



5 August 2022

Australian Securities Exchange (ASX) Announcement

SALE OF MAIN UNDERTAKING

Highlights

- TTB enters into binding agreement with SonderMind to purchase the TTB business through a sale of assets.
- Purchase price is US\$10 million, less adjustments and liabilities, including the value of assumed employee leave entitlements of any transferring employees, any debt funding provided by or on behalf of SonderMind to fund the Company's working capital requirements and an agreed adjustment on account of certain tax liabilities.
- Transaction is subject to a number of conditions, including TTB shareholder approval.
- The TTB Board unanimously recommends that shareholders vote in favour of the transaction, subject to the independent expert opining the transaction is in the best interests of shareholders and in the absence of a Superior Proposal.¹
- Post-completion of the transaction, TTB intends to return funds to shareholders via a buy-back facility and commence a winding up.

Total Brain Limited (**Total Brain, TTB** or the **Company**), an applied, integrative neuroscience company, and developer of a SaaS-based mental health platform, has entered a binding asset sale agreement (**Agreement**) with SonderMind Inc. (**SonderMind**), pursuant to which SonderMind has agreed to purchase the business of the Company through a sale of assets by the Company and its subsidiaries (**TTB Group**) (**Proposed Transaction**).

The purchase price payable by SonderMind is US\$10 million, less:

- any debt funding provided by or on behalf of SonderMind to fund the Company's working capital requirements until completion of the Proposed Transaction;
- the value of assumed employee leave entitlements as at completion for those employees who accept SonderMind's offer of employment; and
- an agreed adjustment on account of certain tax liabilities of approximately US\$133,000.

As at the date of this announcement, SonderMind has made available US\$500,000 to TTB Group via a letter of credit which TTB Group has fully drawn. SonderMind has advised TTB that, subject to appropriate arrangements being agreed, a further US\$2,000,000 may be made available to the TTB Group should funds be required prior to completion. TTB presently expects that the TTB Group will require approximately a further US\$1,500,000 to ensure it has adequate working capital up to completion of the Proposed Transaction (assuming a completion date of 30 September 2022).

¹ See definition in Annexure B.



An additional payment of USD\$3 million may become payable on completion if the Company implements a previously executed clinical services agreement with one of its key customers by 22 August 2022. This would require the commencement of the Company's platform being made available to the client's patients on terms acceptable to SonderMind. The payment is not pro-rated and there is no guarantee TTB will become entitled to this payment.

A summary of the Agreement is set out in **Annexure A** to this announcement. The Agreement contains customary exclusivity obligations for a public company transaction which are set out in full in **Annexure B** to this announcement.

The TTB Board intends to use the purchase consideration to:

- pay transaction fees;
- pay outstanding liabilities of the TTB Group, including the convertible note to Zoltan Varga;² and
- following these payments, conduct a share buy-back enabling shareholders to liquidate their investment in the Company.

More details of the expected net proceeds available for distribution to TTB shareholders will be provided in the Notice of Meeting (see below).

On completion of the buy-back, the Company intends to apply to ASX for delisting and commence a winding up process.

Conditions of the Proposed Transaction

The Proposed Transaction is subject to a number of conditions (**Conditions**) which must be satisfied or waived for completion to occur, including:

- approval of the Proposed Transaction by TTB shareholders by ordinary resolution in accordance with ASX Listing Rule 11.2;
- no breach of warranty by SonderMind;
- no breach of warranty by the TTB Group;
- no material adverse change occurring in relation to the TTB Group;
- receipt of material third party consents to assign or novate contracts to SonderMind;
- no insolvency event occurring in respect of any member of the TTB Group;
- key employees accepting employment with SonderMind; and
- agreement of the terms on which interim funding is provided by SonderMind to the TTB Group.

² Refer to TTB's ASX announcement dated 5 April 2022.



Unless all Conditions are satisfied or waived in accordance with the Agreement, the Proposed Transaction will not complete. TTB has the benefit of, and the right to waive, the Condition of no breach of warranty by Sondermind. The shareholder approval Condition is for the benefit of TTB but cannot be waived. The remainder of the Conditions are for the benefit of SonderMind only.

Shareholder approval and Independent Expert's Report

As the Proposed Transaction will be a disposal of the Company's main undertaking, Total Brain will be required to seek shareholder approval for the Proposed Transaction for the purposes of ASX Listing Rule 11.2. Total Brain intends to hold an extraordinary general meeting for this purpose within 45 days of this announcement. A notice of meeting and explanatory memorandum (**Notice of Meeting**), which will contain additional information on the Proposed Transaction, will be sent to shareholders and released to ASX in due course.

Total Brain has engaged PKF Melbourne Corporate Pty Ltd (**Independent Expert**) to prepare a report (**Independent Expert's Report**) opining on whether the Proposed Transaction is in the best interests of TTB shareholders. The Independent Expert's Report will be provided to TTB shareholders and released to ASX with the notice of meeting.

TTB shareholders are encouraged to participate in the vote after having carefully considered the Notice of Meeting and Independent Expert's Report.

Sale process and recommendation

In early 2022, TTB engaged Incentrum Group, a global merchant bank based in New York City and London, focused on the healthcare, life and material sciences, industrials, and technology industries, to explore strategic alternatives for the Company. Incentrum Group assisted TTB in preparing a tailored positioning of the Company with potential buyers and ultimately soliciting offers for the sale of all or part of the Company's business. The process included Incentrum Group reaching out to a number of strategic and financial buyers with interest in the sector. During the latter period of that process, the broader market conditions for non-profitable technology businesses significantly deteriorated, impacting the Company's ability to raise working capital at an appropriate price and the value attributed to the Company by third parties in a corporate transaction.

The TTB Board has considered the value to TTB shareholders of a sale of the Company's assets as against the need for further working capital to fund ongoing operations having regard to current operating and market conditions.



The directors unanimously recommend that all TTB shareholders vote in favour of the Proposed Transaction, and each director intends to vote all TTB shares held or controlled by them (comprising approximately 13.16% of the Company's shares) in favour of the Proposed Transaction, subject to the Independent Expert concluding that the Proposed Transaction is in the best interests of TTB shareholders and in the absence of a Superior Proposal.

Timetable

Event	Date
Announcement of Proposed Transaction	5 August 2022
Despatch Notice of Meeting and Independent Expert's Report to TTB shareholders	Mid-August 2022
Extraordinary general meeting of TTB shareholders to approve the Proposed Transaction	Mid-September 2022
Completion of Proposed Transaction (subject to satisfaction or waiver of Conditions)	Late September 2022

Authorised for release to ASX by:

Dr Evian Gordon
Executive Chairman
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About Total Brain Limited (ASX: TTB)

Total Brain Limited is a San Francisco and Sydney based applied, integrative neuroscience company that has developed and offers Total Brain, a SaaS-based mental health platform powered by the largest standardized brain database. Its SaaS platform has helped more than 1 million registered users to-date scientifically measure and optimize their brain capacities while managing the risk of common mental conditions. Benefits for providers include improved patient outcomes, tracking of evidence-based outcomes across the continuum of care, and a reduction in clinician fatigue. Benefits for employers and payers include better mental healthcare access, lower costs and higher productivity. For more information, please visit www.totalbrain.com and follow us on [Twitter](#), [LinkedIn](#) and [Facebook](#).

Annexure A – Material terms of Asset Sale Agreement

Termination rights

The Agreement may be terminated:

- by either party, if:
 - a Condition is not satisfied or waived by the end date of 31 October 2022 (unless the parties agree to extend that date);
 - the other party materially breaches the Agreement (other than breach of warranty) which is not remedied in 10 business days; or
 - a court or government agency issues an order prohibited the Proposed Transaction from proceeding;
- by SonderMind, if before completion:
 - a material adverse change in respect of the TTB Group's business occurs; or
 - a member of the TTB Board fails to recommend the Proposed Transaction (or adversely changes their recommendation);
- by the Company, if before completion:
 - a majority of the TTB Board publicly recommends a Competing Proposal³ that is a Superior Proposal⁴ (provided that the Competing Proposal was not solicited in breach of the exclusivity obligations set out in Annexure B); or
 - the Independent Expert concludes the Proposed Transaction is not in the best interests of TTB shareholders; or
- as agreed in writing by the parties.

Warranties and warranty claims

The TTB Group has given standard warranties as to title to the assets being acquired, capacity to sell those assets and the sufficiency and condition of those assets. Customary business warranties as to contracts, property, intellectual property, employees, records, compliance with laws and authorisations, litigation and information provided to SonderMind have also been given by the TTB Group.

SonderMind has a period of 90 days post-completion of the Proposed Transaction to notify the Company of any alleged warranty breach by the TTB Group, or is otherwise prevented from bringing a claim for breach of warranty.

Indemnities

The TTB Group has given customary indemnities for a transaction of this nature, including indemnities in favour of SonderMind:

³ See definition in Annexure B.

⁴ See definition in Annexure B.



- for all liabilities in respect of the assets being acquired that are incurred or relate to the period prior to completion;
- for all liabilities in respect of the assets not being acquired by SonderMind;
- for claims relating pre-completion employee liabilities, and the transfer of the transferring employees to the employment of SonderMind; and
- for loss suffered as a result of breach of warranty by the TTB Group.

SonderMind agrees to indemnify the TTB Group for:

- any loss suffered by the TTB Group in respect of an obligation assumed by SonderMind post-completion;
- loss suffered by the TTB Group as a result of breach of warranty by SonderMind; and
- duty payable on the transfer of assets under the Agreement.

Annexure B – Exclusivity arrangements

1.1 Termination of existing discussions

Total Brain represents and warrants that, as at the date of this Agreement, it is not in negotiations or discussions and that it has ceased any existing negotiations or discussions in respect of any Competing Proposal (or which may reasonably be expected to lead to a Competing Proposal) with any person.

1.2 No shop restriction

During the Exclusivity Period, Total Brain and the Sellers must not, and must ensure that each of their Representatives does not directly or indirectly, except with the prior written consent of the Buyer:

- (a) solicit, invite, encourage or initiate any Competing Proposal or any enquiries, negotiations or discussions with any Third Party in relation to, or that may reasonably be expected to encourage or lead to a Competing Proposal or which may otherwise lead to the Transaction not being completed; or
- (b) solicit, invite, encourage or initiate approaches, enquiries, discussions or proposals with a view to obtaining any offer, proposal or expression of interest from any person in relation to, or which may reasonably be expected to lead to a Competing Proposal,

or communicate any intention to do any of those things.

1.3 No talk restriction

Subject to clauses 1.5 and 1.6, during the Exclusivity Period, Total Brain and the Sellers must not, and must ensure that each of their Representatives does not directly or indirectly, except with the prior written consent of the Buyer:

- (a) facilitate, enter into or participate in negotiations or discussions with, or enter into any agreement, understanding or arrangement with, any Third Party; or
- (b) communicate any intention to do any of those things,

in relation to, or that may reasonably be expected to encourage or lead to a Competing Proposal or any agreement, understanding or arrangement that may reasonably be expected to lead to a Competing Proposal, or which may otherwise lead to the Transaction not being completed, even if:

- (c) the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Total Brain and the Sellers or any of their Representatives; or
- (a) the person has publicly announced the Competing Proposal.



1.4 No due diligence

During the Exclusivity Period, except with the prior written consent of the Buyer, Total Brain and the Sellers must not, and must ensure that their Representatives do not, directly or indirectly:

- (a) solicit, invite, initiate, or encourage, or (subject to clauses 1.5 and 1.6) facilitate or permit, any Third Party to undertake due diligence investigations in respect of the Seller Group or any of its businesses and operations, in connection with or with a view to obtaining or which would reasonably be expected to lead to such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal; or
- (b) subject to clauses 1.5 and 1.6, make available to any Third Party or permit any Third Party to receive any non-public information relating to the Seller Group or any of their businesses and operations, in connection with or with a view to obtaining or which would reasonably be expected to lead to such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.

1.5 Exceptions

Clauses 1.3 and 1.4 do not apply to the extent that they restrict Total Brain, the Sellers or the TTB Board from taking or refusing to take any action in relation to a bona fide Competing Proposal provided that the TTB Board has determined, acting in good faith, that:

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

provided that prior to taking such action or refusing to take any action notification of the Competing Proposal has been made in accordance with clause 1.7.

1.6 Further exceptions

Nothing in this Agreement prevents Total Brain and the Sellers from:

- (a) continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course of business or in relation to the Transaction; or
- (b) fulfilling their continuous disclosure obligations.

1.7 Notice of Competing Proposal

During the Exclusivity Period, Total Brain and the Sellers must promptly (and in any event within 48 hours) notify the Buyer in writing if it or any of its Representatives becomes aware of:

- (a) any negotiations or discussions, approach or attempt to initiate any negotiations or discussions, or intention to make such an approach or attempt to initiate any negotiations



or discussions with Total Brain, the Sellers or their Representatives in respect of any inquiry, expression of interest, offer, proposal or discussion that could reasonably be expected to lead to a Competing Proposal;

- (b) any approach or proposal made by a Third Party to Total Brain, the Sellers or their Representatives that could reasonably be expected to lead to any actual, proposed or potential Competing Proposal or which is itself a Competing Proposal; or
- (c) any request made by a Third Party to Total Brain, the Sellers or their Representatives for any information relating to the Seller Group or any of their businesses and operations, in connection with any actual, proposed or potential Competing Proposal.

A notification given under this clause 1.7 must include all material terms and conditions of the Competing Proposal to the extent known by the Sellers or their Representatives and the identity of the Third Party.

1.8 Matching right

Without limiting clauses 1.2 and 1.3, during the Exclusivity Period, Total Brain and the Sellers must not, and must procure that the Seller Group Members do not, enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a Third Party, a Seller Group Member or any of them proposes or propose to undertake or give effect to an actual, proposed or potential Competing Proposal unless each of the following conditions has been satisfied:

- (a) the TTB Board acting in good faith and in order to satisfy its statutory or fiduciary duties (having received written advice from its external legal advisers), determines that the actual, potential or proposed Competing Proposal would be or would be likely to be an actual, proposed or potential Superior Proposal;
- (b) Total Brain and the Sellers have provided the Buyer with the material terms and conditions of the Competing Proposal including price and the identity of the Third Party making the actual, proposed or potential Competing Proposal (in each case, to the extent known);
- (c) Total Brain and the Sellers have given the Buyer at least five clear Business Days after the date of the provision of the information referred to in clause 1.8(b) to provide a matching or superior proposal to the terms of the Competing Proposal; and
- (d) the Buyer has not provided a matching or superior proposal to the terms of the Competing Proposal to the TTB Board by the expiry of the five Business Day period referred to in clause 1.8(c),

Total Brain and the Sellers acknowledge and agree that each successive modification (excluding immaterial modifications) of any Competing Proposal will constitute a new Competing Proposal for the purposes of the requirements under clause 1.8 and accordingly the Sellers must comply with clauses 1.7 and 1.8 in respect of any new Competing Proposal unless clauses 1.8(a) to 1.8(d) apply.

1.9 Buyer Counterproposal

If the Buyer proposes to Total Brain and the Sellers amendments to the Transaction or a new proposal that constitute a matching or superior proposal to the terms of the Competing Proposal



(Buyer Counterproposal) before the expiry of the five Business Day period referred to in clause 1.8(c), Total Brain must procure that the TTB Board considers the Buyer Counterproposal and if the TTB Board, acting reasonably and in good faith, determines that the Buyer Counterproposal would provide a matching or superior outcome for TTB Shareholders as a whole compared with the Competing Proposal, taking into account the material terms and conditions of the Buyer Counterproposal, then:

- (a) Total Brain, the Sellers and the Buyer must use their reasonable endeavours to agree the amendments to this Agreement that are reasonably necessary to reflect the Buyer Counterproposal and to implement the Buyer Counterproposal, in each case as soon as reasonably practicable; and
- (b) Total Brain must use its reasonable endeavours to procure that each member of the TTB Board recommends the Buyer Counterproposal to TTB Shareholders.

1.10 Key defined terms

Buyer means SonderMind Inc.

Competing Proposal means in relation to the Seller Group, a proposal, offer, expression of interest, agreement, transaction or arrangement which, if entered into or completed substantially in accordance with its terms, would mean a Third Party whether alone or together with its Associates would:

- (a) directly or indirectly, acquire a Relevant Interest in, become the holder of, or otherwise acquire, have the right to acquire or have an economic interest in more than 20% of the securities of any Seller Group Member;
- (b) directly or indirectly acquire, obtain a right to acquire, or otherwise obtain an economic interest in all or a material part of the assets of, or business conducted by, the Seller Group;
- (c) acquire Control of the Seller Group; or
- (d) otherwise acquire or merge with the Seller Group,

in each case, whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition, capital reduction or buy-back, sale or purchase of shares or assets, strategic alliance, joint venture, partnership, dual-listed company structure (or other synthetic merger), or other transaction or arrangement, other than the convertible note with Zoltan Varga. Each successive material modification or variation of a Competing Proposal will constitute a new Competing Proposal.

Exclusivity Period means the period from and including the date of this Agreement and ending on the earlier of:

- (a) the termination of this Agreement in accordance with its terms;
- (b) the Completion Date; and
- (c) 31 October 2022.



Representative of a party means an officer, director, employee, contractor, sub-contractor, adviser, auditor, insurer, financier, consultant, representative or agent of that party or of a Related Body Corporate of that party.

Seller Group means Total Brain Limited and each of its Related Bodies Corporate, and **Seller Group Member** means any member of the Seller Group.

Sellers means Total Brain Limited, Brain Resource Inc., BRC Operations Pty Limited, BRC Distribution Pty Ltd, BRC IP Pty Ltd, BRC International Pty Ltd, BRC Development Pty Ltd and PoweringUpMBS Pty Ltd.

Superior Proposal means a bona fide Competing Proposal received by the Seller Group that the TTB Board determines, acting in good faith and in order to satisfy what the TTB Board considers to be its fiduciary or statutory duties (and after having obtained advice from the Seller Group's external legal and, if appropriate, financial advisers):

- (a) is reasonably capable of being valued and completed within a reasonable timeframe in accordance with its terms; and
- (b) would, if completed substantially in accordance with its terms, result in a transaction that is be more favourable to the TTB Shareholders (as a whole) than the Transaction viewed in aggregate, taking into account all terms and conditions of the Competing Proposal (including consideration, conditionality, funding, certainty and timing),

taking into account all terms, conditions and other aspects of the Competing Proposal and the Transaction, including conditions, the identity, reputation and financial condition of the person making the proposal and all relevant legal, regulatory and financial matters (including the value and type of consideration, funding, any timing considerations, any conditions precedent or other matters affecting the probability of the proposal being completed).

Third Party means any person or entity (including a Government Agency) other than a Seller Group Member or a Buyer Group Member.

Transaction means the proposed acquisition of the Business Assets by the Buyer in accordance with this Agreement.

TTB Board means the board of directors of Total Brain or any relevant board committee authorised by such board of directors to exercise powers of the full board of Total Brain, and a reference to a TTB Board Member means any director of Total Brain comprising part of the TTB Board.