

ASX ANNOUNCEMENT

24 February 2022

VIRTUS HEALTH LIMITED (ASX: VRT)

Deed of Amendment to Process Deed

Virtus Health Limited ("Virtus", ASX: VRT) refers to the decision and final orders of the Takeovers Panel ("Panel") in response to the application dated 2 February 2022 submitted by BGH Capital Pty Ltd ("BGH"), and the Panel's media release, including final orders, which was released yesterday.

Virtus also refers to its related announcement, released this morning, which included a "Conformed Version" of the amended Process Deed agreed by Virtus and CapVest Partners LLP ("CapVest"). A copy of that announcement is attached (excluding the Conformed Version of the amended Process Deed).

The Panel has requested that Virtus release a copy of the Deed of Amendment to the Process Deed entered into by Virtus and CapVest (attached to this announcement), which includes tracked changes displaying the amendments made to the Process Deed and incorporated in the Conformed Version released to the market this morning.

This announcement is authorised by the Board of Directors of Virtus.

-ENDS-

Further information:

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Virtus Health Limited (ASX:VRT) brings together leading clinicians, scientists, researchers and support staff to provide the very best in fertility care and related specialised diagnostic and day hospital services. We have developed one of the most successful ARS collaborations in the world. With 126 of the world's leading fertility specialists supported by over 1300 professional staff, we are the largest network and provider of fertility services in Australia, Ireland and Denmark, Singapore and UK.

ASX ANNOUNCEMENT

24 February 2022

VIRTUS HEALTH LIMITED (ASX: VRT)

Takeovers Panel announcement

Virtus Health Limited ("Virtus", ASX: VRT) refers to the decision and final orders of the Takeovers Panel ("Panel") in response to the application dated 2 February 2022 submitted by BGH Capital Pty Ltd ("BGH") (the "Panel Decision"). The Panel's media release, including final orders, was released yesterday.

The Panel Decision relates to the Process Deed entered into by Virtus and CapVest Partners LLP ("CapVest") following receipt of CapVest's proposal, as set out in Virtus' ASX announcement on 20 January 2022, to acquire 100% of Virtus by way of scheme of arrangement offering \$7.60 cash per share with alternative transaction structure offering \$7.50 cash per share (the "CapVest Proposal"), and the earlier proposal received from BGH as set out in Virtus' ASX announcement on 14 December 2021 to acquire all of Virtus' shares via scheme of arrangement at \$7.10 cash per share (the "BGH Proposal").

The Panel orders provide, in summary, that:

1. Virtus and CapVest cannot enter into an agreement to effect the CapVest Proposal until 11 March 2022;
2. certain exclusivity arrangements contained in the Process Deed needed to be amended to clarify how they would operate in the event that Virtus does receive a competing proposal; and
3. Virtus must disclose the amended terms of the Process Deed and the "Data Room Open Date".

Attached is the amended Process Deed that has been agreed with CapVest. Virtus notes that the "Data Room Open Date" under the Process Deed occurred on 31 January 2022.

The CapVest Proposal was made on the basis that CapVest required exclusivity and other protections in order to proceed with the CapVest Proposal. The Virtus Board agreed to provide exclusivity on the terms of the Process Deed as it considered that the CapVest Proposal was attractive for shareholders in the context of a change of control transaction, was superior to the BGH Proposal and it was therefore in the best interests of Virtus shareholders.

As previously announced on 20 January 2022, subject to Virtus and CapVest agreeing an implementation deed on terms acceptable to Virtus, it is the Virtus Board's intention to unanimously recommend that shareholders vote in favour of, or accept, the CapVest Proposal in the absence of a superior proposal and subject to an independent expert concluding it is in the best interests of Virtus shareholders, or fair and reasonable, as applicable.

While CapVest's due diligence is progressing and the parties are negotiating the terms of an implementation agreement, there is no certainty that the CapVest Proposal will result in any transaction being put to Virtus shareholders for their consideration. Virtus shareholders do not need to take any action at this stage in relation to the CapVest Proposal or the BGH Proposal.



The Virtus Board will continue to keep shareholders and the market informed of further developments.

This announcement is authorised by the board of directors of the company.

-ENDS-

Further information:

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Execution Version

Process Deed – Deed of Amendment

CapVest Partners LLP

and

Virtus Health Limited

ACN 129 643 492

23 February 2022

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THIS DEED is made on

23 February 2022

BETWEEN:

- (1) **CapVest Partners LLP** whose registered office is at 100 Pall Mall, St. James's, London SW1Y 5NQ (**CapVest**); and
- (2) **Virtus Health Limited** ACN 129 643 492 whose registered office is at Level 3, 176 Pacific Highway, Greenwich, NSW 2065 (**Virtus**).

RECITALS:

- (3) Virtus and CapVest are parties to the Process Deed.
- (4) The parties wish to amend and restate the Process Deed in the manner set out in this document.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

Effective Date means the date of this document.

Process Deed means the Process Deed dated 20 January 2022 including its annexure between CapVest and Virtus, as amended and restated under the terms of this document.

1.2 **Terms defined in the Process Deed**

A term (other than the term defined in clause 1.1) that is defined in the Process Deed (as amended by this document) has the same meaning in this document.

2. **CONSIDERATION**

Each party acknowledges that it has received valuable consideration for entering into this document.

3. **AMENDMENT**

3.1 **Amendment to Process Deed**

- (a) Clause 4 of the Process Deed is amended to insert a new clause 4.6 after existing clause 4.5 as follows:

4.6 **Fiduciary carve out to the no talk and no diligence requirements**

~~From the date which is 15 Business Days after the Data Room Open Date,~~
Clauses 4.4 and 4.5 do not apply to the extent that the relevant clause (and only to such an extent) restricts Virtus or the Virtus Board from taking or refusing to take any action with respect to a genuine Competing Proposal (which was not solicited, invited, encouraged or initiated in contravention of clause 4.3) provided that the Virtus Board has determined, in good faith and acting reasonably that:

- (a) after consultation with its financial advisors, such a genuine Competing Proposal is, or could reasonably be considered to become, a Superior Proposal; and
- (b) after receiving written legal advice from its external legal advisers failing to respond to such a genuine Competing Proposal would, or would be reasonably likely to, constitute a breach of the Virtus Board's fiduciary or statutory obligations.

In that regard the Virtus Board may facilitate, or continue to facilitate, a Competing Proposal notwithstanding that the relevant Competing Proposal may not be more favourable to Virtus Shareholders than any matching or superior proposal to the terms of the Competing Proposal that may be made by CapVest.

Further, for the avoidance of doubt, CapVest and Virtus agree that the provisions of, and requirements to comply with, clauses 4.11 and 4.8 do not restrict in any way the ability of the Virtus Board to determine that clauses 4.4 and 4.5 do not apply with respect to a genuine Competing Proposal under this clause 4.6 and clause 4.11 does not oblige Virtus to notify CapVest of a Competing Proposal before the Virtus Board has made a determination under this clause 4.6 as to whether clauses 4.4 and 4.5 apply with respect to a genuine Competing Proposal.

- (c) Clause 4 of the Process Deed is amended to insert a new clause 4.7 after the revised clause 4.6 as follows:

- (a) Subject to clause 4.7(b), if any non-public information about the business or affairs of the Virtus Group is provided or made available to any person in connection with an actual, proposed or potential Competing Proposal which has not previously been provided or made available to CapVest, Virtus must promptly, and in any event within 2 Business Days of the date on which such non-public information has been provided or made available to such person, provide to CapVest:

- ~~(a)~~ (i) in the case of written materials, a copy of; and

- ~~(b)~~ (ii) in any other case, a written statement of,

that non-public information.

- (b) Clause 4.7(a) does not require Virtus to provide or make available to CapVest any information which Virtus reasonably considers is likely to disclose information relating to that other person which is commercially sensitive information of that person.

- (d) Clause 4 of the Process Deed is amended to insert a new clause 4.11 after existing clause 4.10 as follows:

During the Exclusivity Period, Virtus must, subject to clause 4.6:

- (a) promptly, and in any event within 1 Business Day of the approach, inform CapVest in writing if it or any of its Representatives receives any approach with respect to any actual, proposed or potential Competing Proposal and must disclose to CapVest:

- (i) the fact that the approach has been made;

- (ii) all material terms and conditions of, and the nature of, the Competing Proposal, including as to value and price;
 - (iii) the details of the person making the approach (and if different, details of and the identity of the proposed bidder or acquirer), the material terms of the Competing Proposal and any material updates to the proposal, to allow Virtus to properly exercise its right under clause 4.9; and
- (b) as soon as practicable, and in any event within 1 Business Day after Virtus decides to provide information or the Virtus Board resolves to consider the approach (or the actual, proposed or potential Competing Proposal), notify CapVest if Virtus proposes to provide confidential information of Virtus to any third party in relation to any actual, proposed or potential Competing Proposal,

but nothing in this clause 4.11 limits the obligations of Virtus under clauses 4.3 (No shop), clause 4.4 (No talk) or clause 4.5 (No due diligence) **and nothing in this clause 4.11 obliges Virtus to notify CapVest of a Competing Proposal until after the board of Virtus has determined in accordance with clause 4.6 whether clauses 4.4 and 4.5 apply with respect to a genuine Competing Proposal..**

3.2 **Effect of amendment**

- (a) Except as expressly amended and restated to under the terms of this document, no changes to the Process Deed are to be inferred or implied, and in all other respects the Process Deed is confirmed and remains in full force and effect.
- (b) Clause 3.1 does not affect any right or obligation of either party that arises before the date of this document.
- (c) With effect on and from the Effective Date, the Process Deed will be read and construed as amended and restated to under the terms of this document, including all schedules in this document.

3.3 **Consent**

Each party (to the extent applicable):

- (a) consents to the amendments contemplated by this document; and
- (b) agrees that the Process Deed to which it is a party shall be construed in such a way as to give effect to the amendments contemplated by this document.

4. **OTHER**

Clause 6 (Term and termination) and clause 7 (General) of the Process Deed apply to this document as if incorporated by reference in this document.

EXECUTED AS A DEED

Each person who executes this document on behalf of a party under a power of attorney 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 power of attorney.

EXECUTED by **VIRTUS HEALTH LIMITED** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Signature of director/secretary

Name

Name

SIGNED, SEALED AND DELIVERED for
and on behalf of **CAPVEST PARTNERS
LLP** in the presence of:



Signature of witness

Signature of authorised signatory

Name of witness

Name of authorised signatory

This document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000*.