operate in relation to the performance of their respective obligations under the Timetable and any modifications reasonably necessary to the Timetable.

#### **4.4 Responsibility**

- (a) The parties acknowledge that the Scheme Booklet will contain statements to the effect that:
  - (i) the Target is responsible for the contents of the Scheme Booklet other than, to the maximum extent permitted by law, the Bidder Scheme Booklet Information, the Independent Expert's Report, and any statement of the tax consequences of the Scheme and associated matters for the Target Shareholders on the letterhead of the Target's tax advisers as may be included in the Scheme Booklet. The Bidder and its respective directors, officers and advisers do not assume any responsibility for the accuracy or completeness of any such Target information; and
  - (ii) the Bidder is responsible for the Bidder Scheme Booklet Information. The Target and its directors, officers and advisers do not assume any responsibility for the accuracy or completeness of the Bidder Scheme Booklet Information.
- (b) The Target must obtain the written consent of the Bidder to the form and content of the Bidder Scheme Booklet Information (which consent must not be unreasonably withheld or delayed).

#### **4.5 Disagreement on content of Scheme Booklet**

If the parties disagree on the form or content of the Scheme Booklet (including any update to the Scheme Booklet), they must consult in good faith to try to settle an agreed form of the Scheme Booklet and failing agreement within five Business Days:

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

#### **4.6 Verification**

Each party must undertake appropriate verification processes for the information supplied by that party in the Scheme Booklet to ensure that the information is accurate and not misleading or deceptive (including by omission).

#### **4.7 Undertakings**

Each party agrees to give all undertakings to the Court in all Court proceedings which it is reasonably required to give (on an individual basis) to obtain Court approval and confirmation of the Scheme as contemplated by this document, except to the extent that such undertakings would be unduly onerous on the party giving the undertaking. Nothing in this document gives

any party the right or power to make undertakings to Court for or on behalf of another party without its written consent.

#### **4.8 Appeal process**

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

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

in which case either party may terminate this document in accordance with clause 11.1(f).

#### **4.9 Scheme voted down**

If the Bidder considers (acting in good faith and reasonably) that share splitting or some other improper conduct has caused the Headcount Test to not be satisfied, then the Bidder may be written notice to the Target within 3 days of the Scheme Meeting, require the Target to:

- (a) apply for an order to the Court as contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval for the Scheme under section 411(4)(b) of the Corporations Act; and
- (b) make such submissions to the Court and file such evidence as the Target's counsel, in consultation with the Bidder's counsel, considers is reasonably required for the Court to exercise its discretion to disregard the Headcount Test.

#### **4.10 Performance rights**

- (a) Subject to the Scheme becoming Effective:
  - (i) the parties must do all things reasonably necessary to ensure that the Target Performance Rights and JVCo Performance Rights are cancelled as soon as reasonably practicable following the Effective Date (and in any event, before the Record Date);
  - (ii) on the Implementation Date, the Target must pay the holders of Target Performance Rights the cash amount specified in clause 4.10(b); and
  - (iii) the parties acknowledge that the JVCo may pay, the holders of JVCo Performance Rights the cash amount specified in clause 4.10(b); and
- (b) For the purposes of clauses 4.10(a)(ii) and (iii), the cash amount is equal to the sum of \$6.00 per Target Performance Right or JVCo Performance Right and an amount equal to the DEP (dividend equivalent payment) referred to in the invitation letters for those rights.

#### **4.11 Key Management Shareholders and Rollover Shares**

- (a) Key Management Shareholders by signing the SSD (as contemplated by clause 2.1(h)), will agree to subscribe for their respective Relevant Number of Bidder Parent Shares (in such proportions as the Key Management Shareholders of each Key Manager may notify to the Bidder Parent in writing when they sign the SSD), subject to the Scheme becoming Effective.

- (b) Pursuant to the SSD:
  - (i) if a Key Management Shareholder nominates certain of their KMS Shares as Rollover Shares (as contemplated by clause 4.11(c)), Bidder Parent Shares will be issued by Bidder Parent in consideration of the transfer to the Bidder pursuant to the Scheme of their Rollover Shares; and
  - (ii) to the extent (if any) that the Key Management Shareholder has agreed to subscribe for a number of Bidder Parent Shares pursuant to the SSD greater than the number to be issued in consideration of the transfer of the KMS Shares nominated as Rollover Shares, the Key Management Shareholder must pay the cash amount specified in the SSD by way of subscription price for each remaining Bidder Parent Share.
- (c) The Target must inform each Key Management Shareholder that by 5pm on the Business Day before the Second Court Date, a Key Management Shareholder may by notice to the Target nominate which (if any) of the Key Management Shareholder's KMS Scheme Shares are to be Rollover Shares and thus are to be transferred to the Bidder pursuant to the Scheme in consideration for the issue to the Key Management Shareholder of Bidder Parent Shares pursuant to the SSD. The Target must promptly give a copy of each such nomination notice to the Bidder and the Bidder Parent.

#### **4.12 No partnership or joint venture**

Subject to this document, nothing in this clause 4 requires the Bidder or Bidder Parent to act at the direction of the Target (or vice versa). The business of each party will continue to operate independently from the other until the Implementation Date. The parties agree that nothing in this document constitutes the relationship of a partnership or a joint venture between the parties.

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## **5 Target Directors' recommendations and intentions**

- (a) The Target must authorise and issue the Target Agreed Announcement immediately following execution of this document. The Target Agreed Announcement includes a statement to the effect that each of the Target Directors:
  - (i) recommends that Target Shareholders (other than Excluded Shareholders) vote in favour of the Scheme; and
  - (ii) intends to vote (or procure the voting of) all Target Shares held or controlled by the Target Director in favour of the Scheme,in the absence of a Superior Proposal and subject to the Independent Expert concluding, and continuing to conclude, that the Scheme is in the best interests of, the Target Shareholders.
- (b) The Target represents and warrants to the Bidder that as at the date of this document:
  - (i) each Target Independent Director has confirmed his or her recommendation and voting intention (by way of unanimous resolution of the Target Independent Directors) outlined in the statement in clause 5(a) above; and

- (ii) each Target Director has approved the Target Agreed Announcement and has confirmed the recommendations and statements of intention attributed to that Target Director in the Target Agreed Announcement.
- (c) The Target must use its reasonable endeavours to ensure that:
  - (i) the Scheme Booklet will include statements by the Target Directors to the effect set out in the Target Agreed Announcement;
  - (ii) no Target Director adversely changes or withdraws their statements referred to in the Target Agreed Announcement, or makes a recommendation or statement that is inconsistent with any of them; and
  - (iii) no public statement is made by the Target or supported by the Target Board which is inconsistent with the recommendations or statements referred to in the Target Agreed Announcement.
- (d) Despite clauses 2.3 and 5(c), a Target Director may change or withdraw their recommendation if:
  - (i) the Independent Expert concludes (either initially or in any updated report), that the Scheme is not in the best interests of the Target Shareholders;
  - (ii) the Target receives a Competing Proposal (other than as a result of any breach of the Bidder's rights under clause 9 (*Exclusivity*)) that constitutes a Superior Proposal to the Scheme, and only after all of the notification and matching rights under clauses 9.5 and 9.6 have been complied with; or
  - (iii) this document is terminated.

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## 6 Pre-implementation obligations

### 6.1 Conduct of business

From the date of this document up to and including the Implementation Date, the Target must, and must procure that each member of the Target Group and (to the extent within the Target's control) the JV Group:

- (a) complies with its continuous disclosure obligations under the ASX Listing Rules and, to the extent not already provided through continuous disclosure or periodic reporting to the Bidder Group in relation to the JV Group, keep the Bidder informed of material trading updates and any other changes or events relating to the business of the Target Group that are either outside of the ordinary course or which the Target ought to expect (acting reasonably and in good faith) would be material to the Bidder's knowledge of the Target's business and the integration of the Target Group's business into the Bidder Group;
- (b) conducts its business:
  - (i) in the ordinary course, in substantially the same manner, and at the same locations, as previously conducted;
  - (ii) substantially in accordance with budgets approved by the Target's Board prior to the parties' entry into this document, provided that this clause 6.1(b)(ii) only requires expenditure to be substantially in accordance with such budgets on an individual cost centre basis, not an item-by-item basis; and



- (iii) in accordance with its legal and contractual obligations; and
- (c) to the extent consistent with clause 6.1(b), use reasonable endeavours to:
  - (i) preserve intact its current business organisation including keeping available the services of the senior officers and employees of the Target and JVCo on substantially the same terms existing as at the date of this document;
  - (ii) preserve its relationships with material customers and suppliers, landlords, financiers, Governmental Agencies and others having material business dealings with it; and
  - (iii) maintain the condition of its business and assets, including maintaining at least its current level of insurance (provided such level of insurance continues to be generally available on commercially reasonable terms) and notify the Bidder of any material insurance or other claims made or threatened against the Target Group.

## **6.2 Access to information**

Between (and including) the date of this document and the Implementation Date, the Target must, and must cause each other member of the Target Group to afford to the Bidder Group and its Representatives reasonable access to information (subject to any existing confidentiality obligations owed to third parties), premises and such senior executives of the Target Group as reasonably requested by the Bidder.

## **6.3 Change of control consents**

As soon as practicable after the date of this document:

- (a) the parties must agree a proposed strategy (acting reasonably and after consulting with each other in good faith) to seek those consents which the parties agree should be sought from counterparties under Change of Control Contracts in connection with the Transaction, and in accordance with their applicable terms outlined in such Change of Control Contracts; and
- (b) the Target must expeditiously seek to obtain all consents in accordance with the agreed strategy relating to Change of Control Contracts and the Bidder must cooperate with, and provide reasonable assistance to, the Target to obtain such consents as expeditiously as possible.

## **6.4 Changes to Target Board**

The Target must, as soon as practicable:

- (a) after the Scheme Consideration has been despatched to Scheme Shareholders and the payments under clause 4.10 have been despatched to the former holders of Target Performance Rights and JVCo Performance Rights:
  - (i) take all actions necessary to cause the appointment of the nominees of the Bidder to the Target Board; and
  - (ii) ensure that all directors on the Target Board (other than the Bidder nominees) resign and request that the relevant directors release the Target from any claims they may have against the Target arising from their removal as directors; and

- (b) after the Scheme Consideration has been despatched to Scheme Shareholders, take all actions to ensure that all directors on the boards of the Target's Subsidiaries and directors nominated by the Target to the JVCo Board resign and to cause the appointment of nominees of the Bidder to those boards,

in each case, subject to the relevant company's constitution and the Corporations Act.

## 6.5 **Prohibited actions**

Without limiting clause 6.1, from the date of this document up to and including the Implementation Date, the Target must not and must ensure that each other member of the Target Group and (to the extent within the Target's sole control) the members of the JV Group do not:

- (a) **(disposals)** other than under the Banksmeadow Sale Contract, dispose or agree or offer to dispose of, or lease or agree or offer to lease, any one or more assets, businesses or entities or any one or more items of real property, plant or equipment (or any interest in any of the foregoing), the value or aggregate value of which exceeds \$250,000, to any person other than a member of the Extended Target Group;
- (b) **(acquisitions)** acquire or agree or offer to acquire any one or more assets, businesses or entities or any one or more items of real property, plant or equipment (or any interest in any of the foregoing), the value or aggregate value of which exceeds \$250,000, from any person other than a member of the Extended Target Group;
- (c) **(existing agreements)**
  - (i) enter into, terminate, extend, renew or vary any Material Contract or other commitment (including any non-contractual commitment or undertaking) which has a value or involves a liability or expenditure, as the case may be, of \$500,000 or more, or any commitment which, when aggregated with related transactions, is in aggregate \$500,000 or more;
  - (ii) exercise a contractual right or other option to renew or extend, or otherwise renewing or extending, any Material Contract or other existing agreement or arrangement (including under any lease) which has a value or involves a liability or expenditure, as the case may be, of \$500,000 or more, or any number of which, when aggregated with related transactions, is in aggregate \$500,000 or more;
- (d) **(joint ventures)** without limiting any other agreements between members of the Extended Target Group and the Bidder Group, enter, or propose to enter, into or amend, or propose to amend, in any material respect, or terminate or seek to terminate, any joint venture, partnership or similar agreement with any person other than a member of the Extended Target Group involving or reasonably likely to involve expenditure or other commitment on the part of a member of the Extended Target Group in excess of \$250,000;
- (e) **(employment)**
  - (i) either:
    - (A) enter into an employment contract with a potential employee (other than to replace on substantially similar terms (including as to remuneration and benefits) an employee who has ceased to

- be an employee of the Target Group or JV Group (as applicable)); or
- (B) enter into a new employment or engagement contract with, or amend an employment or engagement contract of, an existing employee, executive or director of a member of the Extended Target Group (other than any increase in remuneration or benefits consistent with past practice),
- in respect of which the total annual employment costs of that existing or potential employee, executive or director are in excess of \$150,000;
- (ii) accelerate the rights of any of its directors or executives to compensation or benefits of any kind; or
- (iii) pay or agree to pay a director or executive a termination payment (or a bonus) in excess of contractual or statutory entitlements fairly disclosed in the Data Room or Disclosure Letter;
- (f) **(settle proceedings)** waive, commence or settle any legal proceedings, claim, investigation, arbitration or other like proceeding where the amount claimed by or against a member of the Target Group exceeds \$150,000;
- (g) **(indebtedness)** incur any financial indebtedness or issue any debt securities, other than:
- (i) any financial indebtedness incurred within existing limits of any existing debt facility or debt securities; or
- (ii) trade credit or other liabilities incurred in the ordinary course of business to the extent consistent with usual past practice;
- (h) **(Existing Debt Facilities)** draw down additional debt under the Existing Debt Facilities or otherwise incur additional financial indebtedness to the extent that the aggregate financial indebtedness of the Target Group exceeds \$45 million;
- (i) **(Banksmeadow Sale Contract)**
- (i) take any action to amend or rescind the Banksmeadow Sale Contract; or
- (ii) take any action that has the effect that upon satisfaction or waiver of the condition precedent to the formation of the Banksmeadow Sale Contract, the Banksmeadow Sale Contract will not have legal force and effect in the form existing at the date of this document (including its provisions as to the entry into the 'Lease' (as defined) annexed to the Banksmeadow Sale Contract);
- (j) **(transaction costs)** incurs aggregate external fees and costs (across the Target Group as a whole) and staff bonuses in connection with the Transaction in excess of \$9 million;
- (k) **(no Target Prescribed Event)** undertake any Target Prescribed Event or allow any Target Prescribed Event to occur, other than a Target Prescribed Event:
- (i) referred to in paragraph (i) of the definition of 'Target Prescribed Event' other than in respect of any voluntary Insolvency Event initiated by any member of the Target Group; or

- (ii) relating to a member of the JV Group where the Target has not caused such Target Prescribed Event to occur;
- (l) **(no change in budget)** amend or replace the budgets referred to in clause 6.1(b)(ii) or any other budget fairly disclosed to and agreed with, the Bidder;
- (m) **(related party transaction)** provide any financial benefit to a related party or enter into a transaction with a related party (as those terms are defined in the Corporations Act) other than financial benefits specified in sections 211 to 214 of the Corporations Act;
- (n) **(employee incentive plans)** create any new equity based incentive plan or scheme or make any amendments to the rules of existing employee incentive plan;
- (o) **(accounting policy and tax status)** change any accounting policy applied by the Target Group as at the date of this document or modify the tax status of any member of the Target Group;
- (p) **(nature of business)** materially change the nature or scope of its existing business or commence any new business activities which are substantially different to the existing business undertaken by the Target Group; or
- (q) **(agree)** agree to do any of the matters set out above.

## 6.6 **Exceptions**

Nothing in clauses 6.1 or 6.5 restricts:

- (a) anything which a party is required to do, permitted to do under any provision of this document or the Scheme;
- (b) anything which is consented in writing to by the Bidder, such consent not to be unreasonably withheld or delayed, or which the Board of a member of the JV Group formally approves (with the nominees of the Bidder Group voting in favour);
- (c) the formation of the Banksmeadow Sale Contract; or
- (d) any transaction, expenditure or other action fairly disclosed before the date of this document in writing in the Disclosure Letter.

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## 7 **Representations and warranties**

### 7.1 **Target Warranties**

Subject to clause 7.3, the Target represents and warrants to the Bidder (on its own behalf and on behalf of each of the Bidder Indemnified Parties) that:

- (a) **(status)** each member of the Extended Target Group is a corporation duly incorporated, validly existing and limited by shares under the Corporations Act or other applicable legislation;
- (b) **(power)** it has full legal capacity and power to enter into and perform its obligations under this document;
- (c) **(authorisations)** the execution, delivery and performance of this document by the Target has been properly authorised by all necessary corporate action and the Target has full corporate power to execute, deliver and perform this document;

- (d) **(validity of this document)** this document constitutes legal, valid and binding obligations on the Target (subject to laws generally affecting creditors' rights and the principles of equity);
- (e) **(Insolvency Events)** neither it nor any other member of the Extended Target Group is affected by an Insolvency Event;
- (f) **(provision of information to Independent Expert)** all information provided by or on behalf of the Target to the Independent Expert has been provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;
- (g) **(Target Scheme Booklet Information)** as at the date the Scheme Booklet is despatched to the Target Shareholders, the Target Scheme Booklet Information:
  - (i) has been prepared and included in the Scheme Booklet in good faith and on the understanding that the Bidder and Bidder Parent and their directors will rely on that information for the purpose of considering and approving the Bidder Scheme Booklet Information; and
  - (ii) complies in all material respects with the requirements of the Corporations Act, the ASX Listing Rules and relevant ASIC regulatory guides and the terms of this document as they apply to such information;
- (h) **(Scheme Booklet)** as at the date the Scheme Booklet is despatched to the Target Shareholders, the Scheme Booklet (excluding the Bidder Scheme Booklet Information, the Independent Expert's Report, and any statement of the tax consequences of the Scheme and associated matters for the Target Shareholders on the letterhead of the Target's tax advisers as may be included in the Scheme Booklet) is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (i) **(continuous disclosure)** the Target is not in breach of its continuous disclosure obligations under the ASX Listing Rules and, other than in respect of the Scheme, it is not relying on the carve-out in Listing Rule 3.1A to withhold any material information from public disclosure;
- (j) **(financial information)**
  - (i) the Target's financial statements for the financial year ended 30 June 2017 give a true and fair view of the financial position of the Target as at 30 June 2017 and of its financial performance for the financial year ended on that date;
  - (ii) the Target's financial statements for the 31-week financial year ended 3 February 2018 give a true and fair view of the financial position of the Target as at 3 February 2018 and of its financial performance for the 31-week financial year ended on that date;
  - (iii) the Target's financial statements for the financial half-year ended 4 August 2018 give a true and fair view of the financial position of the Target as at 4 August 2018 and of its financial performance for the financial half-year ended on that date;

- (k) **(securities)** as at the date of this document:
  - (i) the Target has on issue:
    - (A) 44,687,514 Target Shares;
    - (B) 796,570 Target Performance Rights;
  - (ii) there are no other shares, options, performance rights or convertible instruments or other securities or financial products granted or on issue by the Target;
- (l) **(complete and accurate)** the Target Due Diligence Information and the Disclosure Letter have been provided in good faith and as far as the Target is aware as at the date of this document, all the Target Due Diligence Information and the information in the Disclosure Letter is materially complete and accurate and is not materially misleading or deceptive, whether by way of omission or otherwise;
- (m) **(Banksmeadow sale)** as at the date of this document, there is no act, omission, event or circumstance of which the Target is aware that has the effect that upon satisfaction of the condition precedent to the formation of the Banksmeadow Sale Contract, the Banksmeadow Sale Contract will not have legal force and effect;
- (n) **(no default)** this document does not conflict with or result in the breach of or a default under:
  - (i) any provision of any constitution of a Target Group Member;
  - (ii) any material term or provision of any Material Contract (including any financing arrangements) or any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it or any other member of the Target Group is bound,and it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this document;
- (o) **(change of control)** except as otherwise fairly disclosed in the Target Due Diligence Information, there are no material contracts or material leases to which a member of the Target Group or (as far as the Target Board and the Target Deal Team are aware) the JV Group is a party which contain any change of control provisions that will be triggered by implementation of the Transaction;
- (p) **(interests)** no member of the Extended Target Group owns or has an equity interest in any company, partnership, trust, joint venture or other enterprise or entity;
- (q) **(security interests)** other than any security interest fairly disclosed in the Target Due Diligence Information, there is no security interest over all or any member of the Target Group material present or future assets or revenues;
- (r) **(compliance)** each member of the Target Group is in compliance in all material respects with all material laws and regulations applicable to them and orders of Governmental Agencies having jurisdiction over them and the Target Group holds all material licenses, authorisations and permits necessary to conduct the business of the Target Group;
- (s) **(judgments)** as at the date of this document, there is no judgment, injunction, order or decree binding on any member of the Target Group that has or would be likely to

have the effect of prohibiting, materially impairing after the Effective Date any business of Target Group as presently being conducted;

- (t) **(litigation)** as at the date of this document:
  - (i) there are no material actions, suits, arbitrations, legal or administrative proceedings against any member of the Target Group; and
  - (ii) as far as the Target Board and the Target Deal Team are aware, no member of the Target Group is the specific focus of any material formal investigation by a Governmental Agency (not being an industry-wide investigation). For the purposes of this clause 7.1(t)(ii), the Target Board will be deemed to be aware of any investigation in relation to which written notification has been provided to a member of the Target Group by a Governmental Agency prior to the date of this document;
- (u) **(No Target Material Adverse Change)** as at the date of this document, the Target Board and the Target Deal Team are not aware of a Target Material Adverse Change occurring between 28 September 2018 and the date of this document, which has not been fairly disclosed in the Disclosure Letter; and
- (v) **(material default)** each of the Material Contracts is valid, binding and effective and there is no subsisting material breach of any Material Contract by the Target or any member of the Extended Target Group.

## 7.2 Bidder Warranties

Subject to clause 7.4, the Bidder represents and warrants to the Target (on its own behalf and on behalf of each of the Target Indemnified Parties) that:

- (a) **(status)** it is a company duly incorporated and validly existing under the laws of the jurisdiction of its incorporation;
- (b) **(power)** it has full legal capacity and power to enter into and perform its obligations under this document;
- (c) **(authorisations)** its execution, delivery and performance of this document has been properly authorised by all necessary corporate action and it has full corporate power to execute, deliver and perform this document;
- (d) **(validity of this document)** this document constitutes legal, valid and binding obligations on it (subject to laws generally affecting creditors' rights and the principles of equity);
- (e) **(Insolvency Events)** it is not affected by an Insolvency Event;
- (f) **(provision of information to Independent Expert)** as at the date the Scheme Booklet is despatched to the Target Shareholders, all information provided by or on behalf of it to the Independent Expert has been provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;
- (g) **(Bidder Scheme Booklet Information)** as at the date the Scheme Booklet is despatched to the Target Shareholders, the Bidder Scheme Booklet Information (to the extent that the Bidder has consented to inclusion of that information in accordance with clause 4.4(b)):

- (i) has been prepared in good faith and on the understanding that the Target and each of its directors will rely on that information for the purposes of preparing the Scheme Booklet and proposing the Scheme;
  - (ii) is not misleading or deceptive in any material respect (whether by omission or otherwise); and
  - (iii) complies in all material respects with the requirements of the Corporations Act, the ASX Listing Rules and relevant ASIC regulatory guides and the terms of this document as they relate to such information;
- (h) **(no dealing with Target Shareholders)** neither it nor any of its Associates:
  - (i) has a Relevant Interest in any Target Shares; or
  - (ii) is a party to any agreement, arrangement or understanding involving the conferring of rights on it the economic effect of which is equivalent, substantially equivalent, or similar to it acquiring, holding or disposing of Target Shares (whether combined with a financing arrangement or not), other than a maximum of 9,667,362 Target Shares held by PVH Services (UK) Limited;
- (i) **(securities and other activities):**
  - (i) all of the shares on issue by the Bidder are owned (legally and beneficially) by the Bidder Parent and none of them are subject to any Encumbrance or other third party interest;
  - (ii) as at the date of this document, the Bidder Parent has 100 Bidder Parent Shares on issue;
  - (iii) as at the Second Court Date, the Bidder Parent will have 100 fully paid ordinary shares on issue;
  - (iv) there are no other shares, options, performance rights or convertible instruments or other securities or financial products granted or on issue by the Bidder or Bidder Parent; and
  - (v) neither the Bidder nor the Bidder Parent have engaged in any business since their incorporation other than business incidental to their formation and their entry into this document and the Equity Commitment Deed Poll;
- (j) **(funding)** it has a reasonable basis to expect that it will, on the Implementation Date, have available to it sufficient cash amounts (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy its obligations to provide or procure the provision of the Scheme Consideration in accordance with its obligations under this document, the Scheme and the Deed Poll; and
- (k) **(Equity Commitment Deed Poll)**
  - (i) the Bidder has disclosed a true and complete copy of the Equity Commitment Deed Poll; and
  - (ii) the Equity Commitment Deed Poll has been duly executed by the parties to it and constitutes legally binding obligations of those parties that are enforceable in accordance with its terms, and the Equity Commitment



Deed Poll has not been terminated or amended since the date of its execution.

### **7.3 Qualifications and Target limitation of liability**

- (a) The Target is not liable in respect of a Warranty Claim in relation to a Target Warranty if the fact, matter, circumstance or act giving rise to the Warranty Claim:
  - (i) was required to be done by the Target under or in connection with this document; or
  - (ii) was approved by an authorised officer of the Bidder in writing (prior to the fact, matter, circumstance or act occurring), including in relation to the joint venture operated by the JV Group;
  - (iii) has been fairly disclosed in writing by the Target to the Bidder in the Disclosure Letter;
  - (iv) was within the actual knowledge of the Bidder Deal Team as at the date of this document.
- (b) The Target Warranties are qualified by, and are given subject to, the facts, matters, circumstances and acts referred to in clause 7.3(a).

### **7.4 Qualifications and Bidder limitation of liability**

- (a) The Bidder is not liable in respect of a Warranty Claim in relation to a Bidder Warranty if the fact, matter, circumstance or act giving rise to the Warranty Claim:
  - (i) was required to be done by the Bidder under or in connection with this document; or
  - (ii) was approved by the Target in writing (prior to the fact, matter, circumstance or act occurring);
  - (iii) has been fairly disclosed in the Disclosure Letter; or
  - (iv) was within the actual knowledge of the Target Deal Team as at the date of this document.
- (b) The Bidder Warranties are qualified by, and are given subject to, the facts, matters, circumstances and acts referred to in clause 7.4(a).

### **7.5 Reliance**

Each party acknowledges that:

- (a) the others have entered into this document in reliance on the representations and warranties that are given by the party in this clause 7; and
- (b) it has not relied on any representation or warranty in deciding whether to enter into this document, other than as expressly set out in this clause 7.

### **7.6 Nature of provisions**

- (a) Except as otherwise stated in this clause 7, each of the representations and warranties in this clause 7 shall be deemed to be given as at the date of this document and at 8am on the Second Court Date by reference to the circumstances then existing.

- (b) Each of the representations and warranties given by a party in this clause 7 must be construed as a separate and independent provision and will not be limited or restricted by reference to the terms of any other representation or warranty in this clause 7 or any other term of this document.

## **7.7 Notification**

A party must promptly advise the others in writing of any representation or warranty provided in this clause 7 by the party being false or misleading in any material respect when given.

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## **8 Indemnities**

### **8.1 Indemnity from the Target**

Subject to clause 10.7, the Target indemnifies the Bidder and the other Bidder Indemnified Parties from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which any of the Bidder Indemnified Parties may suffer or incur by reason of any breach of any of the Target Warranties.

### **8.2 Indemnity from the Bidder**

The Bidder indemnifies the Target and the other Target Indemnified Parties from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which any of the Target Indemnified Parties may suffer or incur by reason of any breach of any of the Bidder Warranties.

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## **9 Exclusivity**

### **9.1 Existing discussions**

The Target represents and warrants that, as at the time of execution of this document, it is not in any negotiations or discussions (directly or indirectly), and that it has ceased any existing negotiations or discussions and there are no existing arrangement or agreement, in respect of any Competing Proposal (or which may reasonably be expected to lead to a Competing Proposal) with any person.

### **9.2 No shop**

Subject to clause 9.5, during the Exclusivity Period, the Target must not and must ensure that each of its Representatives does not:

- (a) directly or indirectly solicit or invite; or
- (b) initiate or encourage any enquiries, negotiations or discussions, or communicate any intention to do any of these things, with a view to obtaining,

any engagement, discussion, offer, expression of interest or proposal from any person in relation to a Competing Proposal or potential Competing Proposal.

### **9.3 No talk obligation and no due diligence**

Subject to clauses 9.4 and 9.7:

- (a) during the Exclusivity Period, the Target must not and must ensure that each of its Representatives does not (directly or indirectly) enter into, continue or participate in

- negotiations or discussions with, any person regarding or in connection with a Competing Proposal (or potential Competing Proposal); and
- (b) without limiting clause 9.3(a), during the Exclusivity Period, the Target must not, and must ensure that its Representatives do not:
- (i) solicit, initiate, facilitate or encourage any person (other than the Bidder or its Representatives) to undertake due diligence on the Target or its Related Bodies Corporate; or
  - (ii) make available to any person (other than the Bidder or its Representatives) or permit such person to receive any non-public information relating to the Target or its Related Bodies Corporate in connection with a Competing Proposal (or potential Competing Proposal).

#### **9.4 *Fiduciary carve out***

- (a) Nothing in clause 9.3 prevents or requires any action by or on behalf of the Target in relation to any Unsolicited Competing Proposal if, after consultation with the Target's financial advisers and receiving written legal advice from external legal advisers (from a reputable firm who is experienced in large corporate law transactions), the Board of the Target has determined in good faith that:
- (i) the Unsolicited Competing Proposal is or, if it was proposed, is reasonably likely to be, a Superior Proposal; and
  - (ii) failure to take such action (where such action would otherwise be prevented by this document) would involve, or would be likely to involve, a breach of the fiduciary or statutory duties of the directors of the Target.
- (b) Any action permitted by clause 9.4(a) will not be regarded as a breach of clause 9.2.

#### **9.5 *Notification of approaches***

- (a) Subject to clause 9.5(c), during the Exclusivity Period, the Target must as soon as possible, and in any case within 2 Business Days of becoming aware of any of the matters set out below, notify the Bidder in writing if it, or any of its Representatives, becomes aware of any:
- (i) written proposal made to the Target or any of its Representatives, in connection with, or in respect of any exploration or completion of, an actual, proposed or potential Competing Proposal; or
  - (ii) provision by the Target or any of its Representatives of any non-public information concerning the business or operations of the Target or, the Target Group or the JV Group to any Third Party in connection with an actual, proposed or potential Competing Proposal,
- whether direct or indirect, solicited or unsolicited, and in writing or otherwise. For the avoidance of doubt, any of the acts described in paragraphs (i) and (ii) may only be taken by the Target if not prohibited by clauses 9.2 or 9.3 (or if permitted by clause 9.4).
- (b) Subject to clause 9.5(c), a notification given under clause 9.5(a) must include the identity of the relevant person making or proposing the relevant actual, proposed or potential Competing Proposal, together with all material terms and conditions of the actual, proposed or potential Competing Proposal.

- (c) The Target is not required to notify the Bidder of any item of information described in clause 9.5(a) or clause 9.5(b) (**Subject Information**) if, after consultation with the Target's financial advisers and receiving written legal advice from external legal advisers (from a reputable firm who is experienced in large corporate law transactions), the Board of the Target has determined in good faith that:
- (i) the relevant actual, proposed or potential Competing Proposal is or, if it was proposed, is reasonably likely to be, a Superior Proposal; and
  - (ii) notification of the Subject Information to the Bidder would involve, or would be likely to involve, a breach of the fiduciary or statutory duties of the directors of the Target.

## 9.6 **Matching right**

- (a) Without limiting clauses 9.2 and 9.3, during the Exclusivity Period, the Target:
- (i) must not enter into any agreement, arrangement or understanding (whether or not in writing) pursuant to which a third party, the Target or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Proposal; and
  - (ii) must use its best endeavours to procure that none of the Target Directors change their recommendation in favour of the Transaction to publicly recommend an actual, proposed or potential Competing Proposal (or recommend against the Transaction),
- unless:
- (iii) the Target Board acting in good faith and in order to satisfy their statutory or fiduciary duties (having received written advice from its financial advisers and external legal advisers from a reputable firm who are experienced in large corporate law transactions) determines that the Competing Proposal would be or would be likely to be a Superior Proposal;
  - (iv) to the extent that Subject Information is required to be provided to the Bidder under clause 9.5(a) (subject to clause 9.5(c)):
    - (A) the Target has provided the Bidder with that information;
    - (B) where that information includes the material terms and conditions of the actual, proposed or potential Competing Proposal, the Target has given the Bidder at least 5 Business Days after the date of the provision of that information to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal; and
    - (C) the Bidder has not announced a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal by the expiry of the 5 Business Day period in clause 9.6(a)(iv)(B) above.
- (b) If the Bidder proposes to the Target or announces amendments to the Scheme that constitute a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal (**Bidder Counterproposal**) by either:
- (i) the expiry of the 5 Business Day period in clause 9.6(a)(iv)(B) above (if applicable); or

- (ii) where clause 9.6(a)(iv)(B) does not apply, within 5 Business Days after the announcement of the Competing Proposal,

the Target must procure that the Target Board considers the Bidder Counterproposal.
- (c) If the Target Board, acting reasonably and in good faith, determines that the Bidder Counterproposal would provide an equivalent or superior outcome for Target Shareholders as a whole (other than Excluded Shareholders) compared with the Competing Proposal, taking into account all of the terms and conditions of the Bidder Counterproposal, then:
  - (i) the Target and Bidder must use their best endeavours to agree amendments to this document that are necessary to reflect and implement the Bidder Counterproposal; and
  - (ii) the Target must procure that each of the Target Directors recommends or continues to recommend the Transaction (as modified by the Bidder Counterproposal) to the Target Shareholders,

in each case as soon as reasonably practicable.
- (d) Where the Bidder has made a Bidder Counterproposal, this clause 9.6 has repeating application so that if any further Competing Proposal (with each successive material modification of a Competing Proposal constituting a new Competing Proposal) is made after the Bidder has made a Bidder Counterproposal:
  - (i) the Target must comply with clauses 9.6(a)(i) and 9.6(a)(ii) in respect of the new Competing Proposal unless clauses 9.6(a)(iii) to 9.6(a)(iv) (as modified by paragraph (ii) below) apply; and
  - (ii) the periods in clauses 9.6(a)(iv)(B) and 9.6(b)(ii) each become 3 Business Days.

## **9.7 Normal provision of information**

Nothing in this clause 9 prevents the Target from:

- (a) providing information to rating agencies or any Governmental Agency in response to a request, where legally obliged to do so;
- (b) providing information to its auditors, advisers, financiers, customers, business partners and suppliers acting in that capacity in the ordinary course of business and in accordance with usual past practices;
- (c) complying with its continuous disclosure obligations (only to the extent of that such provision of information is necessary to comply with the ASX Listing Rules).

## **9.8 Acknowledgements and undertaking**

The Target acknowledges that:

- (a) the Bidder has required the Target to agree to the obligations set out in this clause 9 in consideration of the Bidder proceeding with the Scheme and incurring significant costs in doing so; and
- (b) in the absence of obtaining these obligations, the Bidder would not have entered into this document.

## 10 Break Fee

### 10.1 Background

- (a) The Target believes the Scheme will provide significant benefits to the Target and its shareholders and acknowledges that the Bidder will incur significant costs in connection with performing its obligations under this document and the Scheme.
- (b) In these circumstances:
  - (i) the Bidder has requested that provision be made in this document for the payment set out in clause 10.2, without which it would not have entered into this document; and
  - (ii) the Target believes that it is appropriate to agree to the payment which it agrees to make under this clause 10 in order to secure the participation of the Bidder in the Scheme.
- (c) The Target acknowledges that the amount it has agreed to pay under this clause 10 is an amount which is appropriate to compensate the Bidder for its reasonable external and internal costs and opportunity costs in connection with the Scheme.

### 10.2 Payment by the Target to the Bidder

The Target must pay the Break Fee to the Bidder:

- (a) **(change in recommendation)** any Target Director adversely changes, or withdraws, its recommendation or voting intention described in clause 5(a), or makes an announcement in support of a Competing Proposal or otherwise makes any public statement or undertakes (or agrees to undertake) any action that is inconsistent with its recommendation or voting intention;
- (b) **(Competing Proposal)** during the Exclusivity Period, the Target Board or any member of it recommends a Competing Proposal and within 12 months of such recommendation, the third party who made the Competing Proposal (together with its Associates):
  - (i) completes the Competing Proposal recommended by the Target Board; or
  - (ii) acquires a Relevant Interest in more than 50% of the Target Shares for which any defeating conditions have been satisfied or waived; or
- (c) **(termination)** the Bidder validly terminates this document under:
  - (i) clauses 11.1(b)(i), 11.1(b)(ii) or 11.1(c); or
  - (ii) clause 11.1(f) as a consequence of the conditions precedent in clause 2.1(i) (No Target Prescribed Events) not being satisfied or waived.

### 10.3 Qualifications

- (a) Clause 10.2 does not apply in circumstances where:
  - (i) the Scheme becomes Effective;
  - (ii) the Bidder is in material breach of any provision of this document (including a material breach of a Bidder Warranty); or

- (iii) the Independent Expert concludes (whether in its original or any subsequent opinion) that the Scheme is not in the best interests of the Target Shareholders, other than where a Competing Proposal is the reason for that conclusion.
- (b) A statement to the effect that that "shareholders should take no action pending further advice" on a new development does not constitute an adverse modification of a recommendation for the purposes of clause 10.2(a).
- (c) For the avoidance of doubt, in no circumstances will more than one Break Fee be payable by the Target.

#### **10.4 Timing of payment**

- (a) A demand by the Bidder for the payment of the Break Fee under clause 10.2 must:
  - (i) be in writing;
  - (ii) be made after the occurrence of an event referred to in clause 10.2;
  - (iii) specify the event the subject of the claim and the circumstances giving rise to the claim; and
  - (iv) nominate an account into which the Target must pay the Break Fee.
- (b) The Target must pay the Break Fee to the Bidder within 20 Business Days of receipt by the Target from the Bidder of a valid demand under clause 10.4(a).

#### **10.5 Nature of payment**

The amount of the Break Fee payable by the Target to the Bidder under clause 10.2 is an amount to compensate the Bidder for:

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

incurred by the Bidder.

#### **10.6 Compliance with law**

- (a) A payment under this clause 10 is not required to be made or, if already made, is refundable, to the extent that such payment is determined by a court to be unlawful or is determined by the Takeovers Panel to constitute unacceptable circumstances within the meaning of that phrase in the Corporations Act, subject to all proper avenues of appeal and review, judicial and otherwise, having been exhausted.
- (b) The Target must not make, or cause or permit another member of the Target Group to make, any application to a court or the Takeovers Panel for or in relation to such a determination.

## **10.7 Other claims**

Notwithstanding any other provision of this document, other than clause 10.8:

- (a) a payment by the Target of the Break Fee in accordance with clause 10.2 represents the sole and absolute liability of the Target to the Bidder Indemnified Parties under or in connection with a matter specified in clause 10.2 and no further damages, fees, expenses or reimbursements of any kind will be payable by the Target to the Bidder in connection with that matter;
- (b) the maximum aggregate liability of the Target to the Bidder Indemnified Parties (collectively) under or in connection with this document including in respect of any breach of this document by the Target will be an amount equal to the Break Fee; and
- (c) the amount of the Break Fee payable to the Bidder under this clause 10 is reduced by the amount of any loss or damage recovered by any Bidder Indemnified Party in relation to a breach of any other clause of this document.

## **10.8 Deliberate material breaches**

Clause 10.7 does not limit the right of the Bidder (or a Bidder Indemnified Party) to claim damages against the Target in respect of any intentional material breach of this document by the Target, where the breach is the consequence of an act or failure to act by the Target with the knowledge that the taking of the act or the failure to act would be a material breach of this document. However, any amounts received by the Bidder must be offset and reduced by any amounts received by the Bidder under this clause 10. It is agreed that such an intentional breach by the Target of clause 9 shall constitute a material breach for the purposes of this clause 10.8.

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# **11 Termination**

## **11.1 Termination events**

This document may be terminated:

- (a) **(lack of support)**
  - (i) by the Bidder at any time prior to 8am on the Second Court Date if any Target Director adversely changes, or withdraws, their recommendation or voting intention described in clause 5(a) or otherwise makes a public statement indicating that they no longer support the Scheme or undertakes (or agrees to undertake) any action that is otherwise inconsistent with their recommendation or voting intention (not including a statement to the effect that that 'shareholders should take no action pending further advice' on a new development); or
  - (ii) by the Target at any time prior to 8am on the Second Court Date if the majority of the Target Directors adversely change, or withdraw, their recommendation or voting intention described in clause 5(a);
- (b) **(material breach)**
  - (i) by the Target at any time prior to 8am on the Second Court Date if the Bidder is in material breach of a term of this document (including any material breach of any Bidder Warranty), taken in the context of the Scheme as a whole; or



- (ii) by the Bidder at any time prior to 8am on the Second Court Date if the Target is in material breach of a term of this document (including any material breach of any Target Warranty or a material breach of the pre-implementation conduct restrictions in clauses 6.1 or 6.5), taken in the context of the Scheme as a whole; or
- (iii) by the Bidder at any time prior to 8am on the Second Court Date if, had the Target Warranty in clause 7.1(t)(ii) been repeated at that time (but subject to clause 7.3), the Target would be in material breach of it, taken in the context of the Scheme as a whole,

provided that the Target or the Bidder (as the case may be) has given prompt written notice to the other setting out the relevant circumstances of the breach and the relevant circumstances continue to exist 10 Business Days (or any shorter period ending at 8am on the Second Court Date) after the time such notice is given;

- (c) **(Exclusivity)** by the Bidder if the Target breaches commits any material breach of clause 9;
- (d) **(competing interest)** by the Bidder, if a person (other than a member of the Bidder Group and/or any of their respective Associates, or Michael Gazal and any of his Associates), together with the person's Associates, obtains a Relevant Interest in more than 20% of the Target Shares;
- (e) **(Superior Proposal)** by the Target if the Target Board determines that a Competing Proposal (which did not arise from a breach of clause 9.2) is a Superior Proposal;
- (f) **(condition precedent not satisfied or waived)** by the Target or Bidder in accordance with clause 2.4(b);
- (g) **(Independent Expert)** by the Target at any time prior to 8am on the Second Court Date, if the Independent Expert concludes (whether in its original or any subsequent opinion) that the Scheme is not in the best interests of the Target Shareholders.

## 11.2 Automatic termination

This document will terminate automatically if, at any Scheme Meeting, the Target Shareholders do not approve the Scheme by the requisite majorities under section 411(4)(a)(ii) of the Corporations Act, unless the Headcount Test was not satisfied and either the Bidder delivers a notice in accordance with clause 4.9, or within 3 Business Days of the Scheme Meeting the Target gives written notice to the Bidder that the Target intends to apply for an order described in clause 4.9(a).

## 11.3 Effect of termination

If this document is terminated, it will have no further force or effect and the rights and obligations of the parties under this document will cease, save that:

- (a) clauses 1, 7, 8 and 10 to 19 will survive termination, as do any other clauses that are by their nature intended to survive the termination or expiry of this document; and
- (b) termination will be without prejudice to rights and liabilities of a party which have accrued before termination.

## 11.4 Remedies

The parties acknowledge that damages may not be a sufficient remedy for breach of this document. Specific performance, injunctive relief or any other remedies which would otherwise

be available in equity or law are available as a remedy for a breach or threatened breach of this document by any party, notwithstanding the ability of the Target or Bidder to terminate this document or seek damages for such a breach or threatened breach or, in the case of the Bidder, to demand payment of the Break Fee. This clause is not intended to, and does not, limit the operation of clause 10.7.

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## **12 Public announcements**

### **12.1 Agreed Announcements**

Immediately following the execution of this document:

- (a) the Target must release the Target Agreed Announcement, which has attached to it a copy of this document unless otherwise agreed in writing between the parties; and
- (b) the Bidder Group may release the Bidder Agreed Announcement.

### **12.2 Restriction on other announcements**

- (a) Subject to clause 12.1, no party may make any press release or announcement or make any other public disclosure relating to the subject matter of this document unless the release, announcement, publication or other public disclosure:
  - (i) is required by this document, or is required to give effect to this document or the Scheme;
  - (ii) is required to be made under any applicable law or the rules of any recognised stock exchange;
  - (iii) is required by a Governmental Agency to be made by the party; or
  - (iv) has the prior approval of the other parties (such approval not to be unreasonably withheld or delayed).
- (b) Nothing in clause 12.2(a) prohibits a party from making any announcement or public disclosure if, in the reasonable opinion of its Board, failure to disclose at that time the information proposed to be contained in the announcement or public disclosure would reasonably be expected to be inconsistent with the proper exercise of the duties of the directors of that party.

### **12.3 Notification**

If a party is required by law, the rules of any stock exchange or any Governmental Agency to do any of the things referred to in clause 12.2, or if clause 12.2(b) otherwise applies, it must to the extent reasonably practicable and lawful, consult with the other parties as to the timing, form and content of that announcement or disclosure.

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## **13 Confidentiality Agreement**

Each party acknowledges and agrees that it remains bound by the Confidentiality Agreement, and will comply in full with the provisions of the Confidentiality Agreement as if they were specifically incorporated into this document (subject to any consequential changes to give effect to those provisions in the context of this document).

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## **14 Indemnity, insurance and release**

### **14.1 D&O insurance**

- (a) Subject to the Scheme becoming Effective and subject to the Corporations Act, the Bidder undertakes in favour of the Target and each other Target Indemnified Party that it will:
  - (i) for a period of 7 years from the Implementation Date, ensure that the constitutions of each member of the Extended Target Group provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to the maximum extent permitted by law; and
  - (ii) procure that each member of the Extended Target Group complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time.
- (b) Notwithstanding any other provision of this document, the Target may, prior to the Implementation Date, enter into arrangement to secure director and officers' run-off insurance for up to 7 years from the Implementation Date provided that the level of cover and policy terms do not materially differ from the Target's existing policies fairly disclosed to the Bidder on or before the date of this document. Any actions to facilitate, or in connection with, that insurance will not be a Target Prescribed Event or a breach of any provision of this document. Without limiting clause 14.1(a)(ii), the Bidder must ensure that such run-off insurance cover is maintained on terms no less favourable to the directors and officers than was the case on the Implementation Date.

### **14.2 Release by the Bidder**

To the maximum extent permitted by law, the Bidder releases its rights against each Target Indemnified Party (other than the members of the Extended Target Group) and undertakes that it will not make any claim or demand of any nature (howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise) against any such Target Indemnified Party in connection with any breach of any representations, covenants or warranties in this document or any disclosures in connection with this document except where the Target Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud.

### **14.3 Release by the Target**

To the maximum extent permitted by law, the Target releases its rights against each Bidder Indemnified Party (other than members of the Bidder Group) and undertakes that it will not make any claim or demand of any nature (howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise) against any such Bidder Indemnified Party in connection with any breach of any representations, covenants or warranties in this document or any disclosures in connection with this document except where the Bidder Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud.

### **14.4 Benefit**

- (a) The Target receives and holds the benefit of this clause 14 and clause 8.2 to the extent it relates to each Target Indemnified Party on behalf of each of them.

- (b) The Bidder holds and holds the benefit of this clause 14 and clause 8.1 to the extent it relates to each Bidder Indemnified Party on behalf of each of them

#### **14.5 No limitation**

The rights of the Target Indemnified Parties under this clause 14 are in addition to and without prejudice to any rights to indemnification or insurance coverage which a Target Indemnified Party may have under the constitution of, or in any deed or other agreement with, any member of the Extended Target Group.

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## **15 GST**

### **15.1 GST gross-up**

If a party (**supplier**) is required to pay GST in respect of a supply made under or in connection with (including by reason of a breach of) this document, except to the extent this document provides otherwise (for example, where a price is expressed to be inclusive of GST), the recipient of the supply must (in addition to any other payment for, or in connection with, the supply) pay to the supplier an amount equal to such GST (**GST gross-up**).

### **15.2 GST invoice**

If a GST gross-up is payable, then the supplier must give the recipient a tax invoice for the supply.

### **15.3 Payment**

Provided a tax invoice has been given, the GST gross-up must be paid by the recipient:

- (a) if any monetary consideration is payable for the supply, at the same time and in the same manner as that monetary consideration; or
- (b) if no monetary consideration is payable for the supply, within 10 Business Days after the day on which the tax invoice is given.

### **15.4 Reimbursements**

If any payment to be made to a party under or in connection with this document is a reimbursement or indemnification of an expense or other liability incurred or to be incurred by that party, then the amount of the payment must be reduced by the amount of any input tax credit to which that party is entitled for that expense or other liability, such reduction to be effected before any increase in accordance with clause 15.1.

### **15.5 Adjustments**

If an adjustment event has occurred in respect of a supply made under or in connection with this document, any party that becomes aware of the occurrence of that adjustment event must notify the other party as soon as practicable, and the parties agree to take whatever steps are necessary (including to issue an adjustment note), and to make whatever adjustments are required, to ensure that any GST or additional GST on that supply, or any refund of GST, is paid no later than one month after the supplier first becomes aware that the adjustment event has occurred.

### **15.6 Definitions**

For the purposes of this document:

- (a) terms used in this clause 15 that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meaning given to them in that Act;

- (b) a reference to a payment in this clause 15 includes any payment of money and any form of consideration other than payment of money; and
- (c) all references to payments and obligations to make payments, including all references to compensation (including by way of reimbursement or indemnity), are, but for the operation of this clause 15.6(c), exclusive of GST.

---

## **16 Notices**

### **16.1 How to give notices**

Any notice or other communication of a party contemplated by this document (including any agreement, request, demand, direction, consent, waiver or approval) must be:

- (a) in writing in English, legible and signed by the party or its agent; and
- (b) sent by express or registered post (with delivery confirmation) or email, or delivered, to the recipient, attention the recipient's contact, in each case using the relevant details set out in the Parties section of this document or any new details later notified by the recipient.

If a party sends a communication contemplated by this document other than by email, it must use all reasonable endeavours to send a copy of the communication promptly by email.

### **16.2 Time of receipt**

A communication contemplated by this document is taken to be received by a recipient:

- (a) if hand-delivered, at the time of delivery to that recipient;
- (b) if sent by express or registered post (with delivery confirmation), on the date that communication is received by the recipient at the recipient's location; and
- (c) if sent by email, the earlier of:
  - (i) when the sender receives a read receipt from the recipient's email address; and
  - (ii) the time it is otherwise established that the email (including any attachment) came to the attention of the recipient.

If due to this clause 16.2 a communication would be taken to be received on a day that is not, or after 5pm on, a business day in the place of receipt, the communication is taken to have been received at 9am on the first business day in the place of receipt after that day. The place of receipt of an email is the address of the recipient contemplated by clause 16.1(b).

---

## **17 Governing law, jurisdiction and process agent**

### **17.1 Governing law and jurisdiction**

This document is governed by the laws of New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of, and Commonwealth courts having jurisdiction in that place and waives any right to object to proceedings being brought in those courts on the basis that proceedings have been brought in an inconvenient forum.

### **17.2 Process agent**

The Bidder irrevocably appoints Clifford Chance of Level 16, 1 O'Connell Street, Sydney, New South Wales 2000, Australia to receive on its behalf service of process in connection with this

document, the Scheme and the Deed Poll and related non-contractual matters, and agrees that service of any process or documents on the agent will be sufficient service on it.

---

## **18 General**

### **18.1 Costs and duty**

- (a) Except where expressly provided otherwise, each party must bear its own costs in relation to the negotiation, preparation, execution and performance of this document, the Scheme, the Deed Poll and the steps to be taken under or in connection with each of them.
- (b) The Bidder must:
  - (i) pay all stamp duties (if any) and any fines and penalties with respect to stamp duty in connection with of this document, the Scheme, the Deed Poll or the steps to be taken under or in connection with each of them; and
  - (ii) indemnify the Target and each Scheme Shareholder against any liability arising from any failure to comply with clause 18.1(b)(i).

### **18.2 Entire agreement**

This document (and the Confidentiality Agreement) embodies the entire agreement between the parties in respect of its subject matter.

### **18.3 Variation**

This document can only be varied by a document signed by all of the parties.

### **18.4 Further acts**

Each party must, at its own expense, do all things (including the execution and delivery of documents) required by law or reasonably requested by another party to give effect to this document and the transactions contemplated by it.

### **18.5 No assignment**

A party cannot assign or otherwise deal with its rights under this document without the consent of each other party.

### **18.6 Exercise of rights**

A party may exercise a right or a remedy, or give or withhold a consent, waiver or approval, in its absolute discretion (including by imposing conditions), unless this document expressly provides otherwise.

### **18.7 Waiver**

A party is only bound by a waiver that it gives or confirms in writing. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given. No other conduct of a party (including a failure to exercise, or delay in exercising, a right) operates as a waiver of a right or otherwise prevents the exercise of a right.

**18.8 Indemnities**

Unless this document provides otherwise:

- (a) each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this document;
- (b) it is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this document; and
- (c) the making of a claim by a party under an indemnity contained in this document in respect of a particular event does not preclude that party from subsequently making further claims under that indemnity in respect of the same event.

**18.9 No merger**

The warranties, undertakings and indemnities in this document do not merge on completion of any transaction under or contemplated by this document.

**18.10 Severance**

If a provision of this document would, but for this clause 18.10, be void, unenforceable or illegal in a jurisdiction:

- (a) the provision is read down to the extent necessary to avoid that result; and
- (b) if the provision cannot be read down, to that extent, it is severed in that jurisdiction,

without affecting the validity and enforceability of that provision in any other jurisdiction or any other provisions of this document. This clause 18.10 has no effect if its operation alters the basic nature of this document or is contrary to public policy.

---

**19 Counterparts and execution****19.1 Counterparts**

This document may be executed in counterparts which together constitute one instrument but is not effective until each party has executed at least one counterpart and the counterparts have been exchanged. Each party consents to the exchange of counterparts by email or other electronic means.

**19.2 Authority of signatory**

Each person, who executes this document on behalf of a party under a power of attorney or other authority, declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that authority.

## Execution

**EXECUTED** as an agreement

**Executed by Gazal Corporation Limited** in  
accordance with section 127 of the  
*Corporations Act 2001* (Cth) by:

Director signature

Director/Secretary signature

Director full name  
(BLOCK LETTERS)

Director/Secretary full name  
(BLOCK LETTERS)

**Executed by Sunshine B Pty Ltd** in  
accordance with section 127 of the  
*Corporations Act 2001* (Cth) by:

Director signature

Director/Secretary signature

Director full name  
(BLOCK LETTERS)

Director/Secretary full name  
(BLOCK LETTERS)



## Execution

**EXECUTED** as an agreement

**Executed by Gazal Corporation Limited** in  
accordance with section 127 of the  
*Corporations Act 2001* (Cth) by:

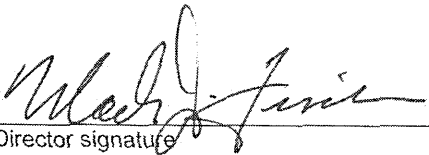
\_\_\_\_\_  
Director signature


\_\_\_\_\_  
Director/Secretary signature

\_\_\_\_\_  
Director full name  
(BLOCK LETTERS)

\_\_\_\_\_  
Director/Secretary full name  
(BLOCK LETTERS)

**Executed by Sunshine B Pty Ltd** in  
accordance with section 127 of the  
*Corporations Act 2001* (Cth) by:

  
\_\_\_\_\_  
Director signature

  
\_\_\_\_\_  
Director/Secretary signature

Mark David Fischer  
\_\_\_\_\_  
Director full name  
(BLOCK LETTERS)

SWAPNA KESKAR  
\_\_\_\_\_  
Director/Secretary full name  
(BLOCK LETTERS)

## **Annexure 1 – Scheme**

**Gazal Corporation Limited**

# **Scheme of Arrangement**

**JOHNSON WINTER & SLATTERY**

Level 25, 20 Bond Street

SYDNEY NSW 2000

T +61 2 8274 9555 | F +61 2 8274 9500

[www.jws.com.au](http://www.jws.com.au)

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## Scheme of Arrangement

### Parties

- 1 **Gazal Corporation Limited** (ABN 57 004 623 474) (**Target**) of 3-7 McPherson Street, Banksmeadow NSW 2019
- 2 Each person registered in the Target Register as the holder of Scheme Shares as at the Record Date (**Scheme Shareholder**)

### Operative part

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## 1 Definitions and interpretation

### 1.1 Definitions

In this Scheme:

**ASIC** means the Australian Securities and Investment 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.

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

**Bidder** means Sunshine B Pty Ltd ACN 631 685 553.

**Bidder Group** means the Bidder and its Related Bodies Corporate, not including the JV Group.

**Bidder Parent Constitution** means any constitution adopted by the Bidder Parent and except to the extent overridden by such a constitution, the replaceable rules specified in section 141 of the Corporations Act.

**Bidder Parent** means Sunshine A Pty Ltd ACN 631 684 770.

**Bidder Parent Share** means a fully paid ordinary share in the Bidder Parent issued on the terms of issue set out in the SSD and the Bidder Parent Constitution.

**Business Day** has the meaning given in the ASX Listing Rules.

**Cash Scheme Consideration** means an amount equal to the aggregate amount of the cash component of the Scheme Consideration payable to Scheme Shareholders under clauses 5.2 and 5.3 of this Scheme.

**CHES** means the Clearing House Electronic Subregister System for electronic transfers 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 as agreed by the Target and the Bidder in writing.

**Deed Poll** means the deed poll dated [●] 2019 executed by the Bidder and Bidder Parent in favour of the Scheme Shareholders.

**Effective** means 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) in relation to the Scheme.

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

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

**End Date** means six months after the date of the Scheme Implementation Agreement or such other date as the Target and the Bidder agree in writing.

**Excluded Shareholder** means:

- (a) any member of the Bidder Group that holds Target Shares; and
- (b) any other person to the extent they hold Target Shares on behalf of, or for the benefit of, any member of the Bidder Group,

which for the avoidance of doubt, as at the date of the Scheme Implementation Agreement, included PVH Services (UK) Limited.

**General Target Shareholders** means the Target Shareholders other than the Key Management Shareholders and the Excluded Shareholders.

**Governmental Agency** means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity in any jurisdiction. It includes ASIC, ASX (and any other stock exchange) and the Takeovers Panel and any self-regulatory organisation established under statute.

**Implementation Date** means the fifth Business Day following the Record Date or such other date agreed by the Target and Bidder in writing.

**JVCo** means PVH Brands Australia Pty Limited ACN 165 485 290.

**JVCo Performance Right** means a performance right issued by JVCo.

**JV Group** means JVCo and its Subsidiaries.

**Key Management Shareholders** means:

- (a) the Key Managers and their spouses;
- (b) any person directly or indirectly controlled by a Key Manager or their spouse; and
- (c) any other person to the extent they hold Target Shares on behalf of, or for the benefit of, a person in paragraph (a) or (b).

**Key Manager** means each of Michael Gazal, Patrick Robinson, Guy Griffiths and Craig Barnett.

**KMS Scheme Share** means a Scheme Share owned by a Key Management Shareholder.

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

**Record Date** means 7pm (Sydney time) on the fifth Business Day following the Effective Date or such other date as the Target and the Bidder agree in writing.

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

**Related Body Corporate** has the meaning given in the Corporations Act and for the purpose of applying that definition, and except as otherwise contemplated by this document, JVCo will not be considered to be a Subsidiary of either the Target or the Bidder Parent (or the Bidder).

**Rollover Share** in respect of a Key Management Shareholder means a KMS Scheme Share that the Key Management Shareholder has nominated for transfer to the Bidder pursuant to the Scheme in consideration of the issue of Bidder Parent Shares pursuant to the SSD, as contemplated by clauses 2.1(h) and 4.11 of the Scheme Implementation Agreement.

**Scheme** means this scheme of arrangement under Part 5.1 of the Corporations Act between the Target and Scheme Shareholders, subject to any alterations or conditions (whether proposed by a party or made or required by the Court) which are agreed in writing by the Target and the Bidder.

**Scheme Booklet** means the explanatory statement to be approved by the Court and despatched by the Target to Target Shareholders, and which includes, amongst other things, the Scheme and an explanatory statement under section 412 of the Corporations Act.

**Scheme Consideration** means the consideration to be provided or procured by the Bidder to Scheme Shareholders in consideration for the transfer of the Scheme Shares held by Scheme Shareholders to the Bidder as follows:

- (a) in the case of General Target Shareholders: \$6.00 per Scheme Share; and
- (b) in the case of each Key Management Shareholder:
  - (i) \$6.00 per Scheme Share for the Key Management Shareholder's KMS Scheme Shares which are not Rollover Shares; and
  - (ii) Bidder Parent Shares equal to the number of KMS Scheme Shares (if any) that the Key Management Shareholder has nominated as Rollover Shares.

**Scheme Implementation Agreement** means the scheme implementation agreement dated [●] 2019 between the Target and Bidder, as amended, substituted or replaced from time to time.

**Scheme Share** means a Target Share on issue and not held by an Excluded Shareholder as at the Record Date.

**Scheme Shareholder** means a Target Shareholder on the Record Date other than an Excluded Shareholder.

**Scheme Transfer** means, in relation to each Scheme Shareholder, a proper instrument of transfer of their Scheme Shares to the Bidder for the purpose of section 1071B of the Corporations Act, which will be in the form of a master share transfer form of all of the Scheme Shares.

**Scrip Scheme Consideration** means the aggregate Scheme Consideration to be provided to Key Management Shareholders in the form of the issue of Bidder Parent Shares (if any) under clause 5.4 of this Scheme.

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

**SSD** means the Subscription and Shareholders Deed entered into by the Bidder Parent, PVH Services (UK) Limited, one or more Key Management Shareholders and one or more Key

Managers, as contemplated by clauses 2.1(h) and 4.11 of the Scheme Implementation Agreement.

**Target Performance Right** means a performance right issued by the Target and for the avoidance of doubt does not include a JVCo Performance Right.

**Target Register** means the register of members of the Target.

**Target Share** means a fully paid ordinary share in the Target.

**Target Shareholder** means a person who is recorded in the Target Register as the holder of the Target Shares at the time of the relevant inquiry or as at the referenced date.

**Trust Account** means the trust account operated by or on behalf of Target to hold the Cash Scheme Consideration on trust for the purpose of paying the Cash Scheme Consideration to the Scheme Shareholders in accordance with clause 5.3.

## 1.2 *Interpretation*

In this Scheme, the following rules of interpretation apply unless a contrary intention appears.

- (a) Any heading, index, table of contents or marginal note is for convenience only and does not affect the interpretation of this Scheme.
- (b) The singular includes the plural and vice versa.
- (c) A person includes an individual, body corporate, firm, partnership, joint venture, unincorporated body and Governmental Agency.
- (d) A reference to:
  - (i) a person includes that person's successors, permitted substitutes and permitted assigns;
  - (ii) a clause, schedule, attachment, annexure or exhibit is to a clause of, or a schedule, attachment, annexure or exhibit to, this Scheme;
  - (iii) this Scheme or another document includes that document as amended, varied, supplemented, novated or replaced from time to time and any schedule, attachment, annexure or exhibit to that document;
  - (iv) "agreement" includes an undertaking, deed, contract or other legally enforceable arrangement, whether or not in writing, and a reference to "document" includes an agreement (as so defined) in writing or any certificate, notice, instrument or other document of any kind;
  - (v) legislation or a provision of legislation includes all regulations, orders or instruments issued under that legislation or provision and any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision;
  - (vi) "include", "including" and "for example", and similar expressions, when introducing a list of items, does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
  - (vii) dollars or \$ is to Australian dollars; and
  - (viii) time is to the time in Sydney, New South Wales.



- (e) Where a word or expression is defined or given meaning, another grammatical form has a corresponding meaning.
  - (f) A provision of this Scheme must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Scheme or the inclusion of the provision in this Scheme.
  - (g) Where an act would be required to be done (including the payment of any money), or a time limit or period would expire, on a day that is not a Business Day, the act must be done or the limit or period will expire, on the following Business Day.
  - (h) A period of time expressed to commence:
    - (i) before or after a given day, or before or after the day of an act or event, is to be calculated exclusive of that day; and
    - (ii) on a given day, or on the day of an act or event, is to be calculated inclusive of that day.
- 

## **2 Preliminary**

- (a) The Target is a public company limited by shares, incorporated in Australia and registered in Victoria. The Target is admitted to the official list of the ASX and the Target Shares are officially quoted on the ASX.
- (b) As at the date of the Scheme Booklet, the Target had the following securities on issue:
  - (i) 44,687,514 Target Shares; and
  - (ii) 796,570 Target Performance Rights.
- (c) The Bidder is a proprietary company limited by shares, incorporated in Australia. The Bidder is a direct wholly-owned subsidiary of the Bidder Parent, a corporation incorporated in Australia.
- (d) The Target and Bidder have agreed, by executing the Scheme Implementation Agreement, to implement this Scheme.
- (e) This Scheme attributes actions to the Bidder and Bidder Parent but does not itself impose an obligation on them to perform those actions. The Bidder and Bidder Parent have agreed, by executing the Deed Poll, to perform the actions attributed to them under this Scheme, including the provision or procuring the provision of the Scheme Consideration to the Scheme Shareholders subject to the Scheme becoming Effective.
- (f) If this Scheme becomes Effective, each of the following will occur:
  - (i) all of the Scheme Shares will be transferred to the Bidder;
  - (ii) in consideration of the transfer of the Scheme Shares to the Bidder, the Bidder will provide or procure the provision of the Scheme Consideration to the Scheme Shareholders in accordance with this Scheme; and
  - (iii) the Target will enter the Bidder's name in the Target Register as the holder of all of the Scheme Shares.

### **3 Conditions precedent**

#### **3.1 Conditions precedent**

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

- (a) as at 8am on the Second Court Date, neither the Scheme Implementation Agreement nor the Deed Poll has been terminated in accordance with its terms;
- (b) all of the conditions precedent set out in clause 2.1 of the Scheme Implementation Agreement (other than the condition precedent in clause 2.1(b) (*Court approval*) of the Scheme Implementation Agreement) have been satisfied or waived in accordance with the terms of the Scheme Implementation Agreement;
- (c) the Court having approved this Scheme, with or without modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, the Target and (if required by clause 3.2 of the Scheme Implementation Agreement) the Bidder having accepted in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act; and
- (d) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme.

#### **3.2 Conditions precedent and operation of clauses 4 and 5**

The satisfaction of each condition of clause 3.1 is a condition precedent to the operation of clauses 4 and 5, which will not come into effect unless and until each of those conditions have been satisfied.

#### **3.3 Certificate**

- (a) At the Court hearing on the Second Court Date, the Target and the Bidder will each provide the Court with a certificate (or such other evidence as the Court may request), confirming (in respect of matters within its own knowledge) whether or not all of the conditions precedent set out in clause 2.1 of the Scheme Implementation Agreement (other than the condition precedent in clause 2.1(b) (*Court approval*) of the Scheme Implementation Agreement) have been satisfied or waived in accordance with the terms of the Scheme Implementation Agreement.
- (b) Where the certificates disclose that any of those conditions precedent has been satisfied or waived in accordance with the terms of the Scheme Implementation Agreement, they will constitute conclusive evidence (in the absence of manifest error) of the satisfaction or waiver of the condition (as the case may be).

#### **3.4 Lapse of Scheme**

Without limiting any rights under the Scheme Implementation Agreement, unless the Bidder and the Target agree otherwise in writing, the Scheme will lapse and be of no further force or effect if the Scheme Implementation Agreement is terminated in accordance with its terms, or if the Effective Date does not occur by the End Date, in which event the Target, Bidder and Bidder Parent are each released from:

- (a) any further obligation to take steps to implement this Scheme; and
- (b) any liability with respect to this Scheme.

---

## **4 Implementation of the Scheme**

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

- (a) By no later than 5pm on the first Business Day following the date on which the Court makes orders approving the Scheme, the Target must lodge with ASIC an office copy of the Court order approving this Scheme in accordance with section 411(10) of the Corporations Act.
- (b) Subject to clause 3.4, this Scheme will become Effective on and from the Effective Date.

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

Subject to this Scheme becoming Effective in accordance with clause 4.1, the following actions will occur (in the order set out below) on the Implementation Date:

- (a) subject to the Bidder fulfilling its obligations under clauses 5.2 and 5.4, all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares at the Implementation Date, must be transferred to the Bidder without the need for any further act by any Scheme Shareholder (other than acts performed by the Target or any of its directors or officers as attorney and agent for Scheme Shareholders under clause 7.7), by:
  - (i) the Target delivering to the Bidder a duly completed Scheme Transfer, executed on behalf of the Scheme Shareholders by the Target; and
  - (ii) the Bidder duly executing the Scheme Transfer, attending to the stamping of the Scheme Transfer (if required) and delivering it to the Target for registration;
- (b) immediately after receipt of the duly executed Scheme Transfer from the Bidder under clause 4.2(a)(ii), but subject to the stamping of the Scheme Transfer (if required), the Target must enter, or must procure the entry of, the name and address of the Bidder in the Target Register as the holder of the Scheme Shares; and
- (c) the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to the Bidder will, at the time of transfer of them to the Bidder, vest in the Bidder free from all Encumbrances, third party interests (whether legal or equitable) or restrictions on transfer.

---

## **5 Scheme Consideration**

### **5.1 Consideration under the Scheme**

On the Implementation Date, in consideration for the transfer to Bidder of the Scheme Shares, each Scheme Shareholder will be entitled to receive the Scheme Consideration in respect of each of their Scheme Shares in accordance with clauses 5.2 and 5.4.

### **5.2 Provision of Cash Scheme Consideration**

The obligation of the Bidder to pay the Cash Scheme Consideration pursuant to clause 2(f)(ii) will be satisfied by the Bidder:

- (a) before 10am on the Implementation Date, depositing in cleared funds into the Trust Account (details of which must be notified by the Target to the Bidder at least five Business Days before the Implementation Date), an amount equal to the aggregate

Cash Scheme Consideration payable to all Scheme Shareholders, such amount to be held on trust by the Target for the Scheme Shareholders (except that any interest on the amount, less bank fees and other charges, will be for the benefit of the Bidder), for the purpose of the Target paying the Scheme Consideration to the Scheme Shareholders; and

- (b) providing the Target with written confirmation of that payment.

### **5.3 Despatch of Cash Scheme Consideration**

- (a) Subject to the Bidder complying with its obligations under clause 5.2, the Target must on the Implementation Date, pay from the Trust Account to each Scheme Shareholder an amount equal to the Cash Scheme Consideration due to that Scheme Shareholder in accordance with this Scheme by:
  - (i) making, or procuring the making, of a deposit for the relevant amount in an account with any ADI (as defined in the *Banking Act 1959* (Cth)) in Australia notified by the Scheme Shareholder to the Target and recorded in the Target Register as the Record Date; or
  - (ii) despatching or procuring the despatch to the Scheme Shareholder of a cheque in the name of the Scheme Shareholder for the relevant amount, by pre-paid ordinary post (or, if the Registered Address of the Scheme Shareholder is outside Australia, by pre-paid airmail post) in an envelope addressed to the Registered Address as at the Record Date. In the case of Scheme Shares held in joint names any cheque required to be paid to Scheme Shareholders must be payable to the joint holders and be forwarded to the holder whose name appears first in the Register as at the Record Date.
- (b) To the extent that a cheque properly despatched by or on behalf of the Target pursuant to clause 5.3(a)(ii) is returned to the Target (or its agents) as undelivered or the cheque is not presented by a Scheme Shareholder earlier than six months after the Implementation Date (**Unclaimed Consideration**):
  - (i) the Target may cancel the cheque and credit the amount to a separate bank account of the Target until the Unclaimed Consideration is claimed or otherwise dealt with in accordance with any applicable unclaimed moneys legislation; and
  - (ii) subject to the Target complying with its obligations under clause 5.3(b)(i), the Target is discharged from liability to any Scheme Shareholder in respect of the Unclaimed Consideration.

### **5.4 Provision of Scrip Scheme Consideration**

- (a) The Bidder Parent must, on the Implementation Date (or such later time as the Bidder and the Target may agree in writing):
  - (i) issue the Bidder Parent Shares required to be issued under this Scheme (if any) to the Key Management Shareholders on terms such that each such Bidder Parent Share will rank equally in all respects with each other Bidder Parent Share on issue at the time and will have the rights set out in the Bidder Parent Constitution and the SSD;
  - (ii) ensure that each Bidder Parent Share required to be issued under this Scheme (if any) is duly and validly issued in accordance with all applicable laws and the Bidder Parent Constitution, and is fully paid and free from any

Encumbrance (except for any Encumbrance arising under the Bidder Parent Constitution or SSD); and

- (iii) procure that the name of each Key Management Shareholder entitled to receive Bidder Parent Shares under this Scheme is entered in the Bidder Parent's register of members as the holder of those Bidder Parent Shares to which it is entitled as part of its Scheme Consideration (with the same holding name and address and other details as the holding of the relevant Target Shares). In the case of any such Key Management Shareholders who hold Scheme Shares in a joint holding, the Bidder Parent must register the Bidder Parent Shares comprised in the Scheme Consideration in the names of the joint holders.
- (b) On or before the date that is five Business Days after the Implementation Date, the Bidder Parent must send or procure the sending of a certificate to each Key Management Shareholder, reflecting the issue of their Bidder Parent Shares.

## **5.5 Orders of a Governmental Agency**

In the case of notice having been given to the Target (or the Target's share registry) of an order or direction made by a Governmental Agency:

- (a) which requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder in accordance with clause 5.3, then the Target must procure that payment is made in accordance with that order or direction; or
- (b) which would prevent the Target from dispatching payment to any particular Scheme Shareholder in accordance with clause 5.3, the Target must retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the applicable amount of Cash Scheme Consideration until such time as payment in accordance with clause 5.3 is permitted by the order or direction or otherwise permitted by law,

and the payment or retention by the Target will constitute full discharge of the Target's obligations under clause 5.3(a) with respect to the amount so paid or retained until it is no longer required to be retained under clause 5.3(b).

## **5.6 Fractional entitlements**

Where the calculation of the Cash Scheme Consideration or the Scrip Scheme Consideration to be provided to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a cent, or fraction of a Bidder Parent Share, the fractional entitlement will be rounded to the nearest cent or Bidder Parent Share.

---

# **6 Dealings in Target Shares**

## **6.1 Dealings in Target Shares by Scheme Shareholders**

- (a) For the purpose of establishing who is a Scheme Shareholder, dealings in the Target 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 Target Register as the holder of the relevant Target Shares by the Record Date; and

- (ii) in all other cases, registrable transfers or transmission applications in respect of those dealings are received at the place where the Target Register is kept by 5pm on the Record Date,

and the Target will not accept for registration or recognise for any purpose (except a transfer to the Bidder under this Scheme and any subsequent transfer by the Bidder or its successors in title) any transmission application or transfer in respect of the Target Shares received after such times, or received prior to such times but not in registrable form.

- (b) The Target must register any registrable transfers or transmission applications of the type referred to in clause 6.1(a)(ii) by the Record Date.

## **6.2 Target Register**

- (a) The Target must, until the Scheme Consideration has been provided to Scheme Shareholders in accordance with this Scheme, maintain or procure the maintenance of the Target Register in accordance with the provisions of this clause 6 and the Target Register in this form will solely determine entitlements to Scheme Consideration.
- (b) As from the Record Date (other than for the Bidder after the Implementation Date), each entry current at that time in the Target Register in relation to the Scheme Shares will cease to be of any effect other than as evidence of the entitlement of Scheme Shareholders to the Scheme Consideration in accordance with this Scheme in respect of those Scheme Shares.

## **6.3 Certificates and holding statements**

All certificates and statements of holding for Scheme Shares held by Scheme Shareholders shall, following the Record Date, cease to have any effect as documents of title in respect of such Scheme Shares.

## **6.4 Provision of information**

As soon as practicable after the Record Date and in any event at least three Business Days before the Implementation Date, the Target must, or must procure, details of the names, Registered Addresses and holdings of Scheme Shares of each Scheme Shareholder as at the Record Date are given to the Bidder (or as it directs). Scheme Shareholders agree that this information may be disclosed to the Bidder Parent, the Bidder, their advisers and their other service providers to the extent necessary to effect the Scheme.

## **6.5 No disposals after Record Date**

If the Scheme becomes Effective, each Scheme Shareholder, and any person claiming through that Scheme Shareholder, must not in any way, deal with or dispose of or purport or agree to deal with or dispose of, any Scheme Shares or any interest in them except as set out in the Scheme, after the Record Date and any attempt to do so will be void and will have no legal effect whatsoever.

## **6.6 Quotation of Target Shares**

- (a) The Target must apply for suspension of trading in the Target Shares on the ASX with effect from the close of trading on ASX on the Effective Date.
- (b) At a date on or after the Implementation Date to be determined by the Bidder, the Target will apply to ASX:

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

## **7 General provisions**

### **7.1 Binding effect of Scheme**

Each Scheme Shareholder acknowledges that this Scheme binds the Target and all of the Scheme Shareholders (including those who do not attend the members' meeting of the Target to approve the Scheme or do not vote at that meeting or who vote against the Scheme at the meeting) and, to the extent of any inconsistency and as permitted by law, overrides the constitution of the Target.

### **7.2 Agreement by Scheme Shareholders**

Each Scheme Shareholder irrevocably agrees to:

- (a) transfer its Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares to the Bidder in accordance with this Scheme; and
- (b) any variation, cancellation or modification (if any) of the rights attached to its Scheme Shares constituted by or resulting from this Scheme.

### **7.3 Warranties by Scheme Shareholders**

Each Scheme Shareholder is deemed to have warranted to the Bidder, and to have appointed and authorised the Target as its attorney and agent to warrant to the Bidder, that:

- (a) all their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the date of transfer of them to the Bidder pursuant to the Scheme, be fully paid and free from all Encumbrances, third party interests (whether legal or equitable) or restrictions on transfer; and
- (b) they have full power and capacity to sell and to transfer their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) to the Bidder under the Scheme; and
- (c) it has no existing right to be issued any Target Shares or other securities in the Target, other than any Target Performance Rights or any entitlement under the SSD in the case of the Key Management Shareholders.

### **7.4 Pending registration of transfers**

From the Effective Date, until the registration of the Bidder in the Target Register as the holder of the Scheme Shares:

- (a) the Bidder will be beneficially entitled to the Scheme Shares transferred to it under this Scheme;
- (b) each Scheme Shareholder is deemed to have irrevocably appointed the Bidder as attorney and agent (and directed the Bidder in each capacity) to appoint any officer or agent nominated by the Bidder as its sole proxy and, where appropriate, its corporate representative, to attend the meetings of holders of Target Shares, exercise the votes attached to the Scheme Shares registered in their name and sign any resolution of holders of Target Shares (and each Scheme Shareholder acknowledges and agrees that as a result of each appointment they must not

themselves attend or vote at any meetings or sign any resolution whether in person or by proxy or corporate representative);

- (c) each Scheme Shareholder must take all other action in the capacity of a registered holder of Scheme Shares as the Bidder reasonably directs; and
- (d) each Scheme Shareholder acknowledges and agrees that in exercising the powers referred to in this clause 7.4, the Bidder and any officer or agent nominated by the Bidder under clause 7.4 may act in the best interests of the Bidder as the intended registered holder of Scheme Shares.

## **7.5 Stamp duty**

The Bidder:

- (a) must pay all stamp duty (if any) and any related fines and penalties payable in connection with the transfer of the Scheme Shares under this Scheme; and
- (b) indemnifies each Scheme Shareholder against any liability incurred by the Scheme Shareholder arising from the Bidder's failure to comply with clause 7.5(a).

## **7.6 Indemnities**

Unless this document provides otherwise:

- (a) each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this document;
- (b) it is not necessary for a person to incur expense or make any payment before enforcing a right of indemnity conferred by this document; and
- (c) the making of a claim by a person under an indemnity contained in this document in respect of a particular event does not preclude that person from subsequently making further claims under that indemnity in respect of the same event.

## **7.7 Authority to Target**

- (a) Each Scheme Shareholder consents to the Target and the Bidder doing all acts and things as may be necessary or desirable to give full effect to the Scheme and the transactions contemplated by it.
- (b) Each Scheme Shareholder, without the need for any further act, irrevocably appoints the Target and each of its directors and officers (jointly and severally) as its agent and attorney for the purpose of:
  - (i) executing any document or doing any other act necessary, expedient or desirable to give effect to the terms of this Scheme and the transactions contemplated by it including (without limitation) the execution and provision of the Scheme Transfer;
  - (ii) executing and delivering any deed or document required by the Target or the Bidder that causes each Scheme Shareholder entitled to Bidder Parent Shares to become a shareholder of Bidder and to be bound by the Bidder Parent Constitution and SSD; and
  - (iii) enforcing the Deed Poll against the Bidder and Bidder Parent.



- (c) The Target undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against the Bidder and Bidder Parent on behalf of and as agent and attorney for each Scheme Shareholder.

#### **7.8 Further assurance**

- (a) Each Scheme Shareholder and the Target will execute all documents and do all acts and things as may be necessary or desirable to give full effect to the Scheme and the transactions contemplated by it.
- (b) Without limiting the Target's other powers under the Scheme, the Target has power to do all things that it considers necessary or desirable to give effect to this Scheme and the transactions contemplated by it.

#### **7.9 Amendments to the Scheme**

If the Court proposes to approve the Scheme subject to any alterations or conditions, the Target may consent on behalf of all persons concerned, by its counsel or solicitors, to those alterations or conditions to which (if required by clause 3.2 of the Scheme Implementation Agreement) the Bidder has provided its prior written consent.

#### **7.10 Notices**

If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to the Target, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at the registered office of the Target.

#### **7.11 Governing law and jurisdiction**

This Scheme is governed by the laws of New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of, and Commonwealth courts having jurisdiction in that place and waives any right to object to proceedings being brought in those courts on the basis that proceedings have been brought in an inconvenient forum.

## **Annexure 2 – Deed Poll**

# Deed Poll

JOHNSON WINTER & SLATTERY

Level 25, 20 Bond Street  
SYDNEY NSW 2000

T +61 2 8274 9555 | F +61 2 8274 9500

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SYDNEY | PERTH | MELBOURNE | BRISBANE | ADELAIDE

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## Deed Poll

### Date

### Parties

**1 Sunshine B Pty Ltd (ACN 631 685 553) (Bidder)**

Address: c/o Clifford Chance, Level 16, 1 O'Connell Street, Sydney 2000

Email: markfischer@pvh.com (with a copy to andrew.crook@cliffordchance.com)

Contact: Mark D. Fischer

**2 Sunshine A Pty Ltd (ACN 631 684 770) (Bidder Parent)**

Address: c/o Clifford Chance, Level 16, 1 O'Connell Street, Sydney 2000

Email: markfischer@pvh.com (with a copy to andrew.crook@cliffordchance.com)

Contact: Mark D. Fischer

### In favour of

Each Scheme Shareholder

### Recitals

- A** Gazal Corporation Limited (ABN 57 004 623 474) (**Target**) and the Bidder have entered into the Scheme Implementation Agreement with respect to the Scheme and associated matters.
- B** The Target has agreed in the Scheme Implementation Agreement to propose the Scheme, pursuant to which (amongst other things), subject to the satisfaction or waiver of certain conditions precedent, the Bidder will acquire all of the Scheme Shares from Scheme Shareholders for the Scheme Consideration.
- C** In accordance with the Scheme Implementation Agreement, the Bidder and the Bidder Parent enter into this document for the purpose of covenanting in favour of the Scheme Shareholders to perform the obligations attributed to them under the Scheme.

### Operative part

---

## 1 Definitions and interpretation

### 1.1 Definitions

In this document:

**Implementation** has the meaning given in the Scheme Implementation Agreement.

**Insolvency Event** has the meaning given in the Scheme Implementation Agreement.

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

**Scheme** means the proposed scheme of arrangement pursuant to Part 5.1 of the Corporations Act between the Target and Scheme Shareholders, substantially in the form of Annexure 1 to this document, subject to any alterations or conditions (whether proposed by the Target, Bidder or required by the Court) which are agreed in writing by the Target and the Bidder.

Terms defined in the Scheme have the same meaning when used in this document unless the context requires otherwise.

## **1.2 Interpretation**

Clause 1.2 of the Scheme applies to this document.

---

## **2 Nature of deed poll**

The Bidder and the Bidder Parent acknowledge and agree that:

- (a) this document may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme, each Scheme Shareholder irrevocably appoints the Target and each of its directors and officers (jointly and severally) as its agent and attorney to enforce this document against the Bidder or the Bidder Parent on behalf of that Scheme Shareholder.

---

## **3 Conditions**

### **3.1 Conditions**

The obligations of the Bidder and the Bidder Parent under clause 4 are subject to the Scheme becoming Effective.

### **3.2 Termination**

Unless the Target, the Bidder and the Bidder Parent agree otherwise, the obligations of the Bidder and the Bidder Parent under this document will automatically terminate and the terms of this document will be of no further force or effect if:

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

### **3.3 Consequences of termination**

If this document is terminated under clause 3.2, then in addition and without prejudice to any other available rights, powers or remedies:

- (a) the Bidder and the Bidder Parent are both released from their obligations under this document except those obligations contained in clause 9.1; and
- (b) each Scheme Shareholder retains the rights they have against the Bidder and the Bidder Parent in respect of any breach of this document by the Bidder or the Bidder Parent which occurs before this document is terminated.

---

## **4 Payment of Scheme Consideration and performance of Scheme steps**

### **4.1 Compliance with obligations generally**

Subject to clause 3, each of the Bidder and Bidder Parent covenants in favour of the Scheme Shareholders to comply with its obligations under the Scheme Implementation Agreement, observe and perform the steps attributed to it under, and otherwise to comply with, the Scheme

as if named as a party to the Scheme, and do all other acts and things necessary or desirable on their respective parts to give full effect to the Scheme.

#### **4.2 Provision of Cash Scheme Consideration**

Subject to clause 3, the Bidder undertakes to, deposit an amount equal to the aggregate Scheme Consideration payable to all Scheme Shareholders in cleared funds into the Trust Account in accordance with clause 5 of the Scheme, before 10am on the Implementation Date.

#### **4.3 Provision of Scrip Scheme Consideration**

- (a) Subject to clause 3, the Bidder Parent undertakes to issue the Bidder Parent Shares required to be issued under the Scheme (if any) to the Key Management Shareholders in accordance with clause 5 of the Scheme, on the Implementation Date.
- (b) Without limiting any provision of the Scheme, the Bidder Parent Shares must:
  - (i) rank equally in all respects with each other Bidder Parent Share on issue at the time;
  - (ii) have the rights set out in the Bidder Parent Constitution and the SSD; and
  - (iii) be fully paid and free from any Encumbrance (except for any Encumbrance arising under the Bidder Parent Constitution or SSD).

---

## **5 Representations and warranties**

Each of the Bidder and Bidder Parent represents and warrants, and the Bidder Parent jointly and severally represents and warrants where applicable in respect of the Bidder Parent as well as the Bidder, that:

- (a) **(status)** it is a company duly incorporated and validly existing under the laws of the jurisdiction of its incorporation;
- (b) **(power)** it has full legal capacity and power to enter into and perform its obligations under this document;
- (c) **(authorisations)** its execution, delivery and performance of this document has been properly authorised by all necessary corporate action and it has full corporate power to execute, deliver and perform this document;
- (d) **(validity of this document)** this document constitutes legal, valid and binding obligations on it (subject to laws generally affecting creditors' rights and the principles of equity);
- (e) **(Insolvency Events)** neither it nor any other member of the Bidder Group is affected by an Insolvency Event;
- (f) **(no business)** immediately prior to Implementation, it:
  - (i) has not commenced trading or conducted business other than (as applicable):
    - (A) the entry into the Scheme Implementation Agreement, the Equity Commitment Deed Poll, the SSD, the Disclosure Letter, this document and any ancillary documents (as agreed between the Target and Bidder for the purposes of this clause); or

- (B) the taking of such other actions as are necessary to facilitate the implementation of the Scheme; and
- (ii) does not own any assets and does not have any Liabilities, other than assets derived, or Liabilities incurred, as a direct result of a matter specified in clause 5(f)(i); and
- (g) (**securities**) from the date of the Scheme Implementation Agreement until immediately prior to the implementation of the Scheme, it has not issued any shares, options, performance rights or convertible instruments or other securities or financial products granted or on issue by the Bidder, other than in accordance with the SSD or the issue of securities to the Bidder Parent or PVH Services (UK) Limited after the Effective Date solely in relation to the provision of funding necessary for the payment of the Cash Scheme Consideration.

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## 6 Continuing obligations

This document is irrevocable and, subject to clause 3, remains in full force and effect until the earlier of:

- (a) the Bidder and Bidder Parent having each fully performed its obligations under this document; or
- (b) the termination of this document under clause 3.2.

---

## 7 Notices

### 7.1 How to give notices

Any notice or other communication by a person contemplated by this document (including any agreement, request, demand, direction, consent, waiver or approval) must be:

- (a) in writing in English, legible and signed by the person or their agent; and
- (b) sent by express or registered post (with delivery confirmation) or email, or delivered, to the recipient, attention the recipient's contact, in each case using the relevant details set out in the Parties section of this document or any new details later notified by the recipient.

If a person sends a communication contemplated by this document other than by email, they must use all reasonable endeavours to send a copy of the communication promptly by email.

### 7.2 Time of receipt

A communication contemplated by this document is taken to be received by a recipient:

- (a) if hand-delivered, at the time of delivery to that recipient;
- (b) if sent by express or registered post (with delivery confirmation), on the date that communication is received by the recipient at the recipient's location; and
- (c) if sent by email, the earlier of:
  - (i) when the sender receives a read receipt from the recipient's email address; and
  - (ii) the time it is otherwise established that the email (including any attachment) came to the attention of the recipient.



If due to this clause 7.2 a communication would be taken to be received on a day that is not, or after 5pm on, a business day in the place of receipt, the communication is taken to have been received at 9am on the first business day in the place of receipt after that day. The place of receipt of an email is the address of the recipient contemplated by clause 7.1(b).

---

## **8 Governing law, jurisdiction and process agent**

### **8.1 *Governing law and jurisdiction***

This document is governed by the laws of New South Wales. The Bidder and Bidder Parent each irrevocably submits to the non-exclusive jurisdiction of the courts of, and Commonwealth courts having jurisdiction in that place and waives any right to object to proceedings being brought in those courts on the basis that proceedings have been brought in an inconvenient forum.

### **8.2 *Process agent***

The Bidder and Bidder Parent each irrevocably appoints Clifford Chance of Level 16, 1 O'Connell Street, Sydney, New South Wales 2000, Australia to receive on its behalf service of process in connection with this document, the Scheme and the Scheme Implementation Agreement and related non-contractual matters, and agrees that service of any process or documents on the agent will be sufficient service on it.

---

## **9 General**

### **9.1 *Costs and duty***

- (a) The Bidder agrees to (and the Bidder Parent agrees to procure that the Bidder will) pay all costs in respect of the Scheme (including in connection with the transfer of the Scheme Shares to the Bidder in accordance with the terms of the Scheme).
- (b) The Bidder must (and the Bidder Parent must procure that the Bidder will):
  - (i) pay all stamp duties (if any) and any fines and penalties with respect to stamp duty in connection with of this document, the Scheme, the Scheme Implementation Agreement or the steps to be taken under or in connection with each of them; and
  - (ii) indemnify each Scheme Shareholder against any liability arising from any failure to comply with clause 9.1(b)(i).

### **9.2 *Variation***

A provision of this document may not be varied by the Bidder or Bidder Parent unless:

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

and in either case, the Bidder and Bidder Parent enter into a further deed poll in favour of the Scheme Shareholders giving effect to such amendment.

**9.3 Further acts**

The Bidder and the Bidder Parent must, at their own expense, do all things (including the execution and delivery of documents) required by law or as may be necessary or desirable to give full effect to the provisions of this document and the transactions contemplated by it.

**9.4 No assignment**

The rights of a Scheme Shareholder under this document are personal. They cannot be assigned, charged or otherwise dealt with, and no person shall attempt or purport to do so, without the prior written consent of the Bidder and the Bidder Parent.

**9.5 Waiver**

A person waives a right under this document only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given. No other conduct of any person (including a failure to exercise, or delay in exercising, a right) operates as a waiver of a right or otherwise prevents the exercise of a right.

**9.6 Indemnities**

Unless this document provides otherwise:

- (a) each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this document;
- (b) it is not necessary for a person to incur expense or make any payment before enforcing a right of indemnity conferred by this document; and
- (c) the making of a claim by a person under an indemnity contained in this document in respect of a particular event does not preclude that person from subsequently making further claims under that indemnity in respect of the same event.

**9.7 Remedies cumulative**

The rights, powers and remedies of the Scheme Shareholders under this document are in addition to and do not exclude the rights, powers or remedies provided by law or equity or by any agreement.

---

**10 Counterparts and execution****10.1 Counterparts**

This document may be executed in counterparts which together constitute one instrument but is not effective until each party has executed at least one counterpart and the counterparts have been exchanged.

**10.2 Authority of signatory**

Each person, who executes this document on behalf of a party under a power of attorney or other authority, declares and warrants that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that authority.

## Execution

**EXECUTED** as a deed

**Executed by Sunshine B Pty Ltd** in  
accordance with section 127 of the  
*Corporations Act 2001* (Cth) by:

---

Director signature

---

Director/Secretary signature

---

Director full name  
(BLOCK LETTERS)

---

Director/Secretary full name  
(BLOCK LETTERS)

**Executed by Sunshine A Pty Ltd** in  
accordance with section 127 of the  
*Corporations Act 2001* (Cth) by:

---

Director signature

---

Director/Secretary signature

---

Director full name  
(BLOCK LETTERS)

---

Director/secretary full name  
(BLOCK LETTERS)

## **Annexure 1 – Scheme**