

30 March 2017

## AFTERPAY AND TOUCHCORP – MERGER TO PROCEED

Afterpay Holdings Limited (ASX:AFY) (**Afterpay**) and Touchcorp Limited (ASX:TCH) (**Touchcorp**) are pleased to announce that the due diligence investigations and contractual negotiations referred to in their joint announcement of 23 February 2017 have been successfully concluded and that a formal Merger Implementation Agreement (**MIA**) has been entered into. The two companies have agreed to merge under a new Australian holding company called "Afterpay Touch Group Limited" (**Afterpay Touch Group**) to be implemented by inter-conditional schemes of arrangement (**Merger**).

### Benefits of the Merger

The boards of Afterpay and Touchcorp believe the key benefits of the Merger include:

- Additional scope for accelerating the growth profile of Afterpay through new verticals and geographies
- The opportunity to create a leading platform to provide payment solutions for customers and retailers
- Expand core Touchcorp recurring revenue streams and profit contribution through focused business development and a strong sales platform
- Generate synergies through combined platform benefits, operational cost savings and a singular strategic focus
- Enhanced intellectual property profile and transaction integrity capability
- A strong combined leadership team focused on success and operational excellence

A summary of the key aspects of the merger, including more information on the benefits for shareholders, is set out in the investor presentation.

Anthony Eisen will be Afterpay Touch Group's Executive Chairman, Nick Molnar will be the Managing Director and Chief Executive Officer and Nadine Lennie will be the Chief Financial Officer.

### **Details of the Merger Implementation Agreement**

The Afterpay Scheme and Touchcorp Scheme are inter-conditional and subject to conditions. These conditions include each party obtaining all necessary regulatory, court and shareholder approvals, no material adverse change or certain specific company events in relation to Afterpay or Touchcorp occurring, no prescribed occurrences in relation to Afterpay or Touchcorp occurring, the entry into appropriate exchange or variation documentation in respect of Afterpay and Touchcorp employee awards, each party's warranties remaining true and correct in all material respects, Afterpay Touch Group obtaining ASX listing approval, and the receipt of independent expert reports for each scheme that the scheme is in the best interests of, and fair and reasonable to, the respective shareholders.

The MIA contains customary exclusivity provisions including reciprocal no shop and no talk restrictions, notification obligations and matching rights (subject to customary fiduciary outs).

The MIA also details circumstances under which either Afterpay or Touchcorp may be required to pay a break fee of \$750,000 to the other.

Full details of the conditions to the Merger and other agreed terms are set out in the MIA, a copy of which is attached to this announcement.

### **Indicative timetable and next steps**

Afterpay and Touchcorp shareholders do not need to take any action at the present time.

Separate scheme booklets containing information relating to the Afterpay Scheme and the Touchcorp Scheme respectively (including in each case an independent expert's report) is expected to be sent to Afterpay and Touchcorp shareholders (as applicable) in May 2016.

It is expected that Afterpay and Touchcorp shareholders will have the opportunity to vote on the Afterpay Scheme and Touchcorp Scheme (as applicable) in June 2017.

Subject to the conditions being satisfied, the Merger is expected to be implemented in late June 2017.

A more detailed indicative timetable for the Merger is set out in Schedule 1 to the MIA. These dates are indicative and subject to change.

**-Ends**

For further information please contact:

Anthony Eisen

**Afterpay Holdings Limited**

Executive Chairman

*ant@afterpay.com.au*

Mike Jefferies

**Touchcorp Limited**

Executive Chairman

*Mike.Jefferies@touchcorp.com*

**Annexure**

**Merger Implementation Agreement**

Refer attached.

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# **Merger Implementation Agreement**

**Afterpay Holdings Limited**

**Touchcorp Limited**

**Afterpay Touch Group Limited**

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**Title**                      **Merger Implementation Agreement**

**Date**                      **30 March 2017**

**Parties**                      **Afterpay Holdings Limited** (ACN 606 589 520) of Level 16, 380 La Trobe Street, Melbourne VIC 3000 (**Afterpay**)

**Touchcorp Limited** (ARBN 603 731 184) of 19 Par-La-Ville Road, Hamilton, Bermuda HM 11 (**Touchcorp**)

**Afterpay Touch Group Limited** (ACN 618 280 649) of Level 16, 380 La Trobe Street, Melbourne VIC 3000 (**NewCo**)

## **Recitals**

- A      Afterpay and Touchcorp signed and announced a Heads of Agreement on 23 February 2017 in respect of an agreement in principle for the Transaction.
- B      The Parties have agreed to implement the Transaction on and subject to the terms and conditions of this Agreement.
- C      The Parties have agreed certain other matters in connection with the Transaction as set out in this Agreement.

## **Operative provisions**

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### **1. Defined terms and interpretation**

#### **Definitions**

- 1.1      In this Agreement:

**Accounting Standards** means:

- (a)      the accounting standards made by the Australian Accounting Standards Board in accordance with the Corporations Act, and the requirements of the Corporations Act relating to the preparation and content of accounts; and
- (b)      generally accepted accounting principles that are consistently applied in Australia, except those inconsistent with the standards or requirements referred to in paragraph (a).

**Adviser** means any person who is engaged to provide professional advice of any type (including legal, accounting, consulting or financial advice) to Afterpay or Touchcorp.

**Afterpay Board** means the board of directors of Afterpay as constituted from time to time (or any committee of the board of directors of Afterpay constituted from time to time to consider the Transaction on behalf of Afterpay).

**Afterpay Break Fee** has the meaning given to that term in clause 12.8.

**Afterpay Deed Poll** means a deed poll to be executed by NewCo prior to the Afterpay First Court Date, in a form the Parties agree in writing, provided that where NewCo nominates a NewCo Sub in accordance with clause 2.4, the Deed Poll must provide for the NewCo Sub to have the primary obligations under the Afterpay Deed Poll.

**Afterpay Due Diligence Materials** means the information disclosed by or on behalf of the Afterpay Group (including management presentations and in response to requests for information) to Touchcorp or any of its Authorised Persons prior to the date of this Agreement.

**Afterpay Effective Date** means, in respect of the Afterpay Scheme, the date on which the Afterpay Scheme becomes Effective.

**Afterpay Employee Plan** means the Afterpay Employee Option Plan and Afterpay Employee Incentive Plan.

**Afterpay Employee Rights** means any right to be issued or transferred an Afterpay Share, or to have a limited recourse loan share vested, granted under any Afterpay Employee Plan.

**Afterpay Excluded Shareholder** means any member of the Touchcorp Group who is an Afterpay Shareholder.

**Afterpay First Court Date** means the date the Australian Court first hears the application to order the convening of the Afterpay Scheme Meeting under section 411(1) of the Corporations Act.

**Afterpay General Meeting** means a general meeting of Afterpay Shareholders to be convened for the purpose of considering and voting on the Afterpay General Meeting Resolutions.

**Afterpay General Meeting Resolutions** means resolutions to be voted on by Afterpay Shareholders (subject to voting exclusions under the Listing Rules) for the purpose of satisfying the condition in clause 3.1(o).

**Afterpay Group** means Afterpay and its Subsidiaries.

**Afterpay Implementation Date** means, with respect to the Afterpay Scheme, the third Business Day, or such other Business Day as Afterpay and Touchcorp agree, following the Afterpay Record Date.

**Afterpay Indemnified Parties** means each Authorised Person of a member of the Afterpay Group.

**Afterpay Independent Expert** means an expert, independent of the Parties, engaged by Afterpay in good faith to opine on whether the Afterpay Scheme is in the best interests of Afterpay Shareholders.

**Afterpay Independent Expert's Report** means the report from the Afterpay Independent Expert commissioned by Afterpay for inclusion in the Afterpay Scheme Booklet, which includes a statement by the Afterpay Independent Expert on whether, in its opinion, the Afterpay Scheme is fair and reasonable and in the best interests of Afterpay Shareholders, and includes any update of that report by the Afterpay Independent Expert.

**Afterpay Information** means such information regarding Afterpay that is provided by or on behalf of Afterpay to the other Parties or the Touchcorp Independent Expert:



- (a) to enable the Touchcorp Scheme Booklet and the Afterpay Scheme Booklet to be prepared and completed in compliance with all applicable laws and to satisfy any requirements imposed by ASIC or ASX, including under RG 60; and
- (b) to enable applications for Regulatory Approvals to be made.

To avoid doubt, this includes all information provided by Afterpay in accordance with clause 5.1(i).

**Afterpay Material Adverse Change** means:

- (a) an event, occurrence or matter that occurs, is announced, is disclosed or otherwise becomes known to Touchcorp and/or NewCo (whether it becomes public or not) after the date of this Agreement (whenever occurring), and which (individually or when aggregated with other events, occurrences or matters) has or is reasonably likely to have the following effects:
  - (i) to prevent or would be likely to prevent Afterpay from materially discharging its obligations under this Agreement; or
  - (ii) to materially adversely affect the financial condition or prospects (in each case considered as a whole) of the Afterpay Group, including as a consequence of:
    - (A) any material default by any member of the Afterpay Group under their existing financing facilities, including the NAB Facility; or
    - (B) any material litigation threatened or commenced against any member of the Afterpay Group;
- (b) Afterpay is in default, or National Australia Bank Limited notifies Afterpay that it considers an Afterpay Group entity is in default, under the NAB Facility and that default is not remedied to the satisfaction of National Australia Bank Limited within the earlier of 5 Business Days from the date of such default or the Touchcorp Second Court Date;
- (c) National Australia Bank Limited ceases funding under the NAB Facility;
- (d) net transaction losses of the Afterpay Group (calculated on a basis consistent with previous public disclosures by Afterpay) are above 1.00% (unaudited) on average over two consecutive months commencing on the date of this Agreement;
- (e) Anthony Eisen and/or Nick Molnar ceases his employment or gives notice of his intention to resign from employment with the Afterpay Group;
- (f) underlying merchant sales of the Afterpay Group (calculated on a basis consistent with previous public disclosures by Afterpay) are below \$11.5 million on average over 4 or more consecutive weeks commencing on the date of this Agreement (excluding the effects of any Afterpay System or Touchcorp System failure not caused or materially contributed to by Afterpay);
- (g) total current net assets of the Afterpay Group (unaudited and calculated on a basis consistent with Afterpay's audited financial statements as at 30 June 2016) fall below \$69.5 million (excluding any effect from costs or expenses associated with the Transaction or accounting effects which arise as a direct result of the Transaction); or

- (h) a major security breach or systems failure is experienced in relation to the Afterpay System, other than a failure caused or materially contributed to by the Touchcorp Group;

but does not include:

- (i) any matter Fairly Disclosed in the Afterpay Due Diligence Materials;
- (ii) any matter, event or circumstance arising from changes in general economic or political conditions, the securities market in general or law;
- (iii) any change in taxation or interest rates;
- (iv) any change in generally accepted accounting principles or the interpretation of them;
- (v) any change occurring directly or indirectly as a result of any matter, event or circumstance required by this Agreement, the Transaction, the Afterpay Scheme, the Touchcorp Scheme or the transactions contemplated by them; or
- (vi) any change occurring with the written consent of Touchcorp.

**Afterpay Prescribed Occurrence** means the occurrence of any of the following on or after the date of this Agreement and before 8.00am on the Touchcorp Second Court Date:

- (a) Afterpay converts all or any of its shares into a larger or smaller number of shares (see section 254H of the Corporations Act);
- (b) any member of the Afterpay Group resolves to reduce its share capital in any way;
- (c) any member of the Afterpay Group:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under subsections 257C(1) or 257D(1) of the Corporations Act;
- (d) any member of the Afterpay Group declares, pays or distributes any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital;
- (e) any member of the Afterpay Group issues shares, or grants a performance right, a phantom performance right, or an option over its shares, or agrees to make such an issue or grant such a performance right, phantom performance right or an option;
- (f) any member of the Afterpay Group issues, or agrees to issue, convertible notes;
- (g) any member of the Afterpay Group disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;
- (h) any member of the Afterpay Group creates or agrees to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property, other than in the usual and ordinary course of business consistent with past practice, and other than in connection with a NAB Facility Extension;
- (i) Afterpay adopts a new constitution or modifies or repeals its constitution or a provision of it; or
- (j) any member of the Afterpay Group becomes Insolvent,

provided that an Afterpay Prescribed Occurrence will not include any matter:

- (k) expressly required to be done or procured by Afterpay pursuant to this Agreement;
- (l) to the extent it is Fairly Disclosed in filings of Afterpay with the ASX prior to the date of this Agreement;
- (m) to the extent it is Fairly Disclosed in the Afterpay Due Diligence Materials;
- (n) required by law or by an order of a court or Governmental Agency; or
- (o) expressly permitted pursuant to this Agreement; or
- (p) in respect of which Afterpay first consulted Touchcorp, and which Touchcorp subsequently approved in writing (which approval must not be unreasonably withheld or delayed).

**Afterpay Recommendation** has the meaning given to that term in clause 6.3(a).

**Afterpay Record Date** means, in respect of the Afterpay Scheme, 5.00pm on the third Business Day (or such other Business Day as Afterpay and Touchcorp agree in writing) following the Afterpay Effective Date.

**Afterpay Register** means the register of members of Afterpay maintained by or on behalf of Afterpay in accordance with section 168(1) of the Corporations Act.

**Afterpay Scheme Booklet** means the explanatory booklet to be prepared by Afterpay in respect of the Afterpay Scheme in accordance with the terms of this Agreement and to be dispatched to Afterpay Shareholders.

**Afterpay Scheme Consideration** means the consideration payable to Afterpay Scheme Shareholders under the Afterpay Scheme, being 1 new NewCo Share for each Afterpay Scheme Share held by an Afterpay Scheme Shareholder.

**Afterpay Scheme** means the proposed scheme of arrangement pursuant to Part 5.1 of the Corporations Act between Afterpay and Afterpay Scheme Shareholders in respect of all Afterpay Scheme Shares, in a form the Parties agree in writing, subject to any alterations or conditions made or required by the Australian Court under section 411(6) of the Corporations Act and approved in writing by Afterpay and Touchcorp.

**Afterpay Scheme Meeting** means the meeting of Afterpay Shareholders ordered by the Australian Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Afterpay Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

**Afterpay Scheme Share** means an Afterpay Share on issue as at the Afterpay Record Date other than any Afterpay Share then held by an Afterpay Excluded Shareholder (but including any such Afterpay Share held on behalf of one or more third parties or otherwise in a fiduciary capacity).

**Afterpay Scheme Shareholder** means a person who holds one or more Afterpay Scheme Shares.

**Afterpay Second Court Date** means, in respect of the Afterpay Scheme, the first day on which an application made to the Australian Court for an order under section 411(4)(b) of the Corporations Act approving the Afterpay Scheme is heard or scheduled to be heard or, if the

application is adjourned for any reason, means the date on which the adjourned application is heard or scheduled to be heard.

**Afterpay Share** means an issued fully paid ordinary share in the capital of Afterpay.

**Afterpay Shareholder** means each person who is registered in the Afterpay Register as a holder of Afterpay Shares.

**Afterpay System** has the same meaning as in the SDLA;

**Afterpay Voting Intention** has the meaning given to that term in clause 6.3(b).

**Afterpay Warranties** means the representations and warranties of Afterpay set out in clauses 10.1 and 10.2.

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

**ASX** means ASX Limited (ACN 008 624 691) or, if the context requires, the financial market operated by it.

**ATO** means the Australian Taxation Office.

**Australian Court** means the Federal Court of Australia or any other court of competent jurisdiction under the Corporations Act as the parties may agree in writing.

**Authorised Person** means, in respect of a person:

- (a) a director, officer, or employee of the person;
- (b) an Adviser of the person; and
- (c) a director, officer or employee of an Adviser of the person.

**BMA** means the Bermuda Monetary Authority.

**Bermudan Court** means the Supreme Court of Bermuda.

**Break Fee** has the meaning given to that term in clause 12.5.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Melbourne, Victoria.

**Bye-laws** means the bye-laws of Touchcorp adopted on 2 March 2015 (as may be amended from time to time).

**Change of Control Requirements** has the meaning given to that term in clause 7.13(a).

**Claim** means a claim, notice, demand, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute.

**Companies Act** means the *Companies Act 1981* of Bermuda.

**Competing Proposal** means any proposal, offer or transaction by a third party (other than the Parties or their Related Bodies Corporate) that, if completed, would mean:

- (a) a person would acquire a relevant interest or voting power in 20% or more of the issued shares of a Party or of the securities of any member of any Party's group;

- (b) a person would directly or indirectly acquire or obtain an interest (including an economic interest or an interest by way of a licence) in all or a substantial part or material part of the business conducted by, or assets or property of, a Party or any member of any Party's group. In the case of Touchcorp and members of the Touchcorp Group, for the purpose of this Agreement:
  - (i) its business, assets or property is to be assessed as a whole, and also on a basis which excludes the Touchcorp Group's holding of Afterpay Shares; and
  - (ii) a substantial or material part of its business, assets or property will be taken to include its intellectual property assets which are used to provide services to the Afterpay Group under the SDLA;
- (c) a person would acquire Control of any Party or any member of any Party's group;
- (d) a person may otherwise acquire, or merge with, a Party or any member of any Party's group (including by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale of securities, strategic alliance, dual listed company structure, joint venture or partnership); or
- (e) a Party will issue, on a fully diluted basis, 20% or more of its capital as consideration for the assets or share capital or another person.

Each successive material modification or variation of any proposal, offer or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.

**Condition Subsequent** means the condition subsequent to the Touchcorp Scheme, being the condition set out in clause 3.1(d) to the Afterpay Scheme.

**Confidential Information** has the meaning given to that term in clause 15.1.

**Consultation Notice** has the meaning given to that term in clause 3.16(d).

**Control** has the meaning given under section 50AA of the Corporations Act. **Controlled** has the equivalent meaning.

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

**Costs** means those costs outlined in clauses 12.2 and 12.3.

**Counter-proposal** has the meaning given to that term in clause 11.9.

**Effective** means, when used in relation to the:

- (a) Afterpay Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Australian Court made under section 411(4)(b) of the Corporations Act in relation to the Afterpay Scheme; and
- (b) Touchcorp Scheme, the coming into effect, of the order of the Bermudan Court in relation to the Touchcorp Scheme.

**End Date** means the later of:

- (a) 30 September 2017; and
- (b) such other date and time agreed in writing between Afterpay and Touchcorp.

**Escrow Agreement** means:

- (a) unless paragraph (b) applies in relation to all of the Escrowed Shares for at least the balance of the restriction period currently applicable to the Afterpay Shares held by the Escrowed Shareholders, an agreement between NewCo and each of the Escrowed NewCo Shareholders in respect of the Escrowed Shares, substantially in the form of Appendix 9A to the Listing Rules with necessary amendments to reflect escrow of NewCo Shares in lieu of Afterpay Shares, to be agreed by Afterpay and Touchcorp; or
- (b) if required by ASX as a condition to the admission of NewCo to the official list of ASX, a restriction agreement which complies with Appendix 9A to the Listing Rules.

**Escrowed NewCo Shareholders** means the Afterpay Shareholders named in Schedule 2.

**Escrowed Shares** means, in respect of each Escrowed NewCo Shareholder, the NewCo Shares set out opposite the name of that Escrowed NewCo Shareholders Schedule 2.

**Exchange of Options/Rights Deed** means a deed in a form which the Parties agree in writing for the purposes of this Agreement having the effect of cancelling all Afterpay Employee Rights and replicating all such rights on substantially the same terms but with respect to NewCo Shares.

**Exclusivity Period** means the period commencing on the date of this Agreement and ending on the earliest of:

- (a) the End Date;
- (b) the Afterpay Effective Date; and
- (c) the date this Agreement is terminated in accordance with its terms.

**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 and includes any minister, ATO, ASIC, ASX, the BMA, the Bermuda Registrar of Companies, and any regulatory organisation established under statute or any stock exchange.

**GST Exclusive Consideration** has the meaning given to that term in clause 17.6.

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

**Heads of Agreement** means the Heads of Agreement between Afterpay and Touchcorp in respect of an agreement in principle for the Transaction, signed and announced to ASX on 23 February 2017.

**Impugned Amount** has the meaning given to that term in clause 12.15.

**Ineligible Foreign Shareholder** means:

- (a) an Afterpay Scheme Shareholder whose address as shown in the Afterpay Register (as at the Afterpay Record Date) is in a place which Afterpay and NewCo reasonably determine is a place that it is unlawful or unduly onerous to issue that Afterpay Scheme Shareholder with new NewCo Shares when the Afterpay Scheme becomes Effective; and

- (b) a Touchcorp Scheme Shareholder whose address as shown in the Touchcorp Register (as at the Touchcorp Record Date) is in a place which Touchcorp and NewCo reasonably determine is a place that it is unlawful or unduly onerous to issue that Touchcorp Scheme Shareholder with new NewCo Shares when the Touchcorp Scheme becomes Effective.

**Insolvency Event** means in relation to a person:

- (a) **(insolvency official)** the appointment of a liquidator, provisional liquidator, administrator, statutory manager, controller, receiver, receiver and manager or other insolvency official (whether under an Australian law, Bermudan law or another foreign law) to the person or to the whole or a substantial part of the property or assets of the person and the action is not stayed, withdrawn or dismissed within 14 days;
- (b) **(arrangements)** the entry by the person into a compromise or arrangement with its creditors generally;
- (c) **(winding up)** the calling of a meeting to consider a resolution to wind up the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or order for the winding up or deregistration of the person other than where the application or order (as the case may be) is set aside or withdrawn within 14 days;
- (d) **(suspends payments)** the person suspends or threatens to suspend payment of its debts as and when they become due;
- (e) **(ceasing business)** the person ceases or threatens to cease to carry on business;
- (f) **(insolvency)** the person is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or the Companies Act, or is otherwise presumed to be insolvent under the Corporations Act or the Companies Act;
- (g) **(deregistration)** the person being deregistered as a company or otherwise dissolved;
- (h) **(deed of company arrangement)** the person executing a deed of company arrangement; or
- (i) **(analogous events)** anything analogous to those set out in any of paragraphs (a) to (h) inclusive occurs in relation to the person under the laws of a foreign jurisdiction,

and a person is **Insolvent** if any event specified in paragraphs (a) to (i) inclusive occurs in respect of that person.

**Interim Operations Committee** has the meaning given in the Heads of Agreement.

**Investigating Accountant** means Ernst & Young Transaction Advisory Services Limited, or such other person as the Parties agree, engaged by NewCo.

**Investigating Accountant's Report** means the report from the Investigating Accountant commissioned by NewCo for inclusion in each of the Afterpay Scheme Booklet and the Touchcorp Scheme Booklet and to be relied on by each of NewCo, Afterpay and Touchcorp, to provide a limited assurance report on certain pro forma financial information of NewCo.

**Listing Rules** means the official listing rules of ASX as amended from time to time.

**NAB Facility** means the Afterpay Warehouse Trust financing facility constituted by various documents dated on or about 24 November 2016 between, as the case may be, National

Australia Trustees Ltd (in its own capacity and in its capacity as trustee), National Australia Managers Limited, National Australia Bank Limited (in its own capacity and in its capacity as trustee), Afterpay, Afterpay Pty Ltd and others.

**NAB Facility Extension** means an extension of term or increase in the amount which may be advanced under the NAB Facility, and associated extension or increase in security interests in respect of the NAB Facility, provided that any such extension or increase does not include a variation to the NAB Facility which would be materially adverse to the Afterpay Group.

**NDA** means the confidentiality agreement between Afterpay and Touchcorp executed on or about 27 February 2017.

**NewCo Employee Right** means an option, performance right, limited recourse loan share, or other right granted under the NewCo Incentive Plan to acquire, or have vested rights to, a NewCo Share subject to the terms of that plan.

**NewCo Group** means NewCo and its Subsidiaries.

**NewCo Incentive Plan** has the meaning given to that term in clause 8.1.

**NewCo Indemnified Parties** means each Authorised Person of a member of the NewCo Group.

**NewCo Information** means such information regarding NewCo that is provided by or on behalf of NewCo to Afterpay, the Afterpay Independent Expert, Touchcorp or the Touchcorp Independent Expert:

- (a) to enable the Afterpay Scheme Booklet and the Touchcorp Scheme Booklet to be prepared and completed in compliance with all applicable laws and to satisfy any requirements imposed by ASIC or ASX, including under RG 60; and
- (b) to enable applications for Regulatory Approvals to be made.

To avoid doubt, this includes all information provided by NewCo in accordance with clauses 5.3(e) and 5.4(e).

**NewCo Share** means an issued fully paid ordinary share in the capital of NewCo.

**NewCo Sub** has the meaning given to that term in clause 2.4.

**NewCo Warranties** means the representations and warranties of NewCo set out in clauses 10.7 and 10.8.

**Optus Contract** means the Optus Group Master Supply Agreement dated 16 March 2016 between Optus Mobile Pty Limited and Touch Networks Pty Limited.

**Proposal Notice** has the meaning given to that term in clause 11.7.

**Proposal Recipient** has the meaning given to that term in clause 11.7.

**Receiving Party** has the meaning given to that term in clause 17.2.

**Recipient** has the meaning given to that term in clause 17.6.

**Regulatory Approval** means:

- (a) any approval, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, direction, declaration,



authority, waiver, modification or exemption from, by or with a Governmental Agency; or

- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Governmental Agency intervened or acted in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

**Related Body Corporate** of a person, means a related body corporate of that person under section 50 of the Corporations Act (including any body corporate that would be a related body corporate if section 48(2) of the Corporations Act was omitted) or an "affiliated company" as defined in section 86(3) of the Companies Act (as applicable).

**Relevant Expense** has the meaning given to that term in clause 17.8.

**RG 60** means Regulatory Guide 60 issued by ASIC.

**SDLA** means the Software Development and Licence Agreement between Afterpay Pty Ltd and Touch Australia Pty Ltd dated 12 February 2015, as amended from time to time.

**Share Splitting** means, in respect of the Afterpay Scheme, the splitting by a holder of Afterpay Shares into two or more parcels of Afterpay Shares whether or not it results in any change in beneficial ownership of the Afterpay Shares.

**Sub Notification** has the meaning given to that term in clause 2.4.

**Subsidiary** has the meaning given to that term in section 46 of the Corporations Act or section 86 of the Companies Act (as applicable).

**Superior Proposal** means a bona fide Competing Proposal which the Afterpay Board or Touchcorp Board (as applicable) determines, acting in good faith and in order to satisfy what the Afterpay Board or Touchcorp Board (as applicable) reasonably considers to be its fiduciary or statutory duties, would, if completed substantially in accordance with its terms, be likely to result in a transaction more favourable to Afterpay Shareholders or Touchcorp Shareholders (as applicable) than the Afterpay Scheme or Touchcorp Scheme (as applicable) having regard to matters including consideration, conditionality, funding, certainty and timing.

**Supplier** has the meaning given to that term in clause 17.6.

**Timetable** means the indicative timetable in relation to the Transaction set out in Schedule 1 with such modifications as may be agreed in writing by the Parties.

**Touchcorp Board** means the board of directors of Touchcorp as constituted from time to time (or any committee of the board of directors of Touchcorp constituted from time to time to consider the Touchcorp Board on behalf of Touchcorp).

**Touchcorp Break Fee** has the meaning given to that term in clause 12.6.

**Touchcorp Deed Poll** means the deed poll to be executed by NewCo prior to the Touchcorp First Court Date, in a form the Parties agree in writing, provided that where NewCo nominates a NewCo Sub in accordance with clause 2.4, the Deed Poll must provide for the NewCo Sub to have the primary obligations under the Touchcorp Deed Poll.

**Touchcorp Due Diligence Materials** means the information disclosed by or on behalf of the Touchcorp Group (including management presentations and in response to requests for information) to Afterpay or any of its Authorised Persons prior to the date of this Agreement.

**Touchcorp Effective Date** means, in respect of the Touchcorp Scheme, the date on which the Touchcorp Scheme becomes Effective.

**Touchcorp Employee Plan** means the Touchcorp Equity Incentive Plan.

**Touchcorp Employee Rights** means any right to be issued or transferred a Touchcorp Share, or to have a limited recourse loan share vested, granted under any Touchcorp Employee Plan.

**Touchcorp First Court Date** means the date the Bermudan Court first hears the application to order the convening of the Afterpay Scheme Meeting under section 99(1) of the Companies Act.

**Touchcorp Group** means Touchcorp and its Subsidiaries.

**Touchcorp Implementation Date** means, with respect to the Touchcorp Scheme, the third Business Day, or such other Business Day as Touchcorp and Afterpay agree, following the Afterpay Record Date.

**Touchcorp Indemnified Parties** means each Authorised Person of a member of the Touchcorp Group.

**Touchcorp Independent Expert** means an expert, independent of the Parties, engaged by Touchcorp in good faith to opine on whether the Touchcorp Scheme is in the best interests of Touchcorp Shareholders.

**Touchcorp Independent Expert's Report** means the report from the Touchcorp Independent Expert commissioned by Touchcorp for inclusion in the Touchcorp Scheme Booklet, which includes a statement by the Touchcorp Independent Expert on whether, in its opinion, the Touchcorp Scheme is fair and reasonable and in the best interests of Touchcorp Shareholders, and includes any update of that report by the Touchcorp Independent Expert.

**Touchcorp Information** means such information regarding Touchcorp that is provided by or on behalf of Touchcorp to the other Parties or the Afterpay Independent Expert:

- (a) to enable the Afterpay Scheme Booklet and the Touchcorp Scheme Booklet to be prepared and completed in compliance with all applicable laws and to satisfy any requirements imposed by ASIC or ASX, including under RG 60; and
- (b) to enable applications for Regulatory Approvals to be made.

To avoid doubt, this includes all information provided by Touchcorp in accordance with clause 5.2(i).

**Touchcorp Material Adverse Change** means:

- (a) an event, occurrence or matter that occurs, is announced, is disclosed or otherwise becomes known to Afterpay and/or NewCo (whether it becomes public or not) after the date of this Agreement (whenever occurring), and which (individually or when aggregated with other events, occurrences or matters) has or is reasonably likely to have the following effects:
  - (i) to prevent or would be likely to prevent Touchcorp from materially discharging its obligations under this Agreement; or
  - (ii) to materially adversely affect the financial condition or prospects (in each case considered as a whole) of the Touchcorp Group, including as a

consequence of any material litigation threatened or commenced against any member of the Touchcorp Group;

- (b) Optus terminates or notifies Touchcorp of its intention to terminate the Optus Contract for any reason;
- (c) one or more other contracts with customers of the Touchcorp Group (excluding the Optus Contract and the SDLA) are terminated or Touchcorp is notified of an intention to terminate such contracts for any reason such that the annualised revenue to the Touchcorp Group for FY2017 under all customer contracts, including current and any new customers, calculated by annualising such revenue on the basis of revenue received in the period on and from 1 January 2017 to the point of calculation, is reduced by more than \$1 million (excluding under the Optus Contract and the SDLA);
- (d) total cash held by the Touchcorp Group is below \$15 million as at the date of the Touchcorp Scheme Meeting, adjusted for changes in current assets and current liabilities as agreed by the Parties and calculated on the basis that Afterpay has paid all amounts in full as and when due, and excluding (so as to add back) any payments made to advisors whose identities have been disclosed to Afterpay for advice in relation to the Heads of Agreement, this Agreement or any transaction related steps that ensue including preparation and approval of the Afterpay Scheme Booklet and Touchcorp Scheme Booklet;
- (e) Nadine Lennie ceases her employment or gives notice of her intention to resign from employment with the Touchcorp Group;
- (f) Citibank withdraws, or notifies Touchcorp of its intention to withdraw, the provision of acquiring services;
- (g) any current certification of the Touchcorp Group in relation to PCI DSS compliance is withdrawn or Touchcorp is notified that such certification is to be withdrawn;
- (h) a major security breach or systems failure is experienced in relation to the Afterpay System or any Touchcorp System, other than a failure caused, or materially contributed to, by the Afterpay Group, which causes a material adverse effect on Afterpay or Touchcorp or is reasonably likely to have a material adverse effect on the financial results of Afterpay or Touchcorp for calendar 2017; or
- (i) Afterpay becomes entitled to exercise its right to terminate the SDLA in accordance with clause 14.1(a) or 14.1(b) the SDLA;

but does not include:

- (i) any matter Fairly Disclosed in the Touchcorp Due Diligence Materials;
- (ii) any matter, event or circumstance arising from changes in general economic or political conditions, the securities market in general or law;
- (iii) any change in taxation or interest rates;
- (iv) any change in generally accepted accounting principles or the interpretation of them;
- (v) any change occurring directly or indirectly as a result of any matter, event or circumstance required by this Agreement, the Transaction, the Afterpay Scheme, the Touchcorp Scheme or the transactions contemplated by them; or

- (vi) any change occurring with the written consent of Afterpay.

**Touchcorp Prescribed Occurrence** means the occurrence of any of the following on or after the date of this Agreement and before 8.00am on the Afterpay Second Court Date:

- (a) Touchcorp subdivides or consolidates all or any of its shares into a larger or smaller number of shares, as the case may be;
- (b) any member of the Touchcorp Group resolves to reduce its share capital in any way;
- (c) any member of the Touchcorp Group:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under the Companies Act;
- (d) any member of the Touchcorp Group declares, pays or distributes any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital;
- (e) any member of the Touchcorp Group issues shares, or grants a performance right, a phantom performance right, or an option over its shares, or agrees to make such an issue or grant such a performance right, phantom performance right or an option;
- (f) any member of the Touchcorp Group issues, or agrees to issue, convertible notes;
- (g) any member of the Touchcorp Group disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;
- (h) any member of the Touchcorp Group creates or agrees to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property, other than in the usual and ordinary course of business consistent with past practice;
- (i) Touchcorp adopts new Bye-laws or modifies or repeals its Bye-laws or a provision of them; or
- (j) any member of the Touchcorp Group becomes Insolvent,

provided that a Touchcorp Prescribed Occurrence will not include any matter:

- (k) expressly required to be done or procured by Touchcorp, pursuant to this Agreement;
- (l) to the extent it is Fairly Disclosed in filings of Touchcorp with the ASX prior to the date of this Agreement;
- (m) to the extent it is Fairly Disclosed in the Touchcorp Due Diligence Materials;
- (n) required by law or by an order of a court or Governmental Agency;
- (o) expressly permitted pursuant to this Agreement; or
- (p) in respect of which Touchcorp first consulted Afterpay, and which Afterpay approved in writing (which approval must not be unreasonably withheld or delayed).

**Touchcorp Recommendation** has the meaning given to that term in clause 6.5(a).

**Touchcorp Record Date** means, in respect of the Touchcorp Scheme, 5.00pm on the third Business Day (or such other Business Day as Touchcorp and Afterpay agree in writing) following the Effective Date of the Touchcorp Scheme.

**Touchcorp Register** means the register of members of Touchcorp maintained by or on behalf of Touchcorp in accordance with the Companies Act.

**Touchcorp Scheme** means the proposed scheme of arrangement pursuant to the Companies Act between Touchcorp and Touchcorp Scheme Shareholders in respect of all Touchcorp Scheme Shares, in a form the Parties agree in writing, subject to any alterations or conditions made or required by the Bermudan Court under the Companies Act and approved in writing by Touchcorp and Afterpay.

**Touchcorp Scheme Booklet** means the explanatory booklet to be prepared by Touchcorp in respect of the Touchcorp Scheme in accordance with the terms of this Agreement and to be dispatched to Touchcorp Shareholders.

**Touchcorp Scheme Consideration** means the consideration payable to Touchcorp Scheme Shareholders under the Touchcorp Scheme, being 0.64 new NewCo Shares for each Touchcorp Scheme Share held by a Touchcorp Scheme Shareholder.

**Touchcorp Scheme Meeting** means the meeting of Touchcorp Shareholders ordered by the Bermudan Court to be convened under the Companies Act to consider and vote on the Touchcorp Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

**Touchcorp Scheme Shareholder** means a person who holds one or more Touchcorp Scheme Shares.

**Touchcorp Scheme Share** means a Touchcorp Share on issue as at the Touchcorp Record Date.

**Touchcorp Second Court Date** means, in respect of the Touchcorp Scheme, the first day on which an application made to the Bermudan Court for an order under the Companies Act sanctioning the Touchcorp Scheme is heard or scheduled to be heard or, if the application is adjourned for any reason, means the date on which the adjourned application is heard or scheduled to be heard.

**Touchcorp Share** means an issued fully paid ordinary share in the capital of Touchcorp.

**Touchcorp Shareholder** means each person who is registered in the Touchcorp Register as a holder of Touchcorp Shares.

**Touchcorp System** has the same meaning as "Touch System" in the SDLA;

**Touchcorp Voting Intention** has the meaning given to that term in clause 6.5(b).

**Touchcorp Warranties** means the representations and warranties of Touchcorp set out in clauses 10.4 and 10.5.

**Transaction** means the proposed acquisition by NewCo, in accordance with the terms and conditions of this Agreement, of:

- (a) all of the Afterpay Shares (other than the Afterpay Shares held by an Afterpay Excluded Shareholder) through the implementation of the Afterpay Scheme; and
- (b) all of the Touchcorp Shares through the implementation of the Touchcorp Scheme.

## Interpretation

- 1.2 In this Agreement, the following rules of interpretation apply unless the contrary intention appears:
- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
  - (b) the singular includes the plural and vice versa;
  - (c) words that are gender neutral or gender specific include each gender;
  - (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
  - (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
  - (f) a reference to:
    - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation, trust or other body corporate;
    - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
    - (iii) a party includes its agents, successors and permitted assigns;
    - (iv) a document includes all amendments or supplements to that document;
    - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this Agreement;
    - (vi) this Agreement includes all schedules and attachments to it;
    - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
    - (viii) a statute includes any regulation, ordinance, by-law or other subordinate legislation made under it;
    - (ix) an agreement other than this Agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
    - (x) a monetary amount is in Australian dollars;
  - (g) an agreement on the part of two or more persons binds them jointly and each of them severally;
  - (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
  - (i) a reference to time is to Melbourne, Australia time;
  - (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it;

- (k) a reference to **Fairly Disclosed** to a party means disclosed to any of that party or its Advisers (provided that any disclosure to Advisers must occur in writing, including in electronic form) in good faith and in sufficient detail so as to enable a reasonable and sophisticated buyer experienced in transactions similar to the Transaction and experienced in a business similar to any business conducted by the Touchcorp Group (if disclosed to Afterpay) or the Afterpay Group (if disclosed to Touchcorp), to identify the nature and scope of the relevant matter, event or circumstance.
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## **2. Agreement to propose schemes of arrangement**

### **Proposal of schemes of arrangement**

- 2.1 Afterpay will propose and implement the Afterpay Scheme on and subject to the terms and conditions of this Agreement.
- 2.2 Touchcorp will propose and implement the Touchcorp Scheme on and subject to the terms and conditions of this Agreement.
- 2.3 Subject to clauses 2.4 and 2.5, NewCo will assist each of Afterpay and Touchcorp in proposing and implementing the Afterpay Scheme and Touchcorp Scheme respectively, on and subject to the terms and conditions of this Agreement.

### **NewCo Subsidiary**

- 2.4 NewCo may nominate any wholly-owned Subsidiary of NewCo (**NewCo Sub**) to acquire the Afterpay Scheme Shares under the Afterpay Scheme and Touchcorp Scheme Shares under the Touchcorp Scheme by giving written notice to each of Afterpay and Touchcorp (as applicable), on or before the date that is 5 Business Days before the Afterpay First Court Date or Touchcorp First Court Date (as applicable) (**Sub Notification**).
- 2.5 If NewCo nominates a NewCo Sub to acquire the Afterpay Scheme Shares under the Afterpay Scheme and Touchcorp Scheme Shares under the Touchcorp Scheme, then:
- (a) references in this Agreement to NewCo acquiring the Afterpay Scheme Shares under the Afterpay Scheme, the Touchcorp Scheme Shares under the Touchcorp Scheme, or taking any other action under or in respect of the Afterpay Scheme, and the Touchcorp Scheme, are to be read as references to the NewCo Sub doing so;
  - (b) NewCo must procure that NewCo Sub complies with its obligations under this Agreement, including its obligation under each of the Afterpay Scheme and the Touchcorp Scheme. For the avoidance of doubt, the Afterpay Scheme Consideration and the Touchcorp Scheme Consideration will still comprise NewCo Shares; and
  - (c) despite clauses 2.5(a) and 2.5(b), NewCo will continue to be bound by all of the obligations of NewCo under this Agreement and will not be released from any obligations or liabilities under this Agreement following the Sub Notification to the relevant Party. However, Afterpay and Touchcorp agree that NewCo will not be in breach of this Agreement for failing to discharge an obligation of NewCo under this Agreement if the NewCo Sub fully discharges that obligation.

### **Timetable**

- 2.6 Each of Afterpay, Touchcorp and NewCo must:

- (a) use all reasonable endeavours and commit necessary resources (including management and corporate relations resources and the resources of external Advisers); and
- (b) procure that its officers and management work in good faith and in a timely and co-operative fashion with the other parties (including by attending meetings and by providing information),

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

2.7 Subject to clause 2.6, the Parties acknowledge the Timetable as an indicative timetable and will consult with each other regularly in relation to:

- (a) performing their respective obligations within the framework established by the Timetable; and
- (b) any need to modify the Timetable.

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### 3. Conditions precedent and pre-implementation steps

#### Conditions to Afterpay Scheme

3.1 Subject to this clause 3.1, the Afterpay Scheme will not become Effective, and the obligations of NewCo in relation to the implementation of the Afterpay Scheme (including under clause 4) are not binding, until each of the following conditions precedent is satisfied or waived (to the extent and in the manner set out in this clause 3.1):

- (a) **(Orders convening Afterpay Scheme Meeting)** the Australian Court orders the convening of the Afterpay Scheme Meeting under section 411(1) of the Corporations Act;
- (b) **(Afterpay Shareholder approval)** the Afterpay Scheme is approved by Afterpay Shareholders at the Afterpay Scheme Meeting by the majorities required under section 411(4)(a)(ii) of the Corporations Act;
- (c) **(Australian Court approval)** subject to clause 4.15, the Afterpay Scheme is approved by the Australian Court in accordance with section 411(4)(b) of the Corporations Act either unconditionally or on conditions that do not impose unduly onerous obligations upon any Party (acting reasonably);
- (d) **(Order lodged with ASIC)** an office copy of the Australian Court order approving the Afterpay Scheme is lodged with ASIC as contemplated by section 411(10) of the Corporations Act on or before the End Date;
- (e) **(Touchcorp Scheme)** subject to clause 4.14, the Touchcorp Scheme is sanctioned by the Bermudan Court in accordance with the Companies Act subject to the satisfaction of the Condition Subsequent and otherwise either unconditionally or on conditions that do not impose unduly onerous obligations upon any Party (acting reasonably);
- (f) **(Regulatory Approvals)** before 8.00am on the Afterpay Second Court Date, all Regulatory Approvals required to implement the Afterpay Scheme are granted or obtained (including ASIC and ASX having issued or provided such consents, waivers or approvals as are necessary or which the Parties agree are reasonably necessary or desirable to implement the Afterpay Scheme), either unconditionally or on conditions



that do not impose unduly onerous obligations on any Party (acting reasonably), and those Regulatory Approvals have not been withdrawn, cancelled or revoked before 8.00am on the Afterpay Second Court Date;

- (g) **(Restraints)** no law, statute, ordinance, regulation, rule, temporary restraining order, preliminary or permanent injunction or other judgment, order or decree issued by any court of competent jurisdiction or Governmental Agency or other legal restraint or prohibition preventing or materially restricting the Afterpay Scheme is in effect at 8.00am on the Afterpay Second Court Date;
- (h) **(Afterpay Employee Rights)** Exchange of Options/Rights Deeds are executed by the holders of all Afterpay Employee Rights on issue as at the date of this Agreement before 8.00am on the Afterpay Second Court Date;
- (i) **(NewCo listing approval)** ASX approves NewCo to be admitted to the official list of ASX, and official quotation of the NewCo Shares forming the Afterpay Scheme Consideration and the Touchcorp Scheme Consideration, subject only to Implementation of the Afterpay Scheme and the Touchcorp Scheme and other customary conditions which are acceptable to the Parties (acting reasonably), before 8.00am on the Afterpay Second Court Date;
- (j) **(NewCo Warranties)** the NewCo Warranties being true and correct in all material respects on the date of this Agreement and at 8.00am on the Afterpay Second Court Date;
- (k) **(No Touchcorp Prescribed Occurrence)** no Touchcorp Prescribed Occurrence occurs between the date of this Agreement and 8.00am on the Afterpay Second Court Date;
- (l) **(No Touchcorp Material Adverse Change)** there is no Touchcorp Material Adverse Change between the date of this Agreement and 8.00am on the Afterpay Second Court Date;
- (m) **(Touchcorp Warranties)** the Touchcorp Warranties being true and correct in all material respects on the date of this Agreement and at 8.00am on the Afterpay Second Court Date;
- (n) **(Afterpay Independent Expert's Report)** the Afterpay Independent Expert provides the Afterpay Independent Expert's Report to Afterpay, stating that in its opinion the Afterpay Scheme is in fair and reasonable and in the best interests of Afterpay Scheme Shareholders, on or before the date on which the Afterpay Scheme Booklet is registered with ASIC under the Corporations Act, and the Afterpay Independent Expert does not change or publicly withdraw this conclusion before 8.00am on the Afterpay Second Court Date;
- (o) **(NewCo Employee Rights)** to the extent required by ASX for the purposes of the Listing Rules, the issue of NewCo Employee Rights in accordance with clause 8.5 is approved by Afterpay Shareholders at a general meeting of Afterpay (with voting exclusions as required by the Listing Rules) before 8.00am on the Afterpay Second Court Date; and
- (p) **(Escrow Agreement)** an Escrow Agreement has been duly executed by each of the Escrowed NewCo Shareholders in respect of the relevant Escrowed Shares.

## Conditions to Touchcorp Scheme

- 3.2 Subject to this clause 3, the Touchcorp Scheme will not become Effective, and the obligations of NewCo in relation to the implementation of the Touchcorp Scheme (including under clause 4) are not binding, until each of the following conditions precedent is satisfied or waived (to the extent and in the manner set out in this clause 3):
- (a) **(Orders convening Touchcorp Scheme Meeting)** the Bermudan Court orders the convening of the Touchcorp Scheme Meeting under the Companies Act;
  - (b) **(Touchcorp Shareholder approval)** the Touchcorp Scheme is approved by Touchcorp Shareholders at the Touchcorp Scheme Meeting by the majorities required under the Companies Act;
  - (c) **(Bermudan Court approval)** subject to clause 4.14, the Touchcorp Scheme is sanctioned by the Bermudan Court in accordance with the Companies Act either unconditionally or on conditions that do not impose unduly onerous obligations upon any Party (acting reasonably);
  - (d) **(Order lodged with Bermuda Registrar of Companies)** an office copy of the Bermudan Court order approving the Touchcorp Scheme is lodged with the Bermuda Registrar of Companies as contemplated by the Companies Act on or before the End Date;
  - (e) **(Afterpay Scheme):**
    - (i) the condition set out in clause 3.1(c) is satisfied; and
    - (ii) subject to clause 3.3, the Condition Subsequent is satisfied;
  - (f) **(Regulatory Approvals)** before 8.00am on the Touchcorp Second Court Date, all Regulatory Approvals required to implement the Touchcorp Scheme are granted or obtained (including Bermuda Registrar of Companies and ASX having issued or provided such consents, waivers or approvals as are necessary or which the Parties agree are reasonably necessary or desirable to implement the Touchcorp Scheme), either unconditionally or on conditions that do not impose unduly onerous obligations on any Party (acting reasonably), and those Regulatory Approvals have not been withdrawn, cancelled or revoked before 8.00am on the Touchcorp Second Court Date;
  - (g) **(Restraints)** no law, statute, ordinance, regulation, rule, temporary restraining order, preliminary or permanent injunction or other judgment, order or decree issued by any court of competent jurisdiction or Governmental Agency or other legal restraint or prohibition preventing or materially restricting the Touchcorp Scheme is in effect at 8.00am on the Touchcorp Second Court Date;
  - (h) **(Touchcorp Employee Rights)** the holders of all Touchcorp Employee Rights on issue as at the date of this Agreement agree to vary the terms of their Touchcorp Employee Rights such that the loan, security and related terms of their Touchcorp Employee Rights with respect to Touchcorp Shares are substituted so that those terms apply in relation to NewCo Shares (and on the basis that any Touchcorp Shares to which the Touchcorp Employee Rights relate form part of the Touchcorp Scheme);
  - (i) **(NewCo listing approval)** ASX approves NewCo to be admitted to the official list of ASX, and official quotation of the NewCo Shares forming the Afterpay Scheme Consideration and the Touchcorp Scheme Consideration, subject only to Implementation of the Afterpay Scheme and the Touchcorp Scheme and other

customary conditions which are acceptable to the Parties (acting reasonably), before 8.00am on the Touchcorp Second Court Date;

- (j) **(NewCo Warranties)** the NewCo Warranties being true and correct in all material respects on the date of this Agreement and at 8.00am on the Touchcorp Second Court Date;
- (k) **(No Afterpay Prescribed Occurrence)** no Afterpay Prescribed Occurrence occurs between the date of this Agreement and 8.00am on the Touchcorp Second Court Date;
- (l) **(No Afterpay Material Adverse Change)** there is no Afterpay Material Adverse Change between the date of this Agreement and 8.00am on the Touchcorp Second Court Date;
- (m) **(Afterpay Warranties)** the Afterpay Warranties being true and correct in all material respects on the date of this Agreement and at 8.00am on the Touchcorp Second Court Date; and
- (n) **(Touchcorp Independent Expert's Report)** the Touchcorp Independent Expert provides the Touchcorp Independent Expert's Report to Touchcorp, stating that in its opinion the Touchcorp Scheme is in fair and reasonable and in the best interests of Touchcorp Shareholders, and the Touchcorp Independent Expert does not change or publicly withdraw this conclusion before 8.00am on the Touchcorp Second Court Date.

### **Condition subsequent**

- 3.3 The parties acknowledge that the Touchcorp Scheme will become Effective in accordance with clause 3.2 from the lodgement of the Bermudan Court order approving the Touchcorp Scheme with the Bermuda Registrar of Companies under clause 3.2(c), subject to the Condition Subsequent being satisfied.

### **Afterpay obligations**

- 3.4 Afterpay must use best endeavours to ensure that:
- (a) once all of the conditions in clause 3.2 (other than 3.2(e)) of the Touchcorp Scheme have been satisfied, the Afterpay Scheme becomes Effective; and
  - (b) no Afterpay Prescribed Occurrence occurs between 8.00am on the Touchcorp Second Court Date and the Afterpay Effective Date.

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

- 3.5 The conditions in clauses:
- (a) 3.1(f), 3.1(g), 3.1(h), 3.1(i), 3.1(j), 3.1(n), 3.1(o), 3.1(p), 3.2(f), 3.2(g), 3.2(h), 3.2(i), 3.2(j) and 3.2(n) are for the benefit of both Afterpay and Touchcorp, and any breach or non-satisfaction of any of them may only be waived in accordance with applicable law and with the written agreement of both parties;
  - (b) 3.1(k), 3.1(l) and 3.1(m), are for the sole benefit of Afterpay and any breach or non-satisfaction of any of them may only be waived by Afterpay in writing;
  - (c) 3.2(k), 3.2(l) and 3.2(m) are for the sole benefit of Touchcorp and any breach or non-satisfaction of any of them may only be waived by Touchcorp in writing.

- 3.6 A Party entitled to waive the breach or non-satisfaction of a condition pursuant to clause 3.5 (either individually or jointly) may do so in its absolute discretion.
- 3.7 The conditions in clauses 3.1(a), 3.1(b), 3.1(c), 3.1(d), 3.1(e), 3.2(a), 3.2(b), 3.2(c), 3.2(d), and 3.2(e) cannot be waived.
- 3.8 Any waiver of the breach or non-satisfaction of a condition by a Party who is entitled to do so pursuant to clause 3.5 is only effective if such waiver is given on or prior to 8.00am on the Afterpay Second Court Date or Touchcorp Second Court Date (as applicable).
- 3.9 If a Party waives the breach or non-satisfaction of any condition, that waiver will preclude it from suing any other Party for any breach of this Agreement including a breach that resulted in the non-satisfaction of the condition that was waived.
- 3.10 Waiver of a breach or non-fulfilment in respect of one condition does not constitute:
- (a) a waiver of breach or non-fulfilment of any other condition resulting from the same event; or
  - (b) a waiver of breach or non-fulfilment of that condition arising from any other event.

### **Procuring satisfaction of the Conditions relating to Regulatory Approvals**

- 3.11 Each Party must use reasonable endeavours to ensure that:
- (a) each of the conditions in clauses 3.1 and 3.2 (to the extent within its control) is satisfied as soon as reasonably practicable after the date of this Agreement or continues to be satisfied at all times until the last time they are to be satisfied (as the case may require); and
  - (b) there is no occurrence within their control (as the context requires) that would prevent the conditions in clauses 3.1 and 3.2 being satisfied.
- 3.12 Without limiting clause 3.13, each Party must:
- (a) consult with each other Party in good faith (including in relation to review of draft applications and comments in respect of the same) and promptly apply for all approvals necessary in order to satisfy the conditions in clauses 3.1(f), 3.1(i), 3.2(f) and 3.2(i), and provide the other Parties with a copy of all such applications;
  - (b) take all the steps for which it is responsible as part of the process to obtain the approvals necessary in order to satisfy the conditions in clauses 3.1(f), 3.1(i), 3.2(f) and 3.2(i);
  - (c) respond, at the earliest practicable time, to all requests for information in respect of the applications for approvals necessary in order to satisfy the conditions in clauses 3.1(f), 3.1(i), 3.2(f) and 3.2(i);
  - (d) provide any other Party with all information and assistance reasonably requested by that Party and the relevant Governmental Agency in connection with the application necessary in order to satisfy the conditions in clauses 3.1(f), 3.1(i), 3.2(f) and 3.2(i); and
  - (e) so far as it is able, allow any other Party and its Authorised Persons the opportunity to comment on communications, or be present and make submissions at any meetings, with the relevant Governmental Agency relating to the application necessary in order to satisfy the conditions in clauses 3.1(f), 3.1(i), 3.2(f) and 3.2(i).

## Notifications

3.13 Each Party must:

- (a) keep the other Parties promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the conditions;
- (b) promptly notify the other Parties in writing if it becomes aware that any condition has been satisfied;
- (c) promptly notify the other Parties in writing if it becomes aware that any condition is or has become incapable of being satisfied (having regard to the respective obligations of each Party under clause 3.11); and
- (d) upon receipt of a notice given under clause 3.13(c), give written notice to the other Parties as soon as possible (and in any event before 5.00pm on the day before the Touchcorp Second Court Date) as to whether or not it waives the non-fulfilment of the relevant condition resulting from the occurrence of that event (if that condition is capable of being waived).

## Certificate

- 3.14 On the Afterpay Second Court Date, Afterpay and Touchcorp will provide a joint certificate to the Australian Court confirming whether or not the conditions in clause 3.1 (other than the conditions set out in clauses 3.1(c) and 3.1(d)) have been satisfied or waived in accordance with the terms of this Agreement.
- 3.15 On the Touchcorp Second Court Date, Afterpay and Touchcorp will provide a joint certificate to the Bermudan Court confirming whether or not the conditions in clause 3.2 (other than the conditions set out in clauses 3.2(c), 3.2(d) and 3.2(e)) have been satisfied or waived in accordance with the terms of this Agreement.

## Conditions not capable of being satisfied

3.16 If a condition in clause 3.1 or 3.2 is not satisfied, or becomes incapable of being satisfied, before the End Date and none of the following has occurred:

- (a) the Afterpay Independent Expert has opined to the effect that the Afterpay Scheme is not in the best interests of Afterpay Shareholders;
- (b) the Touchcorp Independent Expert has opined to the effect that the Touchcorp Scheme is not in the best interests of Touchcorp Shareholders; or
- (c) a Superior Proposal has been received by either Afterpay or Touchcorp and that Party has complied with its obligations under clause 11,

then unless the relevant condition (where capable of waiver) is waived:

- (d) subject to clause 3.17, either Afterpay or Touchcorp may give the other Parties written notice (**Consultation Notice**) within 5 Business Days after the relevant notice of that fact being given under clause 3.13(c);
- (e) upon delivery of the Consultation Notice, Afterpay and Touchcorp must consult in good faith with a view to determining whether they can reach agreement with respect to:
  - (i) the terms (if any) on which the Party with the benefit of the relevant condition will waive that condition;

- (ii) an extension of the time for satisfaction of the relevant condition or an extension of the End Date (as the case may be);
  - (iii) a change to the date of the application to be made to the Australian Court for orders under section 411(4)(b) of the Corporations Act approving the Afterpay Scheme or the application to be made to the Bermudan Court for orders under section 99(2) of the Companies Act sanctioning the Touchcorp Scheme, or adjourning the relevant application (as applicable) to another date agreed by Afterpay and Touchcorp; or
  - (iv) the Transaction proceeding by way of alternative means or methods; and
  - (f) if Afterpay and Touchcorp are unable to reach such agreement within 5 Business Days after a Consultation Notice is given, or if a Consultation Notice is not given within the timeframe specified in clause 3.16(d) then, subject to clause 3.17, either Afterpay or Touchcorp may terminate this Agreement by notice to the other Parties without any liability to any other Party by reason of that termination alone.
- 3.17 Afterpay or Touchcorp (as applicable) will not be entitled to give a Consultation Notice or terminate this Agreement pursuant to clause 3.16(f) if the relevant condition has not been satisfied as a result of:
- (a) its own breach of this Agreement; or
  - (b) its own deliberate act or omission which directly and materially contributed to that condition not being satisfied, including failure to comply with clauses 3.11 and 3.12(a) - 3.12(c).

### **Afterpay Scheme voted down because of Headcount Test**

- 3.18 If the Afterpay Scheme is not approved by Afterpay Shareholders at the Afterpay Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and Afterpay or Touchcorp considers, acting reasonably, that Share Splitting or some abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied then Afterpay must:
- (a) apply for an order of the Australian Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Australian Court approval of the Afterpay Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
  - (b) make such submissions to the Australian Court and file such evidence as counsel engaged by Afterpay to represent it in Australian Court proceedings related to the Afterpay Scheme, in consultation with Touchcorp, considers is reasonably required to seek to persuade the Australian Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act by making an order to disregard the Headcount Test.

### **Interpretation**

- 3.19 For the purposes of this clause 3, a condition will be incapable of satisfaction if there is an act, failure to act or occurrence that will prevent the condition being satisfied by the End Date (and the breach or non-satisfaction that would otherwise have occurred has not already been waived in accordance with this Agreement).

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## **4. Scheme of arrangement and scheme consideration**

### **Afterpay Scheme**

- 4.1 The Parties acknowledge and agree that, subject to the Afterpay Scheme becoming Effective, on the Afterpay Implementation Date the general effect of the Afterpay Scheme will be that all of the Afterpay Scheme Shares will be transferred to NewCo and the Afterpay Scheme Shareholders will be entitled to receive, for each Afterpay Scheme Share held at the Afterpay Record Date, the Afterpay Scheme Consideration.
- 4.2 NewCo undertakes and warrants to Touchcorp and Afterpay (in its own right and separately as trustee or nominee for each Afterpay Scheme Shareholder) that, if the Afterpay Scheme becomes Effective, in consideration for the transfer to NewCo of the Afterpay Scheme Shares held by each Afterpay Scheme Shareholder under the terms of the Afterpay Scheme, NewCo will provide to each Afterpay Scheme Shareholder the Afterpay Scheme Consideration for each Afterpay Scheme Share held by them in accordance with the terms of the Afterpay Scheme.
- 4.3 Subject to the Afterpay Scheme becoming Effective, and clauses 4.7, 4.10 and 4.13, on the Afterpay Implementation Date immediately after the transactions specified in clause 4.6 have completed, Afterpay and NewCo will ensure the transactions which form part of the Afterpay Scheme will be implemented in the following sequence:
- (a) all existing Afterpay Scheme Shares at the Afterpay Record Date will be transferred to NewCo; and
  - (b) in exchange, NewCo will provide each Afterpay Scheme Shareholder with the Afterpay Scheme Consideration for each Afterpay Scheme Share held by that Afterpay Scheme Shareholder as at the Afterpay Record Date, in accordance with clause 4.8(b) and 4.9.

### **Touchcorp Scheme**

- 4.4 The Parties acknowledge and agree that, subject to the Touchcorp Scheme becoming Effective, on the Touchcorp Implementation Date the general effect of the Touchcorp Scheme will be that all of the Touchcorp Scheme Shares will be transferred to NewCo and the Touchcorp Scheme Shareholders will be entitled to receive, for each Touchcorp Scheme Share held at the Touchcorp Record Date, the Touchcorp Scheme Consideration.
- 4.5 NewCo undertakes and warrants to Touchcorp (in its own right and separately as trustee or nominee for each Touchcorp Scheme Shareholder) that, if the Touchcorp Scheme becomes Effective, in consideration for the transfer to NewCo of the Touchcorp Scheme Shares held by each Touchcorp Scheme Shareholder under the terms of the Touchcorp Scheme, NewCo will provide to each Touchcorp Scheme Shareholder the Touchcorp Scheme Consideration for each Touchcorp Scheme Share held by them in accordance with the terms of the Touchcorp Scheme.
- 4.6 Subject to the Touchcorp Scheme becoming Effective and clauses 4.7, 4.10 and 4.13, at 10.00am on the Touchcorp Implementation Date, Touchcorp and NewCo will ensure the transactions which form part of the Touchcorp Scheme will be implemented in the following sequence:
- (a) all existing Touchcorp Shares at the Touchcorp Record Date will be transferred to NewCo; and

- (b) in exchange, NewCo will provide each Touchcorp Scheme Shareholder with the Touchcorp Scheme Consideration for each Touchcorp Scheme Share held by that Touchcorp Scheme Shareholder as at the Touchcorp Record Date, in accordance with clause 4.8(a) and 4.9.

### **Interconditionality**

- 4.7 The parties acknowledge that the transactions outlined in clause 4.6 will occur immediately prior to the transactions outlined in clause 4.3.

### **Allotment and issue of new NewCo Shares**

- 4.8 Subject to clauses 4.10 and 4.13:

- (a) and subject to each of the Afterpay Scheme and Touchcorp Scheme becoming Effective, NewCo must allot and issue to the Touchcorp Scheme Shareholders the new NewCo Shares that comprise the Touchcorp Scheme Consideration in accordance with the Touchcorp Scheme on terms such that each new NewCo Share will rank equally in all respects with each existing NewCo Share and the NewCo Shares issued in accordance with clause 8.5;
- (b) and subject to each of the Afterpay Scheme and Touchcorp Scheme becoming Effective, NewCo must allot and issue to the Afterpay Scheme Shareholders the new NewCo Shares that comprise the Afterpay Scheme Consideration in accordance with the Afterpay Scheme on terms such that each new NewCo Share will rank equally in all respects with each existing NewCo Share and the NewCo Shares issued in accordance with clause 8.5; and
- (c) NewCo must apply to ASX for official quotation of the new NewCo Shares that comprise the Afterpay Scheme Consideration, the Touchcorp Scheme Consideration on the ASX and the NewCo Shares issues in accordance with clause 8.5 (other than any NewCo Shares that will not be quoted by reason of being classified by ASX as restricted securities for the purposes of the Listing Rules).

- 4.9 NewCo covenants in favour of each of Afterpay and Touchcorp that:

- (a) the new NewCo Shares to be issued under each of the Afterpay Scheme, the Touchcorp Scheme and in accordance with clause 8.5 will rank equally in all respects with all existing NewCo Shares; and
- (b) on issue, each such new NewCo Share will be fully paid and free from any mortgage, charge, lien, encumbrance or other security interest other than under the Escrow Agreements.

### **Ineligible Foreign Shareholders**

- 4.10 NewCo will be under no obligation under either the Afterpay Scheme or the Touchcorp Scheme to issue, and will not issue, any new NewCo Shares to any Ineligible Foreign Shareholder, and instead, unless the Parties otherwise agree, NewCo will on each of the Afterpay Implementation Date and the Touchcorp Implementation Date issue the new NewCo Shares to which that Ineligible Foreign Shareholder would otherwise have been entitled (if they were an Afterpay Scheme Shareholder or Touchcorp Scheme Shareholder (as applicable) who was not an Ineligible Foreign Shareholder) to a nominee appointed by NewCo.
- 4.11 Where new NewCo Shares are issued to a nominee pursuant to clause 4.10, NewCo will procure that, as soon as reasonably practicable and in any event not more than 15 Business



Days after the Afterpay Implementation Date or the Touchcorp Implementation Date (whichever occurs later), the nominee:

- (a) sells on ASX or another prescribed financial market all of the new NewCo Shares issued to the nominee in accordance with clause 4.10 in such manner, at such price and on such other terms as the nominee determines in good faith, and at the risk of the Ineligible Foreign Shareholders; and
  - (b) remits to NewCo the proceeds of sale (after deducting any applicable brokerage, stamp duty and other selling costs, taxes and charges).
- 4.12 Where new NewCo Shares are issued to a nominee pursuant to clause 4.10, promptly after the last remittance in accordance with clause 4.11(b), NewCo will pay to each Ineligible Foreign Shareholder the proportion of the net proceeds of sale received by NewCo pursuant to clause 4.11(b) to which that Ineligible Foreign Shareholder is entitled.

### **Fractional entitlements**

- 4.13 Any fractional entitlement of an Afterpay Scheme Shareholder or a Touchcorp Scheme Shareholder to a part of a new NewCo Share will be rounded up or down to the nearest whole number of new NewCo Shares.

### **Written consent required**

- 4.14 Touchcorp must not consent to any modification of, or amendment to, or the making or imposition by the Bermudan Court of any condition in respect of, the Touchcorp Scheme without the prior written consent of Afterpay.
- 4.15 Afterpay must not consent to any modification of, or amendment to, or the making or imposition by the Australian Court of any condition in respect of, the Afterpay Scheme without the prior written consent of Touchcorp.
- 4.16 Nothing in this Agreement gives Afterpay or Touchcorp any right or power to give undertakings to the Australian Court or Bermudan Court respectively, for or on behalf of the other without the other's written consent.

### **Deed Poll**

- 4.17 NewCo covenants in favour of Afterpay (in its own right and separately as trustee for each of the Afterpay Scheme Shareholders) to execute and deliver the Afterpay Deed Poll prior to the Afterpay First Court Date.
- 4.18 NewCo covenants in favour of Touchcorp (in its own right and separately as trustee for each of the Touchcorp Scheme Shareholders) to execute and deliver the Touchcorp Deed Poll prior to the Touchcorp First Court Date.

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## **5. Implementation of scheme of arrangement**

### **Afterpay's obligations**

- 5.1 Afterpay must take all steps reasonably necessary to implement the Afterpay Scheme as soon as reasonably practicable on a basis consistent with this Agreement, including taking each of the following steps:
- (a) **(promote merits of the Transaction)**

- (i) use all reasonable endeavours to ensure the directors of Afterpay who recommend that Afterpay Shareholders vote in favour of the Afterpay Scheme in accordance with clause 6;
  - (ii) participate in and use efforts reasonably requested by the other Parties to promote the merits of the Transaction and solicit proxy votes in favour of the Afterpay Scheme, including meeting with key Afterpay Shareholders at the reasonable request of the other Parties; and
  - (iii) co-operate and provide all required assistance to Touchcorp and NewCo with respect to obtaining ATO class rulings relating to the Transaction;
- (b) **(Afterpay Information)** provide to Touchcorp and NewCo the Afterpay Information, in a form appropriate for inclusion in the Touchcorp Scheme Booklet and which complies with the requirements of paragraph (a) of the definition of "Afterpay Information";
- (c) **(confirmation of Afterpay Information)** subject to clause 5.11, promptly after Touchcorp requests that it does so, confirm in writing to Touchcorp that it consents to the inclusion of the Afterpay Information in the Afterpay Scheme Booklet, in the form and context in which the Afterpay Information appears;
- (d) **(Afterpay Scheme Booklet)** prepare the Afterpay Scheme Booklet in compliance with all applicable laws and relevant Government Agency policies (in particular with the Corporations Act, RG 60 and the Listing Rules) and in compliance with clause 6.3;
- (e) **(drafts of Afterpay Scheme Booklet)** make available to the other Parties drafts of the Afterpay Scheme Booklet allowing a reasonable opportunity to review and make comments on such drafts, consult with the other Parties in relation to the content of those drafts (other than the Touchcorp Information), and consider in good faith, for the purpose of amending those drafts, comments from the other Parties on those drafts;
- (f) **(commission Afterpay Independent Expert's Report)** promptly appoint an independent expert to provide the Afterpay Independent Expert's Report, and provide any assistance and information reasonably requested by the Afterpay Independent Expert to enable it to prepare the Afterpay Independent Expert's Report;
- (g) **(experts)** provide all assistance and information reasonably requested by any experts appointed by Afterpay, NewCo and/or Touchcorp in connection with the preparation of the Afterpay Scheme Booklet;
- (h) **(approval of Touchcorp Information)** seek approval from Touchcorp for the form and context in which the Touchcorp Information appears in the Afterpay Scheme Booklet, which approval Touchcorp must not unreasonably withhold or delay, and Afterpay must not lodge, or provide any draft of, the Afterpay Scheme Booklet with ASIC until such approval is obtained from Touchcorp;
- (i) **(NewCo Information)** provide to Touchcorp and NewCo all information regarding Afterpay which NewCo requires to prepare the NewCo Information;
- (j) **(approval of NewCo Information)** seek approval from NewCo for the form and context in which the NewCo Information appears in the Afterpay Scheme Booklet, which approval NewCo must not unreasonably withhold or delay, and Afterpay must not lodge or provide any draft of the Afterpay Scheme Booklet with ASIC until such approval is obtained from NewCo;

- (k) **(liaison with ASIC)** as soon as reasonably practicable after the date of this Agreement:
  - (i) provide an advanced draft of the Afterpay Scheme Booklet to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act; and
  - (ii) liaise with ASIC during the period of its consideration of that draft of the Afterpay Scheme Booklet and keep the other Parties reasonably informed of any matters raised by ASIC in relation to the Afterpay Scheme Booklet and use reasonable endeavours, in consultation with the other Parties, to resolve any such matters;
- (l) **(approval of Afterpay Scheme Booklet)** as soon as reasonably practicable after the conclusion of the review by ASIC of the Afterpay Scheme Booklet, procure that a meeting of the Afterpay Board, or of a committee of the Afterpay Board appointed for the purpose, is held to consider approving the Afterpay Scheme Booklet for dispatch to the Afterpay Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act;
- (m) **(section 411(17)(b) statements)** apply to ASIC for the production of statements in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Afterpay Scheme;
- (n) **(first Australian Court hearing)** lodge all documents with the Australian Court and take all other reasonable steps to ensure that promptly after, and provided that, the approval in clause 5.1(l) has been received, an application is heard by the Australian Court for an order under section 411(1) of the Corporations Act directing Afterpay to convene the Afterpay Scheme Meeting;
- (o) **(registration of Afterpay Scheme Booklet)** if the Australian Court directs Afterpay to convene the Afterpay Scheme Meeting, as soon as possible after such orders are made, request ASIC to register the explanatory statement included in the Afterpay Scheme Booklet in relation to the Afterpay Scheme in accordance with section 412(6) of the Corporations Act;
- (p) **(updating Afterpay Scheme Booklet)** until the date of the Afterpay Scheme Meeting, promptly update the Afterpay Scheme Booklet with any information that arises after the Afterpay Scheme Booklet has been dispatched that is necessary to ensure that the Afterpay Scheme Booklet does not contain any material statement that is false, misleading or deceptive in a material respect (including because of any material omission from that statement);
- (q) **(dispatch of Scheme Booklet and convening Afterpay Scheme Meeting)** take all reasonable steps necessary to comply with the orders of the Australian Court including, as required, dispatching the Afterpay Scheme Booklet to the Afterpay Shareholders and convening and holding the Afterpay Scheme Meeting, provided that if this Agreement is terminated under clause 13, Afterpay will take all steps reasonably required to ensure the Afterpay Scheme Meeting is not held;
- (r) **(convening Afterpay General Meeting)** prepare a notice of meeting and explanatory materials for the Afterpay General Meeting Resolutions in accordance with applicable laws and the Listing Rules, and take all necessary steps to convene the Afterpay General Meeting to be held immediately after the close of the Afterpay Scheme Meeting;

- (s) **(Australian Court approval application if Parties agree that conditions are capable of being satisfied)** if the resolution submitted to the Afterpay Scheme Meeting is passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act (or, where clause 0 applies, the majority required under section 411(4)(a)(ii)(B) of the Corporations Act) and, if necessary, Afterpay and Touchcorp agree on the Business Day immediately following the Afterpay Scheme Meeting that it can be reasonably expected that all of the conditions in clause 3.1 will be satisfied or waived prior to 8.00am on the proposed Afterpay Second Court Date, apply (and, to the extent necessary, re-apply) to the Australian Court for orders approving the Afterpay Scheme;
- (t) **(implementation of Afterpay Scheme)** if the Afterpay Scheme is approved by the Australian Court:
  - (i) subject to the Listing Rules and after all of the conditions in clause 3.2 (other than clause 3.2(e)(ii)) have been satisfied, promptly lodge with ASIC an office copy of the orders approving the Afterpay Scheme in accordance with section 411(10) of the Corporations Act;
  - (ii) close the Afterpay Register as at the Afterpay Record Date and determine entitlements to the Afterpay Scheme Consideration as at the Afterpay Record Date in accordance with the Afterpay Scheme;
  - (iii) execute proper instruments of transfer of and effect and, subject to the Touchcorp Scheme being implemented in accordance with clause 4.6, register the transfer of the Afterpay Scheme Shares to NewCo on the Afterpay Implementation Date;
  - (iv) apply to ASX to suspend trading in Afterpay Shares with effect from the close of trading on the Afterpay Effective Date; and
  - (v) do all other things contemplated by or necessary to give effect to the Afterpay Scheme and the orders of the Australian Court approving the Afterpay Scheme;
- (u) **(documents)** consult with the other Parties in relation to the content of the documents required for the purpose of the Afterpay Scheme (including originating process, affidavits, submissions and draft minutes of Australian Court orders); and
- (v) **(compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this Agreement are effected in accordance with all applicable laws and regulations.

## **Touchcorp's obligations**

- 5.2 Touchcorp must take all steps reasonably necessary to implement the Touchcorp Scheme as soon as reasonably practicable on a basis consistent with this Agreement, including taking each of the following steps:

- (a) **(promote merits of the Transaction)**
  - (i) use all reasonable endeavours to ensure the directors of Touchcorp who recommend that Touchcorp Shareholders vote in favour of the Touchcorp Scheme in accordance with clause 6;
  - (ii) participate in and use efforts reasonably requested by the other Parties to promote the merits of the Transaction and solicit proxy votes in favour of the

Touchcorp Scheme, including meeting with key Touchcorp Shareholders at the reasonable request of the other Parties; and

- (iii) co-operate and provide all required assistance to Afterpay and NewCo with respect to obtaining ATO class rulings relating to the Transaction;
- (b) **(Touchcorp Information)** provide to Afterpay and NewCo the Touchcorp Information, in a form appropriate for inclusion in the Afterpay Scheme Booklet and which complies with the requirements of paragraph (a) of the definition of "Touchcorp Information";
- (c) **(confirmation of Touchcorp Information)** subject to clause 5.11, promptly after Afterpay requests that it does so, confirm in writing to Afterpay that it consents to the inclusion of the Touchcorp Information in the Afterpay Scheme Booklet, in the form and context in which the Touchcorp Information appears;
- (d) **(Touchcorp Scheme Booklet)** prepare the Touchcorp Scheme Booklet in compliance with all applicable laws and relevant Government Agency policies (in particular with the Companies Act and the Listing Rules) and ensuring compliance with clause 6.5;
- (e) **(drafts of Touchcorp Scheme Booklet)** make available to the other Parties drafts of the Touchcorp Scheme Booklet allowing a reasonable opportunity to review and make comments on such drafts (excluding any draft of the Touchcorp Independent Expert's Report), consult with the other Parties in relation to the content of those drafts (other than the Afterpay Information), and consider in good faith, for the purpose of amending those drafts, comments from the other Parties on those drafts;
- (f) **(commission Touchcorp Independent Expert's Report)** promptly appoint an independent expert to provide the Touchcorp Independent Expert's Report, and provide any assistance and information reasonably requested by the Touchcorp Independent Expert to enable it to prepare the Touchcorp Independent Expert's Report;
- (g) **(experts)** provide all assistance and information reasonably requested by any experts appointed by Touchcorp, NewCo and/or Afterpay in connection with the preparation of the Touchcorp Scheme Booklet;
- (h) **(approval of Afterpay Information)** seek approval from Afterpay for the form and context in which the Afterpay Information appears in the Touchcorp Scheme Booklet, which approval Afterpay must not unreasonably withhold or delay, and Touchcorp must not publicly release any draft of the Touchcorp Scheme Booklet until such approval is obtained from Afterpay;
- (i) **(NewCo Information)** provide to Afterpay and NewCo all information regarding Touchcorp which NewCo requires to prepare the NewCo Information;
- (j) **(approval of NewCo Information)** seek approval from NewCo for the form and context in which the NewCo Information appears in the Touchcorp Scheme Booklet, which approval NewCo must not unreasonably withhold or delay, and Touchcorp must not publicly release any draft of the Touchcorp Scheme Booklet until such approval is obtained from NewCo;
- (i) **(BMA consent)** obtain the prior approval of the BMA to the transfer of all of the Touchcorp Shares to NewCo;

- (k) **(approval of Touchcorp Scheme Booklet)** procure that a meeting of the Touchcorp Board, or of a committee of the Touchcorp Board appointed for the purpose, is held to consider approving the Touchcorp Scheme Booklet for dispatch to the Touchcorp Shareholders, subject to orders of the Bermudan Court under the Companies Act;
- (l) **(first Bermudan Court hearing)** lodge all documents with the Bermudan Court and take all other reasonable steps to ensure that promptly after, and provided that, the approval in clause 5.2(k) has been received, an application is heard by the Bermudan Court for an order under the Companies Act directing Touchcorp to convene the Touchcorp Scheme Meeting;
- (m) **(updating Touchcorp Scheme Booklet)** until the date of the Touchcorp Scheme Meeting, promptly update the Touchcorp Scheme Booklet with any information that arises after the Touchcorp Scheme Booklet has been dispatched that is necessary to ensure that the Touchcorp Scheme Booklet does not contain any material statement that is false, misleading or deceptive in a material respect (including because of any material omission from that statement);
- (n) **(dispatch of Scheme Booklet and convening Touchcorp Scheme Meeting)** take all reasonable steps necessary to comply with the orders of the Bermudan Court including, as required, dispatching the Touchcorp Scheme Booklet to the Touchcorp Shareholders and convening and holding the Touchcorp Scheme Meeting, provided that if this Agreement is terminated under clause 13, Touchcorp will take all steps reasonably required to ensure the Touchcorp Scheme Meeting is not held;
- (o) **(Bermudan Court sanction application if Parties agree that conditions are capable of being satisfied)** if the resolution submitted to the Touchcorp Scheme Meeting is passed by the majorities required under the Companies Act and, if necessary, Afterpay and Touchcorp agree on the Business Day immediately following the Touchcorp Scheme Meeting that it can be reasonably expected that all of the conditions in clause 3.2 will be satisfied or waived prior to 8.00am on the proposed Touchcorp Second Court Date, apply (and, to the extent necessary, re-apply) to the Bermudan Court for orders sanctioning the Touchcorp Scheme;
- (p) **(implementation of Touchcorp Scheme)** if the Touchcorp Scheme is approved by the Bermudan Court:
  - (i) subject to the Listing Rules, promptly lodge with the Bermuda Registrar of Companies an office copy of the orders sanctioning the Touchcorp Scheme in accordance with the Companies Act;
  - (ii) close the Touchcorp Register as at the Touchcorp Record Date and determine entitlements to the Touchcorp Scheme Consideration as at the Touchcorp Record Date in accordance with the Touchcorp Scheme;
  - (iii) execute proper instruments of transfer of and effect and register the transfer of the Touchcorp Scheme Shares to NewCo on the Touchcorp Implementation Date; and
  - (iv) apply to ASX to suspend trading in Touchcorp Shares with effect from the close of trading on the Touchcorp Effective Date; and
  - (v) do all other things contemplated by or necessary to give effect to the Touchcorp Scheme and the orders of the Bermudan Court approving the Touchcorp Scheme;

- (q) **(documents)** consult with the other Parties in relation to the content of the documents required for the purpose of the Touchcorp Scheme (including originating process, petitions, affidavits, submissions and drafts of Bermudan Court orders); and
- (r) **(compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this Agreement are effected in accordance with all applicable laws and regulations.

### **NewCo's obligations**

5.3 NewCo must take all steps reasonably necessary to assist Afterpay to implement the Afterpay Scheme as soon as reasonably practicable, including taking each of the following steps:

- (a) **(NewCo Information)** provide to Afterpay the NewCo Information, in a form appropriate for inclusion in the Afterpay Scheme Booklet and which complies with the requirements of paragraph (a) of the definition of "NewCo Information";
- (b) **(confirmation of NewCo Information)** subject to clause 5.11, promptly after Afterpay requests that it does so, confirm in writing to Afterpay that it consents to the inclusion of the NewCo Information in the Afterpay Scheme Booklet, in the form and context in which the NewCo Information appears;
- (c) **(commission Investigating Accountant's Report)** promptly appoint the Investigating Accountant to provide the Investigating Accountant's Report, and provide any assistance and information reasonably requested by the Investigating Accountant to enable it to prepare the Investigating Accountant's Report, for inclusion in the Afterpay Scheme Booklet and the Touchcorp Scheme Booklet to the extent not appointed by Afterpay and Touchcorp (respectively) for those purposes;
- (d) **(Afterpay Independent Expert)** promptly provide all assistance and information reasonably requested by the Afterpay Independent Expert to enable it to prepare the Afterpay Independent Expert's Report for inclusion in the Afterpay Scheme Booklet;
- (e) **(assistance with Afterpay Scheme Booklet and Australian Court documents)** promptly provide any assistance or information reasonably requested by Afterpay or its Advisers in connection with the preparation of the Afterpay Scheme Booklet (including any supplementary disclosure to Afterpay Shareholders) and any documents required to be filed with the Australian Court in respect of the Afterpay Scheme;
- (f) **(representation)** procure that, if requested by Afterpay, NewCo is represented by counsel at the Australian Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act; and
- (g) **(compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this Agreement are effected in accordance with all applicable laws and regulations.

5.4 NewCo must take all steps reasonably necessary to assist Touchcorp to implement the Touchcorp Scheme as soon as reasonably practicable, including taking each of the following steps:

- (a) **(NewCo Information)** provide to Touchcorp the NewCo Information, in a form appropriate for inclusion in the Touchcorp Scheme Booklet and which complies with the requirements of paragraph (a) of the definition of "NewCo Information";

- (b) **(confirmation of NewCo Information)** subject to clause 5.11, promptly after Touchcorp requests that it does so, confirm in writing to Touchcorp that it consents to the inclusion of the NewCo Information in the Touchcorp Scheme Booklet, in the form and context in which the NewCo Information appears;
- (c) **(commission Investigating Accountant's Report)** promptly appoint an Investigating Accountant;
- (d) **(Touchcorp Independent Expert)** promptly provide all assistance and information reasonably requested by the Touchcorp Independent Expert to enable it to prepare the Touchcorp Independent Expert's Report for inclusion in the Touchcorp Scheme Booklet;
- (e) **(assistance with Touchcorp Scheme Booklet and Bermudan Court documents)** promptly provide any assistance or information reasonably requested by Touchcorp or its Advisers in connection with the preparation of the Touchcorp Scheme Booklet (including any supplementary disclosure to Touchcorp Shareholders) and any documents required to be filed with the Bermudan Court in respect of the Touchcorp Scheme;
- (f) **(representation)** procure that, if requested by Touchcorp or required by the Bermudan Court, NewCo is represented by counsel at the Bermudan Court hearings; and
- (g) **(compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this Agreement are effected in accordance with all applicable laws and regulations.

## Appeal process

5.5 If either:

- (a) the Australian Court refuses to make any orders directing Afterpay to convene the Afterpay Scheme Meeting or approving the Afterpay Scheme; or
- (b) the Bermudan Court refuses to make any orders directing Touchcorp to convene the Touchcorp Scheme Meeting or approving the Touchcorp Scheme,

Afterpay and Touchcorp must:

- (c) consult with each other in good faith as to whether to appeal the relevant court's decision; and
- (d) appeal the relevant court's decision unless the Parties agree otherwise or an independent senior counsel opines that, in his or her view, an appeal would have no reasonable prospect of success.

## Verification

5.6 In relation to the information in the Afterpay Scheme Booklet:

- (a) subject to clause 5.8, Afterpay must undertake reasonable verification processes (other than in respect of the Touchcorp Information) so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise) and, once those processes have been completed, provide written confirmation to Touchcorp of the completion of such processes; and



- (b) Touchcorp must undertake reasonable verification processes in respect of the Touchcorp Information only (and no other information in the Afterpay Scheme Booklet) so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise) and, once those processes have been completed, provide written confirmation to Afterpay of the completion such processes.

5.7 In relation to the information in the Touchcorp Scheme Booklet:

- (a) subject to clause 5.8, Touchcorp must undertake reasonable verification processes (other than in respect of the Afterpay Information) so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise) and, once those processes have been completed, provide written confirmation to Afterpay of the completion of such processes; and
- (b) Afterpay must undertake reasonable verification processes in respect of the Afterpay Information only (and no other information in the Touchcorp Scheme Booklet) so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise) and, once those processes have been completed, provide written confirmation to Touchcorp of the completion of such processes.

5.8 In relation to the NewCo Information to be included in each of the Afterpay Scheme Booklet and Touchcorp Scheme Booklet:

- (a) NewCo must undertake reasonable verification processes so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise) and once those processes have been completed, provide written confirmation to Touchcorp and Afterpay of the completion of such processes; and
- (b) to the extent the NewCo Information is based on Afterpay Information or Touchcorp Information, each of Afterpay and Touchcorp must, respectively, assist NewCo to enable it to comply with its obligations under clause 5.8(a).

### **Responsibility statements**

5.9 The Afterpay Scheme Booklet will include a responsibility statement, in a form to be agreed by the Parties, which will contain words to the following effect:

- (a) Touchcorp will be responsible for the Touchcorp Information and, to the maximum extent possible at law, Afterpay will not be responsible for any Touchcorp Information and will disclaim any liability for Touchcorp Information appearing in the Afterpay Scheme Booklet;
- (b) NewCo will be responsible for the NewCo Information (other than any information provided by Afterpay and Touchcorp to NewCo in accordance with clauses 5.1(i) and 5.2(i)) and, to the maximum extent possible at law, Afterpay will not be responsible for any NewCo Information and will disclaim any liability for NewCo Information appearing in the Afterpay Scheme Booklet;
- (c) Afterpay will be responsible for the Afterpay Scheme Booklet (other than the Touchcorp Information, NewCo Information, the Afterpay Independent Expert's Report and the Investigating Accountant's Report) and, to the maximum extent possible at law, neither Touchcorp nor NewCo will be responsible for any information appearing in the Afterpay Scheme Booklet other than the Touchcorp Information and NewCo Information respectively, and will disclaim any liability for any information

appearing in the Afterpay Scheme Booklet other than the Touchcorp Information and NewCo Information (as applicable).

- 5.10 The Touchcorp Scheme Booklet will include a responsibility statement, in a form to be agreed by the Parties, which will contain words to the following effect:
- (a) Afterpay will be responsible for the Afterpay Information and, to the maximum extent possible at law, Touchcorp will not be responsible for any Afterpay Information and will disclaim any liability for Afterpay Information appearing in the Touchcorp Scheme Booklet;
  - (b) NewCo will be responsible for the NewCo Information (other than any information provided by Afterpay and Touchcorp to NewCo in accordance with clauses 5.1(i) and 5.2(i)) and, to the maximum extent possible at law, Touchcorp will not be responsible for any NewCo Information and will disclaim any liability for NewCo Information appearing in the Touchcorp Scheme Booklet;
  - (c) Touchcorp will be responsible for the Touchcorp Scheme Booklet (other than the Afterpay Information, NewCo Information, the Touchcorp Independent Expert's Report and the Investigating Accountant's Report) and, to the maximum extent possible at law, neither Afterpay nor NewCo will be responsible for any information appearing in the Touchcorp Scheme Booklet other than the Afterpay Information and NewCo Information respectively, and will disclaim any liability for any information appearing in the Touchcorp Scheme Booklet other than the Afterpay Information and NewCo Information (as applicable).

#### **Disagreement on content**

- 5.11 If Afterpay and Touchcorp disagree on the form or content of either the Afterpay Scheme Booklet or the Touchcorp Scheme Booklet, they must consult in good faith to try to settle an agreed form of the Afterpay Scheme Booklet or Touchcorp Scheme Booklet (as applicable). If complete agreement is not reached after reasonable consultation, then:
- (a) in respect of the Afterpay Scheme Booklet, if the disagreement relates to the form or content of:
    - (i) any information other than the Touchcorp Information, the Afterpay Board will, acting in good faith, decide the final form or content of the disputed part of the Afterpay Scheme Booklet; and
    - (ii) the Touchcorp Information, Afterpay will make such amendments to the form or content of the disputed part of the Touchcorp Information as Touchcorp reasonably requires; and
  - (b) in respect of the Touchcorp Scheme Booklet, if the disagreement relates to the form or content of:
    - (i) any information other than the Afterpay Information, the Touchcorp Board will, acting in good faith, decide the final form or content of the disputed part of the Touchcorp Scheme Booklet; and
    - (ii) the Afterpay Information, Touchcorp will make such amendments to the form or content of the disputed part of the Afterpay Information as Afterpay reasonably requires.

- (c) in respect of the NewCo Information included in either the Touchcorp Scheme Booklet or the Afterpay Scheme Booklet, if the disagreement relates to the form or content of:
  - (i) the Afterpay Information provided in accordance with clause 5.1(i) for the purpose of the NewCo Information, the Afterpay Board will, acting in good faith, decide the final form or content of the disputed part of the Afterpay Scheme Booklet;
  - (ii) the Touchcorp Information provided in accordance with clause 5.2(i) for the purpose of the NewCo Information, the Touchcorp Board will, acting in good faith, decide the final form or content of the disputed part of the Afterpay Scheme Booklet; and
  - (iii) all other NewCo Information, NewCo will make such amendments to the form or content of the disputed part of the NewCo Information as NewCo decides (acting in good faith).

### **New information**

- 5.12 Afterpay must provide to the other Parties all such further or new information of which Afterpay becomes aware that arises after the Afterpay Scheme Booklet has been dispatched to Afterpay Shareholders until the date of the Afterpay Scheme Meeting to comply with clause 5.1(p) and where this is or may be necessary to ensure that the Afterpay Scheme Booklet continues to comply with the Corporations Act, RG 60 and the Listing Rules.
- 5.13 Touchcorp must provide to the other Parties all such further or new information of which Touchcorp becomes aware that arises after the Touchcorp Scheme Booklet has been dispatched to Touchcorp Shareholders until the date of the Touchcorp Scheme Meeting to comply with clause 5.2(m) and where this is or may be necessary to ensure that the Touchcorp Scheme Booklet continues to comply with the Companies Act and the Listing Rules.
- 5.14 NewCo must provide to the other Parties all such further or new information of which NewCo becomes aware that arises after the Afterpay Scheme Booklet and/or the Touchcorp Scheme Booklet has been despatched to Afterpay Shareholders and/or Touchcorp Shareholders (as applicable) until the date of the Afterpay Scheme Meeting and/or the Touchcorp Scheme Meeting (as applicable) to ensure that clauses 5.1(p) and 5.2(m) will be complied with and where this is or may be necessary to ensure that the NewCo Information continues to comply with the relevant laws and the Listing Rules.

### **Good faith co-operation**

- 5.15 Each Party must procure that its Authorised Persons work (including by attending meetings and by providing information) in good faith and in a timely and co-operative fashion with the other Parties to implement the Transaction, to prepare all documents required relating to the Transaction, and to agree and execute the strategy described in clause 7.13.

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## **6. Board recommendations**

### **Recommendations**

- 6.1 Subject to clause 6.4, Afterpay represents and warrants to the other Parties, as at the date of this Agreement, that it has been advised by each Afterpay director other than Michael Jefferies, who will abstain from making a recommendation, that he or she will, recommend that Afterpay Shareholders vote in favour of the Afterpay Scheme, qualified only by the

words to the effect of 'in the absence of a superior proposal and subject to the Afterpay Independent Expert concluding that the Afterpay Scheme is in the best interests of Afterpay Shareholders'.

- 6.2 Subject to clause 6.6, Touchcorp represents and warrants to the other Parties, as at the date of this Agreement, that it has been advised by each Touchcorp director that he or she will, recommend that Touchcorp Shareholders vote in favour of the Touchcorp Scheme, qualified only by the words to the effect of 'in the absence of a superior proposal and subject to the Touchcorp Independent Expert concluding that the Touchcorp Scheme is in the best interests of Touchcorp Shareholders'.

### **Afterpay Board recommendation and voting intention**

- 6.3 Unless an Afterpay Recommendation or Afterpay Voting Intention (each as defined below) has been changed, modified or withdrawn in accordance with clause 6.4, Afterpay must use reasonable endeavours to ensure that the Afterpay Scheme Booklet includes:
- (a) a unanimous recommendation by the Afterpay Board other than Michael Jefferies, who will abstain from making a recommendation, that Afterpay Shareholders vote in favour of the Afterpay Scheme, qualified only by the words to the effect of 'in the absence of a superior proposal' and, other than in respect of the Afterpay Scheme Booklet or any document issued after the issue of the Afterpay Scheme Booklet, 'subject to the Afterpay Independent Expert concluding that the Afterpay Scheme is in the best interests of Afterpay Shareholders' (**Afterpay Recommendation**); and
  - (b) a statement by each Afterpay director that he or she has a present intention to vote in favour of the Afterpay Scheme in respect of all Afterpay Shares controlled or held by, or on behalf of, that Afterpay director, qualified only by the words to the effect of 'in the absence of a superior proposal' and, other than in respect of the Afterpay Scheme Booklet or any document issued after the issue of the Afterpay Scheme Booklet, 'subject to the Afterpay Independent Expert concluding that the Afterpay Scheme is in the best interests of Afterpay Shareholders' (**Afterpay Voting Intention**).
- 6.4 Afterpay represents and warrants to the other Parties, as at the date of this Agreement, that it has been advised by each Afterpay director, other than Michael Jefferies, who will abstain from making a recommendation, that he or she does not intend to, and Afterpay must use reasonable endeavours to procure that each Afterpay director does not:
- (a) change, withdraw or modify his or her Afterpay Recommendation or Afterpay Voting Intention; or
  - (b) make any public statement or take any other action that is inconsistent with his or her recommendation of the Afterpay Scheme,
- in each case except where:
- (c) Afterpay receives a Competing Proposal and the relevant Afterpay director determines, after clauses 11.4 to 11.10 have been satisfied, that the Competing Proposal constitutes a Superior Proposal; or
  - (d) the Afterpay Independent Expert concludes in the Afterpay Independent Expert's Report that the Afterpay Scheme is not in the best interests of Afterpay Scheme Shareholders, or the Afterpay Independent Expert concludes in the Afterpay Independent Expert's Report that the Afterpay Scheme is in the best interests of Afterpay Scheme Shareholders but then changes or publicly withdraws this conclusion prior to 8.00am on the Afterpay Second Court Date; or

- (e) the Afterpay Board determines in good faith and acting reasonably that they must do so because of their fiduciary or statutory duties to the Afterpay Shareholders, having received expert advice in writing from its legal advisors (who must be reputable advisers experienced in transactions of this nature).

### **Touchcorp Board recommendation and voting intention**

6.5 Unless a Touchcorp Recommendation or Touchcorp Voting Intention (each as defined below) has been changed, modified or withdrawn in accordance with clause 6.6, Touchcorp must use reasonable endeavours to ensure that the Touchcorp Scheme Booklet includes:

- (a) a unanimous recommendation by the Touchcorp Board that Touchcorp Shareholders vote in favour of the Touchcorp Scheme, qualified only by the words to the effect of 'in the absence of a superior proposal' and, other than in respect of the Touchcorp Scheme Booklet or any document issued after the issue of the Touchcorp Scheme Booklet, 'subject to the Touchcorp Independent Expert concluding that the Touchcorp Scheme is in the best interests of Touchcorp Shareholders' (**Touchcorp Recommendation**); and
- (b) a statement by each Touchcorp director that he or she has a present intention to vote in favour of the Touchcorp Scheme in respect of all Touchcorp Shares controlled or held by, or on behalf of, that Touchcorp director, qualified only by the words to the effect of 'in the absence of a superior proposal' and, other than in respect of the Touchcorp Scheme Booklet or any document issued after the issue of the Touchcorp Scheme Booklet, 'subject to the Touchcorp Independent Expert concluding that the Touchcorp Scheme is in the best interests of Touchcorp Shareholders' (**Touchcorp Voting Intention**).

6.6 Touchcorp represents and warrants to the other Parties, as at the date of this Agreement, that it has been advised by each Touchcorp director that he or she does not intend to, and Touchcorp must use reasonable endeavours to procure that each Touchcorp director does not:

- (a) change, withdraw or modify his or her Touchcorp Recommendation or Touchcorp Voting Intention; or
- (b) make any public statement or take any other action that is inconsistent with his or her recommendation of the Touchcorp Scheme,

in each case except where:

- (c) Touchcorp receives a Competing Proposal and the relevant Touchcorp director determines, after clauses 11.4 to 11.10 have been satisfied, that the Competing Proposal constitutes a Superior Proposal; or
- (d) the Touchcorp Independent Expert concludes in the Touchcorp Independent Expert's Report that the Touchcorp Scheme is not in the best interests of Touchcorp Shareholders, or the Touchcorp Independent Expert concludes in the Touchcorp Independent Expert's Report that the Touchcorp Scheme is in the best interests of Touchcorp Shareholders but then changes or publicly withdraws this conclusion prior to 8.00am on the Touchcorp Second Court Date; or
- (e) the Touchcorp Board determines in good faith and acting reasonably that they must do so because of their fiduciary or statutory duties to the Touchcorp Shareholders, having received expert advice in writing from its legal advisors (who must be reputable advisers experienced in transactions of this nature).

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## **7. Conduct of business before the implementation date**

### **Conduct of business**

- 7.1 Subject to clause 7.3 for Afterpay and clause 7.5 for Touchcorp, from the date of this Agreement up to and including the Afterpay Implementation Date, other than to the extent that the relevant matter has been Fairly Disclosed to the other of them or to the ASX before the date of this Agreement, each of Afterpay and Touchcorp must conduct its business, and must cause each of its Subsidiaries to conduct their businesses, in the ordinary and usual course of business and:
- (a) operate those businesses consistent with past practice, in substantially the same manner as previously conducted;
  - (b) use reasonable endeavours to preserve their relationships with customers, suppliers, landlords, licensors, licensees and others having material business dealings with them, and to retain the services of all key employees;
  - (c) use reasonable endeavours to ensure that all assets are maintained in the normal course consistent with past practice;
  - (d) use reasonable endeavours to comply in all material respects with all material contracts to which a member of the Afterpay Group or Touchcorp Group (as applicable) is a party, and with laws, authorisations and licenses applicable to each member of the Afterpay Group or Touchcorp Group (as applicable);
  - (e) not take or fail to take any action that constitutes an Afterpay Prescribed Occurrence or a Touchcorp Prescribed Occurrence (as applicable) or that could reasonably be expected to result in an Afterpay Prescribed Occurrence or a Touchcorp Prescribed Occurrence (as applicable); and
  - (f) not take or fail to take any action that would, or would be likely to, prevent a condition in clause 3 being satisfied or result in a condition not being satisfied.

### **Afterpay prohibited actions**

- 7.2 Subject to clause 7.3, from the date of this Agreement up to and including the Afterpay Implementation Date, other than to the extent that the relevant matter has been Fairly Disclosed to Touchcorp or to the ASX before the date of this Agreement or is unanimously approved by the Interim Operations Committee, Afterpay must not, and must procure that the Afterpay Group does not:
- (a) declare, pay or distribute any dividend, bonus or other share of its profits or assets by way of dividend, capital reduction or otherwise;
  - (b) increase, reduce or otherwise alter its share capital or grant any options for the issue of Afterpay Shares or other securities, or buy back or make any offer to buy back the Afterpay Shares;
  - (c) in respect of any single transaction or series of related or similar transactions, acquire or dispose of any interest in a business, real property, entity or undertaking, the value of which exceeds \$100,000 in aggregate;
  - (d) except as required by law or as provided in an existing contract in place at the date of this Agreement, make any material change to the terms of employment of (including increasing the remuneration or compensation of or accelerating the rights to benefits

- of any kind), or grant or pay any bonus, incentive, retention, severance or termination payment to, any director, officer, executive or senior manager of the Afterpay Group;
- (e) enter into a new employment contract with a potential employee of the Afterpay Group under which contract the total remuneration payable to that potential employee would exceed \$75,000 in any 12 month period, other than in respect of a new employee who is employed in order to fill a role that is vacant as at the date of this Agreement;
  - (f) enter into any enterprise bargaining agreement or any other form of collective agreement concerning the terms of employment of employees of the Afterpay Group;
  - (g) incur any additional financial indebtedness (except for draw-downs on existing banking facilities), or guarantee or indemnify the obligations of any person other than a member of the Afterpay Group, other than in the usual and ordinary course of business and consistent with past practice;
  - (h) enter into any new financing arrangement, agreement or otherwise provide financial accommodation (irrespective of what form that accommodation takes), or amend the term of any existing financing arrangement, agreement or instrument in a material respect;
  - (i) incur or enter into any new commitments involving the purchase of plant and equipment (as defined in Afterpay's statement of cash flows), or involving other capital expenditure (other than capitalised wages), of more than \$50,000 in aggregate;
  - (j) give or agree to give a financial benefit to a related party of Afterpay;
  - (k) enter into a contract which is material to the conduct of the Afterpay Group's business as currently conducted or involves undertaking services or selling products outside the ordinary course of business (including as to term) as currently conducted by the Afterpay Group, but for the avoidance of doubt this clause does not prohibit or limit the appointment of any advisor to the Afterpay Group;
  - (l) implement any share based incentive plan or scheme;
  - (m) amend its constitution;
  - (n) alter in any material respect any accounting policy of any member of the Afterpay Group; or
  - (o) agree to do any of the matters set out above.

### **Afterpay permitted activities**

- 7.3 The obligations of Afterpay under clauses 7.1 and 7.2 do not apply in respect of any matter:
- (a) expressly required to be done or procured by Afterpay pursuant to this Agreement or the Afterpay Scheme;
  - (b) which is, or is a consequence of, the NAB Facility Extension;
  - (c) required by law or by an order of a court or Governmental Agency; or
  - (d) the undertaking of which Touchcorp has previously approved in writing.

## **Touchcorp prohibited actions**

- 7.4 Subject to clause 7.5, from the date of this Agreement up to and including the Touchcorp Implementation Date, other than to the extent that the relevant matter has been Fairly Disclosed to Afterpay or to the ASX before the date of this Agreement or is unanimously approved by the Interim Operations Committee, Touchcorp must not, and must procure that the Touchcorp Group does not:
- (a) declare, pay or distribute any dividend, bonus or other share of its profits or assets by way of dividend, capital reduction or otherwise;
  - (b) increase, reduce or otherwise alter its share capital or grant any options for the issue of Touchcorp Shares or other securities, or buy back or make any offer to buy back the Touchcorp Shares;
  - (c) in respect of any single transaction or series of related or similar transactions, acquire or dispose of any interest in a business, real property, entity or undertaking, the value of which exceeds \$100,000 in aggregate;
  - (d) except as required by law or as provided in an existing contract in place at the date of this Agreement, make any material change to the terms of employment of (including increasing the remuneration or compensation of or accelerating the rights to benefits of any kind), or grant or pay any bonus, incentive, retention, severance or termination payment to, any director, officer, executive or senior manager of the Touchcorp Group;
  - (e) enter into a new employment contract with a potential employee of the Touchcorp Group under which contract the total remuneration payable to that potential employee would exceed \$75,000 in any 12 month period, other than in respect of a new employee who is employed in order to fill a role that is vacant as at the date of this Agreement;
  - (f) enter into any enterprise bargaining agreement or any other form of collective agreement concerning the terms of employment of employees of the Touchcorp Group;
  - (g) incur any additional financial indebtedness (except for draw-downs on existing banking facilities), or guarantee or indemnify the obligations of any person other than a member of the Touchcorp Group, other than in the usual and ordinary course of business and consistent with past practice;
  - (h) enter into any new financing arrangement, agreement or otherwise provide financial accommodation (irrespective of what form that accommodation takes), or amend the term of any existing financing arrangement, agreement or instrument in a material respect;
  - (i) incur or enter into any new commitments involving the purchase of plant and equipment (as defined in Touchcorp's statement of cash flows) , or involving other capital expenditure, of more than \$50,000 in aggregate (other than capitalised wages);
  - (j) give or agree to give a financial benefit to a related party of Touchcorp;
  - (k) enter into a contract which is material to the conduct of the Touchcorp Group's business as currently conducted or involves undertaking services or selling products outside the ordinary course of business (including as to term) as currently conducted



by the Touchcorp Group, but for the avoidance of doubt this clause does not prohibit or limit the appointment of any advisor to the Touchcorp Group;

- (l) implement any share based incentive plan or scheme;
- (m) amend its constitution;
- (n) alter in any material respect any accounting policy of any member of the Touchcorp Group; or
- (o) agree to do any of the matters set out above.

### **Touchcorp permitted activities**

7.5 The obligations of Touchcorp under clauses 7.1 and 7.4 do not apply in respect of any matter:

- (a) expressly required to be done or procured by Touchcorp pursuant to this Agreement or the Touchcorp Scheme;
- (b) required by law or by an order of a court or Governmental Agency; or
- (c) the undertaking of which Afterpay has previously approved in writing.

### **NewCo actions**

7.6 Subject to clause 7.7, from the date of this Agreement up to and including the Afterpay Implementation Date, unless otherwise unanimously agreed by the Interim Operations Committee, NewCo must:

- (a) adopt a NewCo constitution and all relevant governance policies, which will be in substantially similar form to the current Afterpay documents;
- (b) not declare, pay or distribute any dividend, bonus or other share of its profits or assets by way of dividend, capital reduction or otherwise;
- (c) not increase, reduce or otherwise alter its share capital or grant any options for the issue of NewCo Shares or other securities or buy back or make any offer to buy back the NewCo Shares;
- (d) not in respect of any single transaction or series of related or similar transactions, acquire or dispose of any interest in a business, real property, entity or undertaking;
- (e) not give or agree to give a financial benefit to a related party of NewCo;
- (f) not enter into a contract or commitment (including an employment contract) which involves aggregate expenditure greater than \$50,000, or has a committed term which is greater than 12 months;
- (g) not implement any share based incentive plan or scheme;
- (h) not alter in any material respect any accounting policy of any member of the NewCo Group; or
- (i) not agree to do any of the matters set out above in clauses 7.6(b) – 7.6(h).

7.7 The obligations of NewCo under clause 7.6 do not apply in respect of any matter:

- (a) expressly required to be done or procured by NewCo pursuant to this Agreement;
- (b) required by law or by an order of a court or Governmental Agency; or

- (c) the undertaking of which Afterpay and Touchcorp have both previously approved in writing.

### **Interim Operations Committee**

- 7.8 Following signing of this Agreement until the Business Day after the Afterpay Implementation Date or the Touchcorp Implementation Date (whichever occurs later), Afterpay and Touchcorp agree to continue to operate the Interim Operations Committee that was formed on signing of the Heads of Agreement.
- 7.9 The purpose of the Interim Operations Committee is to consider matters relating to the conduct of material aspects of Afterpay's, Touchcorp's and NewCo's businesses and operations, and provide advice and make recommendations to the Afterpay Board, Touchcorp Board and NewCo Board in relation to the same, including in respect of:
  - (a) matters including (but not limited to) material expenditure, employee matters, business development opportunities and other strategic matters that are relevant to each Party prior to completion of the Transaction; and
  - (b) integrating Afterpay and Touchcorp's businesses into NewCo following completion of the Transaction.
- 7.10 The obligations in clause 7.9 do not require any of the Parties to:
  - (a) provide information to the other Parties regarding any of their directors' consideration of the Transaction;
  - (b) provide any commercially sensitive or competitive information;
  - (c) breach an obligation of confidentiality to any person; or
  - (d) do anything that would cause or result in that Party being in breach of any material obligation owed to another party (whether under an agreement or otherwise) or a breach of any duty, whether arising under any law, owed by that Party.
- 7.11 For the avoidance of doubt, the Interim Operations Committee is only an advisory and consultative body that will make recommendations to the Parties, rather than a decision-making body. The Interim Operations Committee will be terminated on completion of the Transaction.

### **Access to information**

- 7.12 Subject to the terms of this Agreement and in particular clause 15, from the date of this Agreement to the Afterpay Implementation Date or the Touchcorp Implementation Date (whichever occurs later), each Party must provide the other Parties with all reasonable access during normal business hours and on reasonable notice to the management, offices, books, records and business operations of the relevant Party that any other Party reasonably requires in order to implement the Transaction or for the Parties to prepare for the transition of ownership of the Afterpay Group and Touchcorp Group.

### **Change of control**

- 7.13 As soon as practicable after the date of this Agreement, the Parties must:
  - (a) seek to identify any change of control or similar provisions in an Afterpay material contract or a Touchcorp material contract which may be triggered by the implementation of the Transaction (**Change of Control Requirements**); and

- (b) use all reasonable endeavours to agree a proposed strategy to obtain any consents required in accordance with the terms of any identified Change of Control Requirements, and to then expeditiously seek those consents in accordance with the agreed strategy.

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## **8. Employee rights**

### **NewCo Incentive Plan**

- 8.1 As soon as practicable after the date of this Agreement, NewCo will adopt a NewCo employee incentive plan on terms approved in writing by Afterpay and Touchcorp (**NewCo Incentive Plan**).

### **Exchange or acquisition of existing employee rights**

- 8.2 As soon as reasonably practicable after the date of this Agreement:
- (a) Afterpay and NewCo must use their best endeavours to enter into an Exchange of Options/Rights Deed with each holder of Afterpay Employee Rights subject to the Afterpay Scheme becoming Effective; and
  - (b) Touchcorp and NewCo must use their best endeavours to enter into an agreement with each holder of Touchcorp Employee Rights to vary the terms of their Touchcorp Employee Rights only such that the loan, security and related terms of their Touchcorp Shares are substituted for NewCo Shares (and on the basis that any Touchcorp Shares to which the Touchcorp Employee Rights relate form part of the Touchcorp Scheme), subject to the Touchcorp Scheme becoming Effective.
- 8.3 NewCo must, in accordance with the terms of the Exchange of Options/Rights Deeds and agreements referred to in clause 8.2(b), grant or issue NewCo Employee Rights under the terms of the NewCo Incentive Plan to the relevant holders of Afterpay Employee Rights and relevant holders of Touchcorp Employee Rights, in amounts and on terms agreed by Afterpay and Touchcorp for this purpose.
- 8.4 As soon as reasonably practicable after the date of this Agreement, each of Afterpay and Touchcorp must apply for all necessary consents, approvals and waivers from ASX to cancel all of the Afterpay Employee Rights, and use its best endeavours to procure that all such consents, approvals and waivers from ASX are obtained as soon as reasonably practicable.

### **Grant of NewCo Employee Rights**

- 8.5 Subject to the Afterpay General Meeting Resolutions being passed, on the later of the Afterpay Implementation Date and the Touchcorp Implementation Date (or such other date as the Parties may agree), NewCo may grant or issue up to 12 million NewCo Employee Rights, in the form of limited recourse loan shares at an issue price which is a premium to the current Afterpay price, under the terms of the NewCo Incentive Plan to the persons, and on the terms and conditions agreed by Afterpay and Touchcorp for this purpose.

### **Shareholder approval and voting exclusions**

- 8.6 If required by ASX for the purposes of the Listing Rules, Afterpay must obtain Afterpay Shareholder approval (with voting exclusions as required by ASX or the Listing Rules), and Touchcorp must obtain Touchcorp Shareholder approval, of the terms of the NewCo Incentive Plan and the issue of NewCo Employee Rights to NewCo directors before 8.00am on the Afterpay Second Court Date or the Touchcorp Second Court Date respectively.

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## **9. Board composition of NewCo**

9.1 NewCo represents and warrants to each of Afterpay and Touchcorp that it has been advised by each NewCo director that he or she will, and NewCo must procure that the NewCo Board will appoint directors and/or procure the resignation of an existing NewCo director such that the NewCo Board comprises of:

- (a) Anthony Eisen, Executive Chairman;
- (b) Nicholas Molnar, Managing Director;
- (c) David Hancock, Non-Executive Director;
- (d) Clifford Rosenberg, Non-Executive Director;
- (e) Michael Jefferies; and
- (f) Elana Rubin,

effective as of the Afterpay Implementation Date or the Touchcorp Implementation Date (whichever occurs later), and subject to those persons consenting to act.

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## **10. Representations and warranties**

### **Afterpay representations and warranties**

10.1 Afterpay represents and warrants to each other Party (on its own behalf and separately as trustee or nominee for the directors of each other Party), each of the matters set out in clause 10.2 as at the date of this Agreement and at all subsequent times until 8.00am on the Afterpay Second Court Date or 8.00am on the Touchcorp Second Court Date (whichever occurs later) (except that where any statement is expressed to be made only at a particular date it is given only at that date).

10.2 Afterpay represents and warrants that:

- (a) Afterpay is a validly existing corporation registered under the laws of its place of incorporation;
- (b) the execution and delivery of this Agreement has been properly authorised by all necessary corporate action and Afterpay has full corporate power and lawful authority to execute and deliver this Agreement and to perform or cause to be performed its obligations under this Agreement;
- (c) it has in full force and effect each authorisation necessary for it to enter into this Agreement, to comply with its obligations under it, and to allow them to be enforced;
- (d) this Agreement constitutes legal, valid, binding and enforceable obligations on it and this Agreement does not result in a breach of or default under any Agreement or any writ, order or injunction, rule or regulation to which Afterpay is a party or is bound;
- (e) no Afterpay Prescribed Occurrence has occurred;
- (f) the information contained in the Afterpay Scheme Booklet (other than the Touchcorp Information, NewCo Information and Afterpay Independent Expert's Report) will:
  - (i) be prepared and included in the Afterpay Scheme Booklet in good faith; and

- (ii) comply in all material respects with the requirements of the Corporations Act, Listing Rules and RG 60;
- (g) as at the date the Afterpay Scheme Booklet is despatched to Afterpay Shareholders, the Afterpay Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act (excluding the Touchcorp Information, NewCo Information and the Afterpay Independent Expert's Report) will not be misleading or deceptive in any material respect (whether by omission or otherwise);
- (h) the Afterpay Information provided to Touchcorp and NewCo in accordance with clause 5.1(b) for inclusion in the Touchcorp Scheme Booklet will:
  - (i) be provided in good faith;
  - (ii) comply in all material respects with the requirements of the Companies Act and the Listing Rules; and
  - (iii) be provided on the understanding that Touchcorp and NewCo will rely on that information for the purposes of preparing the Touchcorp Scheme Booklet and NewCo Information and proposing and implementing the Touchcorp Scheme in accordance with the requirements of the Companies Act;
- (i) as at the date of this Agreement, Afterpay has provided to each other Party all information actually known to it (having made reasonable enquiries) regarding matters affecting or relating to it:
  - (i) which is not already in the public domain; and
  - (ii) the disclosure of which might reasonably be expected to have resulted in each other Party not entering into this Agreement at all or only entering into this Agreement on materially different terms;
- (j) all information provided by or on behalf of Afterpay to the Touchcorp Independent Expert to enable the Touchcorp Independent Expert's Report to be included in the Touchcorp Scheme Booklet to be prepared and completed will not be misleading or deceptive in any material respect (whether by omission or otherwise) and will be provided in good faith and on the understanding that the Touchcorp Independent Expert will rely upon that information for the purposes of preparing the Touchcorp Independent Expert's Report for inclusion in the Touchcorp Scheme Booklet;
- (k) as at the date the Touchcorp Scheme Booklet is despatched to Touchcorp Shareholders, the Afterpay Information, in the form and context in which that information appears in the version of the Touchcorp Scheme Booklet so despatched will not be misleading or deceptive in any material respect (whether by omission or otherwise);
- (l) so far as it is aware (after making reasonable enquiries),
  - (i) subject to clause 10.2(l)(ii), all information provided by or on behalf of Afterpay to Touchcorp during the process of due diligence and negotiations in relation to the Transaction is materially accurate and not misleading in all material respects (including by omission), and Afterpay has not knowingly omitted to disclose information to Touchcorp during that process which might reasonably be expected to have resulted in Touchcorp not entering into this Agreement, or entering into this Agreement on materially different term; and

- (ii) all information provided under clause 10.2(1)(i) which is of a forward looking nature such as forecasts, projections or statements of opinion, belief or intent (**Afterpay Forecasts**) has been prepared in good faith. To avoid doubt, Touchcorp acknowledges that that Afterpay does not make any representation or warranty as to the accuracy or completeness of such Afterpay Forecasts;
- (m) as at the date of this Agreement, Afterpay is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the exclusion in Listing Rule 3.1A to withhold any information from disclosure (other than in relation to the Transaction or as disclosed in writing to the other Parties on or before the date of this Agreement);
- (n) as at the date of this Agreement and except as Fairly Disclosed, each member of the Afterpay Group has complied in all material respects with all Australian laws and regulations applicable to it and orders of Australian Governmental Agencies having jurisdiction over it and has all material licenses, permits and franchises necessary for it to conduct its business as presently being conducted;
- (o) the issued capital of Afterpay as at the date of this Agreement is:
  - (i) 180,337,038 Afterpay Shares; and
  - (ii) 16,065,000 options over Afterpay Shares; and
  - (iii) 155,000 performance rights in relation to Afterpay Shares,
 and there are no other Afterpay options, performance rights, shares, warrants, convertible notes, instruments or other securities (or offers or agreements to issue any of the foregoing) that may convert into Afterpay Shares;
- (p) no member of the Afterpay Group has issued, or agreed to issue, any other securities or instruments which may convert into Afterpay Shares or any other securities in Afterpay.
- (q) no member of the Afterpay Group is Insolvent;
- (r) except as Fairly Disclosed, there are no material Encumbrances over all or any of the Afterpay Group's assets or revenue;
- (s) subject to satisfaction of the conditions in clause 3.1, Afterpay does not require the approval of its shareholders or the approval or consent of any other person to enter into or perform any of its obligations under this Agreement; and
- (t) Afterpay's financial statements as disclosed to the ASX have been prepared in accordance with the Accounting Standards on a basis consistent with past practice financial statements and, so far as Afterpay is aware, there has not been any event, change, effect or development which would require Afterpay to restate its financial statements as disclosed to the ASX.

### **Afterpay's indemnity**

- 10.3 Afterpay agrees with each of Touchcorp (on Touchcorp's own behalf and separately as trustee for each of the other Touchcorp Indemnified Parties) and NewCo (on NewCo's own behalf and separately as trustee for each of the other NewCo Indemnified Parties) to indemnify and keep indemnified each of Touchcorp, Touchcorp Indemnified Parties, NewCo and NewCo Indemnified Parties against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and

however arising which Touchcorp and/or NewCo may suffer or incur by reason of any breach of any of the representations and warranties in clauses 10.1 or 10.2.

### **Touchcorp representations and warranties**

10.4 Touchcorp represents and warrants to each other Party (on its own behalf and separately as trustee or nominee for the directors of each other Party), each of the matters set out in clause 10.5 as at the date of this Agreement and at all subsequent times until 8.00am on the Afterpay Second Court or 8.00am on the Touchcorp Second Court Date (whichever occurs later) (except that where any statement is expressed to be made only at a particular date it is given only at that date).

10.5 Touchcorp represents and warrants that:

- (a) Touchcorp is a validly existing corporation registered under the laws of its place of incorporation;
- (b) the execution and delivery of this Agreement has been properly authorised by all necessary corporate action and Touchcorp has full corporate power and lawful authority to execute and deliver this Agreement and to perform or cause to be performed its obligations under this Agreement;
- (c) it has in full force and effect each authorisation necessary for it to enter into this Agreement, to comply with its obligations under it, and to allow them to be enforced;
- (d) this Agreement constitutes legal, valid, binding and enforceable obligations on it and this Agreement does not result in a breach of or default under any Agreement or any writ, order or injunction, rule or regulation to which Touchcorp is a party or is bound;
- (e) no Touchcorp Prescribed Occurrence has occurred;
- (f) the information contained in the Touchcorp Scheme Booklet (other than the Afterpay Information, NewCo Information and Touchcorp Independent Expert's Report) will:
  - (i) be prepared and included in the Touchcorp Scheme Booklet in good faith; and
  - (ii) comply in all material respects with the requirements of the Companies Act and Listing Rules;
- (g) as at the date the Touchcorp Scheme Booklet is despatched to Touchcorp Shareholders, the Touchcorp Scheme Booklet (excluding the Afterpay Information, NewCo Information and the Touchcorp Independent Expert's Report) will not be misleading or deceptive in any material respect (whether by omission or otherwise);
- (h) the Touchcorp Information provided to Afterpay and NewCo in accordance with clause 5.2(b) for inclusion in the Afterpay Scheme Booklet will:
  - (i) be provided in good faith;
  - (ii) comply in all material respects with the requirements of the Corporations Act, Listing Rules and RG 60; and
  - (iii) be provided on the understanding that Afterpay and NewCo will rely on that information for the purposes of preparing the Afterpay Scheme Booklet and NewCo Information and proposing and implementing the Afterpay Scheme in accordance with the requirements of the Corporations Act, Listing Rules and RG 60;

- (i) as at the date of this Agreement, Touchcorp has provided to each other Party all information actually known to it (having made reasonable enquiries) regarding matters affecting or relating to it:
  - (i) which is not already in the public domain; and
  - (ii) the disclosure of which might reasonably be expected to have resulted in each other Party not entering into this Agreement at all or only entering into this Agreement on materially different terms;
- (j) all information provided by or on behalf of Touchcorp to the Afterpay Independent Expert to enable the Afterpay Independent Expert's Report to be included in the Afterpay Scheme Booklet to be prepared and completed will not be misleading or deceptive in any material respect (whether by omission or otherwise) and will be provided in good faith and on the understanding that the Afterpay Independent Expert will rely upon that information for the purposes of preparing the Afterpay Independent Expert's Report for inclusion in the Afterpay Scheme Booklet;
- (k) as at the date the Afterpay Scheme Booklet is dispatched to Afterpay Shareholders, the Touchcorp Information, in the form and context in which that information appears in the version of the Afterpay Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act will not be misleading or deceptive in any material respect (whether by omission or otherwise);
- (l) so far as it is aware (after making reasonable enquiries),
  - (i) subject to clause 10.5(l)(ii), all information provided by or on behalf of Touchcorp to Afterpay during the process of due diligence and negotiations in relation to the Transaction is materially accurate and not misleading in all material respects (including by omission), and Touchcorp has not knowingly omitted to disclose information to Afterpay during that process which might reasonably be expected to have resulted in Afterpay not entering into this Agreement, or entering into this Agreement on materially different terms; and
  - (ii) all information provided under clause 10.5(l)(i) which is of a forward looking nature such as forecasts, projections or statements of opinion, belief or intent (**Touchcorp Forecasts**) has been prepared in good faith. To avoid doubt, Afterpay acknowledges that that Touchcorp does not make any representation or warranty as to the accuracy or completeness of such Touchcorp Forecasts;
- (m) as at the date of this Agreement, Touchcorp is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the exclusion in Listing Rule 3.1A to withhold any information from disclosure (other than in relation to the Transaction or as disclosed in writing to the other Parties on or before the date of this Agreement);
- (n) as at the date of this Agreement and except as Fairly Disclosed, each member of the Touchcorp Group has complied in all material respects with all Australian and Bermudan laws and regulations applicable to it and any orders of Australian and Bermudan Governmental Agencies having jurisdiction over it and has all material licenses, permits and franchises necessary for it to conduct its business as presently being conducted;
- (o) the issued capital of Touchcorp as at the date of this Agreement is:
  - (i) 131,503,568 Touchcorp Shares; and



- (ii) nil options over Touchcorp Shares; and
  - (iii) nil performance rights in relation to Touchcorp Shares,
- and there are no other Touchcorp options, performance rights, shares, warrants, convertible notes, instruments or other securities (or offers or agreements to issue any of the foregoing) that may convert into Touchcorp Shares;
- (p) no member of the Touchcorp Group has issued, or agreed to issue, any other securities or instruments which may convert into Touchcorp Shares or any other securities in Touchcorp.
  - (q) no member of the Touchcorp Group is Insolvent;
  - (r) there are no material Encumbrances over all or any of the Touchcorp Group's assets or revenue;
  - (s) subject to satisfaction of the conditions in clause 3.2, Touchcorp does not require the approval of its shareholders or the approval or consent of any other person to enter into or perform any of its obligations under this Agreement; and
  - (t) Touchcorp's financial statements as disclosed to the ASX have been prepared in accordance with the Accounting Standards on a basis consistent with past practice financial statements and, so far as Touchcorp is aware, there has not been any event, change, effect or development which would require Touchcorp to restate its financial statements as disclosed to the ASX.

### **Touchcorp's indemnity**

- 10.6 Touchcorp agrees with each of Afterpay (on Afterpay's own behalf and separately as trustee for each of the other Afterpay Indemnified Parties) and NewCo (on NewCo's own behalf and separately as trustee for each of the other NewCo Indemnified Parties) to indemnify and keep indemnified each of Afterpay, Afterpay Indemnified Parties, NewCo and NewCo Indemnified Parties against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which Afterpay and/or NewCo may suffer or incur by reason of any breach of any of the representations and warranties in clauses 10.4 or 10.5.

### **NewCo representations and warranties**

- 10.7 NewCo represents and warrants to each other Party, each of the matters set out in clause 10.8 as at the date of this Agreement and at all subsequent times until 8.00am on the Afterpay Second Court or 8.00am on the Touchcorp Second Court Date (whichever occurs later) (except that where any statement is expressed to be made only at a particular date it is given only at that date).
- 10.8 NewCo represents and warrants that:
- (a) NewCo is a validly existing corporation registered under the laws of its place of incorporation;
  - (b) the execution and delivery of this Agreement has been properly authorised by all necessary corporate action and NewCo has full corporate power and lawful authority to execute and deliver this Agreement and to perform or cause to be performed its obligations under this Agreement;

- (c) it has in full force and effect each authorisation necessary for it to enter into this Agreement, to comply with its obligations under it, and to allow them to be enforced;
- (d) this Agreement constitutes legal, valid, binding and enforceable obligations on it and this Agreement does not result in a breach of or default under any Agreement or any writ, order or injunction, rule or regulation to which NewCo is a party or is bound;
- (e) the NewCo Information provided to Afterpay in accordance with clause 5.1(b) for inclusion in the Afterpay Scheme Booklet and Touchcorp in accordance with clause 5.2(b) for inclusion in the Touchcorp Scheme Booklet will:
  - (i) be provided in good faith;
  - (ii) comply in all material respects with the requirements of relevant laws, regulatory policy and Listing Rules; and
  - (iii) be provided on the understanding that each of Afterpay and Touchcorp will rely on that information for the purposes of preparing the Afterpay Scheme Booklet and Touchcorp Scheme Booklet and proposing and implementing the Afterpay Scheme and Touchcorp Scheme (as applicable) in accordance with the requirements of relevant laws, regulatory policy and Listing Rules;
- (f) all information provided by or on behalf of NewCo to:
  - (i) the Afterpay Independent Expert to enable the Afterpay Independent Expert's Report to be included in the Afterpay Scheme Booklet to be prepared and completed; and
  - (ii) the Touchcorp Independent Expert to enable the Touchcorp Independent Expert's Report to be included in the Touchcorp Scheme Booklet to be prepared and completed,

will not be misleading or deceptive in any material respect (whether by omission or otherwise) and will be provided in good faith and on the understanding that:

  - (iii) the Afterpay Independent Expert will rely upon that information for the purposes of preparing the Afterpay Independent Expert's Report for inclusion in the Afterpay Scheme Booklet; and
  - (iv) the Touchcorp Independent Expert will rely upon that information for the purposes of preparing the Touchcorp Independent Expert's Report for inclusion in the Touchcorp Scheme Booklet;
- (g) as at the date:
  - (i) the Afterpay Scheme Booklet is dispatched to Afterpay Shareholders; and
  - (ii) the Touchcorp Scheme Booklet is dispatched to Touchcorp Shareholders,

the NewCo Information, in the form and context in which that information appears in the version of:

  - (iii) the Afterpay Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act,
  - (iv) the Touchcorp Scheme Booklet despatched to the Touchcorp Shareholders,

will not be misleading or deceptive in any material respect (whether by omission or otherwise).

- (h) as at the date of this Agreement, NewCo has provided to each other Party all information actually known to it (having made reasonable enquiries) regarding matters affecting or relating to it:
  - (i) which is not already in the public domain; and
  - (ii) the disclosure of which might reasonably be expected to have resulted in each other Party not entering into this Agreement at all or only entering into this Agreement on materially different terms.

### **NewCo's indemnity**

- 10.9 NewCo agrees with each of Afterpay (on Afterpay's own behalf and separately as trustee for each of the other Afterpay Indemnified Parties) and Touchcorp (on Touchcorp's own behalf and separately as trustee for each of the other Touchcorp Indemnified Parties) to indemnify and keep indemnified each of Afterpay, Afterpay Indemnified Parties, Touchcorp and Touchcorp Indemnified Parties against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which Afterpay and/or Touchcorp may suffer or incur by reason of any breach of any of the representations and warranties in clauses 10.7 or 10.8.

### **Notifications**

- 10.10 Each Party will promptly advise the other Parties in writing if it becomes aware of any fact, matter or circumstance which constitutes or is reasonably expected to constitute a breach of any of the representations or warranties given by it under this clause 10.

### **Survival of representations**

- 10.11 Each representation and warranty in this clause 10:
- (a) is severable;
  - (b) will survive the termination of this Agreement; and
  - (c) is given with the intent that liability will not be confined to breaches which are discovered prior to the date of termination of this Agreement.

### **Survival of indemnities**

- 10.12 Each indemnity in this Agreement (including those in clauses 10.3, 10.6 and 10.9):
- (a) is severable;
  - (b) is a continuing obligation;
  - (c) constitutes a separate and independent obligation of the Party giving the indemnity from any other obligations of that Party under this Agreement; and
  - (d) survives the termination of this Agreement.

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## **11. Exclusivity**

### **No existing discussions**

- 11.1 Other than in relation to the discussions with the Parties in connection with the Transaction and this Agreement, each of Afterpay and Touchcorp represents and warrants to the other Parties that, as at the date of this Agreement:
- (a) neither itself, its Related Bodies Corporate nor any of their respective officers, management or (to its knowledge) Advisers is a party to any agreement with a third party entered into for the purpose of facilitating a Competing Proposal; and
  - (b) neither itself, its Related Bodies Corporate nor any of their respective officers, management or (to its knowledge) Advisers is participating in any discussions or negotiations with a third party that concern, or that could reasonably be expected to lead to, a Competing Proposal.

### **No-shop**

- 11.2 During the Exclusivity Period, each of Afterpay and Touchcorp must not, must ensure that its respective Related Bodies Corporate and their respective officers and management do not, and must use reasonable endeavours to ensure their respective Advisers do not, directly or indirectly solicit, invite, initiate or encourage any Competing Proposal or any enquiries, proposals, discussions or negotiations with any third party in relation to (or that could reasonably be expected to lead to) a Competing Proposal, or communicate any intention to do any of these things.

### **No-talk and no due diligence**

- 11.3 Subject to clause 11.11, during the Exclusivity Period, each of Afterpay and Touchcorp must not, must ensure that its respective Related Bodies Corporate and their respective officers and management, and must use reasonable endeavours to ensure their respective Advisers do not, directly or indirectly:
- (a) negotiate or enter into or participate in negotiations or discussions with any person in relation to (or which may reasonably be expected to lead to) a Competing Proposal;
  - (b) facilitate or permit any person to undertake due diligence investigations or receive any non-public information in respect of it or its Related Bodies Corporate, or their businesses and operations in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal, or
  - (c) communicate any intention to do any of these things,
- even if that person's Competing Proposal or potential Competing Proposal was not directly or indirectly solicited, encouraged or initiated by Afterpay or Touchcorp (as applicable) or any of its respective Related Bodies Corporate (as applicable), or that person has publicly announced the Competing Proposal.

### **Notification of approaches**

- 11.4 During the Exclusivity Period, each of Afterpay and Touchcorp must promptly notify the other Parties in writing of:

- (a) any approach, inquiry or proposal made by any person to Afterpay or Touchcorp (as applicable), any of its Related Bodies Corporate or any of their respective officers, management or (to its knowledge) Advisers, to initiate any discussions or negotiations that concern, or that could reasonably be expected to lead to, a Competing Proposal; and
  - (b) any request made by any person to Afterpay or Touchcorp (as applicable), any of its Related Bodies Corporate, or any of their respective officers, management or (to its knowledge) Advisers, for any information relating to Afterpay or Touchcorp (as applicable), its Related Bodies Corporate, or any of their businesses and operations, in connection with such person initiating, formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.
- 11.5 Subject to clause 11.11, a notice given under clause 11.4 must be accompanied by all material details of the relevant event, including (as applicable):
- (a) the identity of the person who made the relevant approach, inquiry or proposal to initiate discussions or negotiations referred to in clause 11.4(a), or who made the relevant request for information referred to in clause 11.4(b); and
  - (b) the material terms and conditions (including price, conditions precedent, timetable and break fee (if any)) of any Competing Proposal or any proposed Competing Proposal (to the extent known).
- 11.6 During the Exclusivity Period, each of Afterpay and Touchcorp must promptly provide the other Parties with:
- (a) in the case of written materials, a copy of; or
  - (b) in any other case, a written statement of,
- any material non-public information relating to Afterpay or Touchcorp (as applicable), its Related Bodies Corporate, or any of their businesses and operations made available or received by any person in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal and which has not previously been provided to the other Parties.

## Right to match

- 11.7 If Afterpay or Touchcorp (**Proposal Recipient**) receives a Competing Proposal, it must not enter into any agreement, arrangement or understanding in relation to the Competing Proposal, announce the Competing Proposal publicly, or rely on clauses 13.2(a) or 13.3(a) (as applicable) as a result of the Competing Proposal, unless:
- (a) it gives the other Parties a **Proposal Notice** in relation to the Competing Proposal, which must include the material terms and conditions of the actual, proposed or potential Competing Proposal, including price and the identity of the third party making the actual, proposed or potential Competing Proposal; and
  - (b) a period of 3 Business Days has elapsed from the date on which the Proposal Notice is given.
- 11.8 Despite clause 11.7, to the extent required to discharge what they have determined in good faith to be their fiduciary or statutory obligations, the board of directors of the Proposal Recipient may release a public announcement acknowledging the receipt of a Competing Proposal and:

- (a) recommending that its shareholders take no action in relation to the Competing Proposal; and
- (b) reserving the Proposal Recipient board of directors' position in relation to its recommendation of the Afterpay Scheme or the Touchcorp Scheme (as applicable),

provided that any such announcement does not disclose the person from whom the Competing Proposal has been received nor any of the material terms of the Competing Proposal, including the price.

11.9 If a Proposal Recipient gives a Proposal Notice, then whichever of Afterpay or Touchcorp is not the Proposal Recipient will have the right, but not the obligation, at any time until the expiration of 3 Business Days following receipt of Proposal Notice to:

- (a) offer to amend the terms of either or both of the Afterpay Scheme or the Touchcorp Scheme; or
- (b) to propose any other transaction,

which offer or proposal must be submitted to the Proposal Recipient in writing (a **Counter-proposal**). If a Counter-proposal is submitted, the board of directors of the Proposal Recipient must review the Counter-proposal in good faith to determine whether the Counter-proposal is more favourable to shareholders of the Proposal Recipient than the relevant Competing Proposal taking into account all terms and conditions of both proposals.

11.10 If the board of directors of the Proposal Recipient determines, in good faith and after having obtained advice from its legal and financial advisers, that a Counter-proposal is equivalent to or more favourable to its shareholders as a whole than the relevant Competing Proposal, taking into account all of the terms and conditions of the Counter-proposal, then:

- (a) if the Counter-proposal contemplates an amendment to either or both of the Afterpay Scheme or the Touchcorp Scheme, the Parties must amend this Agreement and all other necessary documents to reflect the Counter-proposal;
- (b) if the Counter-proposal contemplates any other transaction, the Proposal Recipient must make an announcement as soon as reasonably practicable recommending the Counter-proposal, in the absence of a Superior Proposal, and the Parties must pursue implementation of the Counter-proposal in good faith; and
- (c) the Proposal Recipient must not take any of the steps referred to in clause 11.7.

## **Fiduciary out**

11.11 The restrictions in clause 11.3 and the obligations in clause 11.5 do not apply to the extent they restrict Afterpay or Touchcorp, or any director of Afterpay or Touchcorp, from taking or refusing to take any action with respect to a Competing Proposal (in relation to which there has been no contravention of this clause 11) provided that:

- (a) the Competing Proposal is bona fide and is made by or on behalf of a person that the Afterpay Board or Touchcorp Board (as applicable) considers is of reputable commercial standing; and
- (b) the Afterpay Board or Touchcorp Board (as applicable) has determined in good faith after:

- (i) consultation with Afterpay's or Touchcorp's (as applicable) financial advisers (if any), that the Competing Proposal is or may reasonably be expected to lead to a Superior Proposal; and
  - (ii) receiving written advice from Afterpay's or Touchcorp's (as applicable) external legal adviser practising in the area of corporate law,
- that failing to take the action or refuse to take the action (as the case may be) with respect to the Competing Proposal would be likely to constitute a breach of the fiduciary or statutory obligations of the Afterpay Board or Touchcorp Board (as applicable).
- 

## **12. Break fee**

### **Declaration**

- 12.1 Afterpay and Touchcorp each represents and warrants to the other Party that it would not have entered into this Agreement without the benefit of this clause 12 and it would not have entered into and continued the negotiations leading up to this Agreement unless it had a reasonable expectation that the other Party would agree to enter into a clause of this kind.

### **Acknowledgements**

- 12.2 Each of Afterpay and Touchcorp acknowledges that the other Party has incurred and will incur:
- (a) significant external advisory costs;
  - (b) some internal costs of a similar kind (including directors and management time costs, risk management costs and capital costs);
  - (c) out-of-pocket expenses;
  - (d) commitment fees and other financing costs;
  - (e) costs of undertaking due diligence; and
  - (f) reasonable opportunity costs incurred by Afterpay in pursuing the Afterpay Scheme and by Touchcorp in pursuing the Touchcorp Scheme, or in not pursuing other alternative acquisitions or strategic initiatives,
- in relation to the Afterpay Scheme and Touchcorp Scheme (as applicable) and will incur further costs after the date of this Agreement if the Afterpay Scheme and/or Touchcorp Scheme is not successful.
- 12.3 Further, each of Afterpay and Touchcorp acknowledge that the other will incur substantial costs in implementing the Afterpay Scheme or Touchcorp Scheme (as applicable), including significant external advisory costs and costs of preparing the Afterpay Scheme Booklet and commissioning the Afterpay Independent Expert's Report or Touchcorp Scheme Booklet and commissioning the Touchcorp Independent Expert's Report (as applicable).
- 12.4 Each of Afterpay and Touchcorp represents and warrants that:
- (a) it has received legal advice on this Agreement and the operation of this clause 12; and
  - (b) it considers this clause 12 to be fair and reasonable and that it is appropriate to agree to the terms in this clause 12 (including the payments) in order to secure the

significant benefits to it (and its shareholders) resulting from the Afterpay Scheme or Touchcorp Scheme (as applicable).

## **Agreement on Costs**

- 12.5 Afterpay and Touchcorp each acknowledge that the amount of the Costs is inherently unascertainable and that, even after termination of this Agreement, the Costs will not be able to be accurately ascertained. As a genuine and reasonable pre-estimate of the Costs that Afterpay will suffer if the Afterpay Scheme does not proceed and that Touchcorp will suffer if the Touchcorp Scheme does not proceed, Afterpay and Touchcorp agree that, for the purposes of this clause 12, the Costs for each of them will be \$750,000 (**Break Fee**).

## **Touchcorp Break Fee**

- 12.6 Touchcorp agrees to pay to Afterpay the Break Fee (**Touchcorp Break Fee**) if at any time on or after the date of this Agreement and before the End Date, any of the following events occur:
- (a) at least a majority of the Touchcorp directors fail to recommend the Touchcorp Scheme as described in clause 6.2;
  - (b) at least a majority of the Touchcorp directors change, withdraw or modify their recommendation of the Touchcorp Scheme or make any public statement, or take any other action, that is inconsistent with their recommendation of the Touchcorp Scheme (including where a Competing Proposal is announced and is recommended by a majority of the Touchcorp directors), other than in the case specified in clause 6.6(d) or (e) provided that the reasons for the applicable conclusion or determination do not include (in whole or in part) the existence of a Competing Proposal;
  - (c) a Competing Proposal is announced before the End Date and, within 6 months of that Competing Proposal being announced, a Competing Proposal results in a person or persons (other than NewCo or a Subsidiary of NewCo) obtaining Control of Touchcorp, obtaining voting power in more than 50% of the Touchcorp Shares, merging or amalgamating with Touchcorp or acquiring (directly or indirectly) an interest in all or a substantial part of the business or assets of the Touchcorp Group;
  - (d) a condition in clause 3.2 (other than the conditions in clauses 3.2(k), 3.2(l), and 3.2(m)) is not satisfied due to an action (or failure to act) of Touchcorp or any of its Related Bodies Corporate in breach of Touchcorp's obligations under clause 3.11, and Afterpay does not waive that condition (if applicable) before the End Date; or
  - (e) Afterpay terminates this Agreement under clause 13.1(a).
- 12.7 The payment of the Touchcorp Break Fee by Touchcorp to Afterpay provided for in clause 12.6 must be made within 5 Business Days of receipt of a written demand (which will be made after the occurrence of the event giving rise to the right to payment and state the circumstances which give rise to the demand for the Touchcorp Break Fee) for payment by Afterpay. The demand may only be made after the occurrence of an event referred to in clause 12.6.

## **Afterpay Break Fee**

- 12.8 Afterpay agrees to pay to Touchcorp the Break Fee (**Afterpay Break Fee**) if at any time on or after the date of this Agreement and before the End Date, any of the following events occur:
- (a) at least a majority of the Afterpay directors fail to recommend the Afterpay Scheme as described in clause 6.1;



- (b) at least a majority of the Afterpay directors change, withdraw or modify their recommendation of the Afterpay Scheme or make any public statement, or take any other action that is inconsistent with their recommendation of the Afterpay Scheme (including where a Competing Proposal is announced and is recommended by a majority of the Afterpay directors), other than in the case specified in clause 6.4(d) or (e) provided that the reasons for the applicable conclusion or determination do not include (in whole or in part) the existence of a Competing Proposal;
  - (c) a Competing Proposal is announced before the End Date and, within 6 months of that Competing Proposal being announced, a Competing Proposal results in a person or persons (other than NewCo or a Subsidiary of NewCo) obtaining Control of Afterpay, obtaining voting power in more than 50% of the Afterpay Shares, merging or amalgamating with Afterpay or acquiring (directly or indirectly) an interest in all or a substantial part of the business or assets of the Afterpay Group;
  - (d) a condition in clause 3.1 (other than the conditions in clauses 3.1(k), 3.1(l), and 3.1(m)) is not satisfied due to an action (or failure to act) of Afterpay or any of its Related Bodies Corporate in breach of Afterpay's obligations under clause 3.11, and Touchcorp does not waive that condition (if applicable) before the End Date; or
  - (e) Touchcorp terminates this Agreement under clause 13.1(a).
- 12.9 The payment of the Afterpay Break Fee by Afterpay to Touchcorp provided for in clause 12.8 must be made within 5 Business Days of receipt of a written demand (which will be made after the occurrence of the event giving rise to the right to payment and state the circumstances which give rise to the demand for the Afterpay Break Fee) for payment by Touchcorp. The demand may only be made after the occurrence of an event referred to in clause 12.8.

### **Qualifications**

- 12.10 No Afterpay Break Fee or Touchcorp Break Fee is payable if the Afterpay Scheme and the Touchcorp Scheme become Effective.
- 12.11 The Touchcorp Break Fee is:
- (a) not payable by Touchcorp if Touchcorp validly terminates this Agreement in accordance with clause 13.1(a); and
  - (b) only payable once and the maximum amount payable by Touchcorp under clause 12.6 is the amount of the Touchcorp Break Fee.
- 12.12 The Afterpay Break Fee is:
- (a) not payable by Afterpay if Afterpay validly terminates this Agreement in accordance with clause 13.1(a); and
  - (b) only payable once and the maximum amount payable by Afterpay under clause 12.8 is the amount of the Afterpay Break Fee.

### **Exclusive remedy**

- 12.13 Despite any other provision of this Agreement, where the Afterpay Break Fee becomes payable to Touchcorp under this Agreement (or would be payable if a demand was made), Touchcorp cannot make any Claim against Afterpay or any other Afterpay Indemnified Party in relation to any loss to Touchcorp or any Touchcorp Indemnified Party arising from the Afterpay Scheme or Touchcorp Scheme not proceeding, any event or occurrence referred to

in clause 12.8, or for any liability of Afterpay and the Afterpay Indemnified Parties in relation to any breach by Afterpay of its obligations under this Agreement or any breach of any Afterpay Warranty.

- 12.14 Despite any other provision of this Agreement, where the Touchcorp Break Fee becomes payable to Afterpay under this Agreement (or would be payable if a demand was made), Afterpay cannot make any Claim against Touchcorp or any other Touchcorp Indemnified Party in relation to any loss to Afterpay or any Afterpay Indemnified Party arising from the Afterpay Scheme or Touchcorp Scheme not proceeding, any event or occurrence referred to in clause 12.6, or for any liability of Touchcorp and the Touchcorp Indemnified Parties in relation to any breach by Touchcorp of its obligations under this Agreement or any breach of any Touchcorp Warranty.

### **Compliance with law**

- 12.15 If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a court that all or any part of the Afterpay Break Fee required to be paid under clause 12.8 or the Touchcorp Break Fee required to be paid under clause 12.6 (**Impugned Amount**):
- (a) is unlawful;
  - (b) involves a breach of directors' duties; or
  - (c) constitutes unacceptable circumstances within the meaning of the Corporations Act or breaches an order of the Takeovers Panel,
- then,
- (a) the requirement to pay the Afterpay Break Fee or Touchcorp Break Fee (as the case may be) does not apply to the extent of any Impugned Amount; and
  - (b) if Touchcorp or Afterpay (as the case may be) has received any Impugned Amount, it must refund it within 5 Business Days of the final determination being made.

### **Regulatory Intervention**

- 12.16 If any regulatory body (including ASIC or the Takeovers Panel) or a court requires any modification (including requiring such a modification as a condition of consenting to or approving the Afterpay Scheme or Touchcorp Scheme (as applicable), or as a condition of not opposing the Afterpay Scheme or Touchcorp Scheme (as applicable)) to the Afterpay Break Fee or the Touchcorp Break Fee, including as to the amount or circumstances in which it is to be paid, then:
- (a) the relevant Parties will accept this determination and amend this Agreement to that extent; and
  - (b) it will not result in a breach of this Agreement or termination of the transactions contemplated by it.

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## **13. Termination**

### **Termination by notice**

- 13.1 Afterpay or Touchcorp may, by notice in writing to the other and NewCo, terminate this Agreement at any time prior to 8.00am on the Afterpay Second Court Date:

- (a) if the other is in material breach of any of its obligations under this Agreement, taken in the context of the Transaction as a whole (other than a material breach of a representation or warranty), and, if capable of remedy, the other party has failed to remedy that breach within 5 Business Days (or 5.00 pm on the day before the Afterpay Second Court Date if earlier) of receipt by it of a notice in writing from the terminating party setting out details of the relevant circumstance and requesting the other party to remedy the breach; or
  - (b) if NewCo is in material breach of any of its obligations under this Agreement, taken in the context of the Transaction as a whole (including a material breach of a representation or warranty), and, if capable of remedy, NewCo has failed to remedy that breach within 5 Business Days (or 5.00 pm on the day before the Afterpay Second Court Date if earlier) of receipt by it of a notice in writing from either Afterpay or Touchcorp (copying the other) setting out details of the relevant circumstance and requesting NewCo to remedy the breach; or
  - (c) in accordance with clause 3.17.
- 13.2 Afterpay may, by notice in writing to Touchcorp, terminate this Agreement at any time prior to 8.00am on the Afterpay Second Court Date or 8.00am on the Touchcorp Second Court Date (whichever occurs later) if, at any time before then:
- (a) subject to clauses 11.7 to 11.10, at least a majority of the Afterpay directors publicly recommend a Superior Proposal and do not, within 3 Business Days, reinstate their recommendation of the Afterpay Scheme;
  - (b) Touchcorp materially breaches a representation or warranty contained in clause 10.5, and:
    - (i) Touchcorp fails to remedy that breach within 5 Business Days of receipt by it of a notice in writing from Afterpay setting out details of the relevant circumstance and requesting Touchcorp to remedy the breach or the breach cannot be remedied to the reasonable satisfaction of Afterpay by subsequent action on the part of Touchcorp before 8.00am on the Afterpay Second Court Date; and
    - (ii) either:
      - (A) the breach was of a kind that, had it been disclosed to Afterpay prior to its entry into this Agreement, could reasonably be expected to have resulted in Afterpay either not entering into this Agreement or entering into it on materially different terms; or
      - (B) the breach amounts to, results in, or discloses anything, that could reasonably be expected to amount to a Touchcorp Material Adverse Change; or
  - (c) a majority of Touchcorp directors:
    - (i) fail to recommend the Touchcorp Scheme in the manner described in clause 6; or
    - (ii) change, withdraw or modify their recommendation of the Touchcorp Scheme or make any public statement, or take any other action, that is inconsistent with their recommendation of the Touchcorp Scheme (including where a Competing Proposal is recommended or supported by a majority of

Touchcorp directors) and do not, within 3 Business Days, reinstate their recommendation of the Touchcorp Scheme.

- 13.3 Touchcorp may, by notice in writing to Afterpay, terminate this Agreement at any time prior to 8.00am on the Afterpay Second Court Date or 8.00am on the Touchcorp Second Court Date (whichever occurs later) if at any time before then:
- (a) subject to clauses 11.7 to 11.10, at least a majority of the Touchcorp directors publicly recommend a Superior Proposal and do not, within 3 Business Days, reinstate their recommendation of the Transaction;
  - (b) Afterpay materially breaches a representation or warranty contained in clause 10.2, and:
    - (i) Afterpay fails to remedy that breach within 5 Business Days of receipt by it of a notice in writing from Touchcorp setting out details of the relevant circumstance and requesting Afterpay to remedy the breach or the breach cannot be remedied to the reasonable satisfaction of Touchcorp by subsequent action on the part of Afterpay before 8.00am on the Afterpay Second Court Date; and
    - (ii) either:
      - (A) the breach was of a kind that, had it been disclosed to Touchcorp prior to its entry into this Agreement, could reasonably be expected to have resulted in Touchcorp either not entering into this Agreement or entering into it on materially different terms; or
      - (B) the breach amounts to, results in, or discloses anything, that could reasonably be expected to amount to an Afterpay Material Adverse Change; or
  - (c) a majority of Afterpay directors (excluding Michael Jefferies):
    - (i) fail to recommend the Afterpay Scheme in the manner described in clause 6; or
    - (ii) change, withdraw or modify their recommendation of the Afterpay Scheme or make any public statement, or take any other action, that is inconsistent with their recommendation of the Afterpay Scheme (including where a Competing Proposal is recommended or supported by a majority of Afterpay directors) and do not, within 3 Business Days, reinstate their recommendation of the Afterpay Scheme.

#### **Termination by mutual agreement**

- 13.4 Afterpay and Touchcorp may by mutual agreement in writing terminate this Agreement at any time prior to 8.00am on the Afterpay Second Court Date or 8.00am on the Touchcorp Second Court Date (whichever occurs first). For the avoidance of doubt, no Afterpay Break Fee or Touchcorp Break Fee is payable as a consequence of termination under this clause 13.4.

#### **Effect of termination**

- 13.5 In the event of termination of this Agreement under this clause 13 or clause 3.16(f), the Parties' obligations under this Agreement cease, except that the provisions of clauses 10.11, 10.12, 12, 13, 14, and 16 (inclusive) survive termination.

- 13.6 Termination of this Agreement does not affect any accrued rights of a Party in respect of a breach of this Agreement prior to termination.
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## **14. Releases**

### **Release of Afterpay Indemnified Parties**

- 14.1 Subject to any restrictions imposed by law, each of Touchcorp and NewCo releases any and all rights that it may have as at the date of this Agreement and from time to time, and agrees with Afterpay that it will not make any Claim, against any Afterpay Indemnified Party in connection with:
- (a) any breach of any covenant, representation or warranty given by Afterpay under this Agreement;
  - (b) any disclosure containing any statement which is false or misleading (whether by omission or otherwise); or
  - (c) any failure to provide information,
- except where an Afterpay Indemnified Party has not acted in good faith, has engaged in wilful misconduct or wilful concealment. To avoid doubt, nothing in this clause 14.1 limits the rights of Touchcorp to terminate this Agreement under clause 13.
- 14.2 Afterpay acknowledges that it will account to the Afterpay Indemnified Parties for any benefit it receives under clause 14.1

### **Release of Touchcorp Indemnified Parties**

- 14.3 Subject to any restrictions imposed by law, each of Afterpay and NewCo releases any and all rights that it may have as at the date of this Agreement and from time to time, and agrees with Touchcorp that it will not make any Claim, against any Touchcorp Indemnified Party in connection with:
- (a) any breach of any covenant, representation or warranty given by Touchcorp under this Agreement;
  - (b) any disclosures containing any statement which is false or misleading (whether by omission or otherwise); or
  - (c) any failure to provide information,
- except where a Touchcorp Indemnified Party has not acted in good faith, has engaged in wilful misconduct or wilful concealment. To avoid doubt, nothing in this clause 14.3 limits the rights of Afterpay to terminate this Agreement under clause 13.
- 14.4 Touchcorp acknowledges that it will account to the Touchcorp Indemnified Parties for any benefit it receives under clause 14.3.

### **Release of NewCo Indemnified Parties**

- 14.5 Subject to any restrictions imposed by law, each of Afterpay and Touchcorp releases any and all rights that it may have as at the date of this Agreement and from time to time, and agrees with NewCo that it will not make any Claim, against any NewCo Indemnified Party in connection with:

- (a) any breach of any covenant, representation or warranty given by NewCo under this Agreement;
- (b) any disclosures containing any statement which is false or misleading (whether by omission or otherwise); or
- (c) any failure to provide information,

except where a NewCo Indemnified Party has not acted in good faith, has engaged in wilful misconduct or wilful concealment. To avoid doubt, nothing in this clause 14.5 limits the rights of Afterpay to terminate this Agreement under clause 13.

- 14.6 NewCo acknowledges that it will account to the NewCo Indemnified Parties for any benefit it receives under clause 14.5.

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## 15. Confidentiality and public announcement

### Confidentiality

- 15.1 Each Party acknowledges and agrees that all information (including in relation to Related Bodies Corporate) which is provided by any Party to the other Parties, or obtained by any Party from the other Parties (including through an Authorised Person), in the course of proposing, negotiating or implementing the Transaction (including information provided before or after the date of this Agreement) is confidential information and may not be disclosed to any third party unless it is of a type described in clause 15.2 (**Confidential Information**).
- 15.2 A Party does not have to treat as confidential, and this Agreement does not otherwise apply to, information:
- (a) which is disclosed to such of the Party's Authorised Persons or Related Bodies Corporate as the Party thinks necessary for the purposes of proposing, negotiating or implementing the Transaction, but only on a confidential basis and provided the Party ensures that the relevant Authorised Persons or Related Bodies Corporate comply with the terms of clauses 15.1 to 15.5;
  - (b) which is required to be disclosed by law, a government agency or the rules of a recognised stock exchange, but only (as far as practicable and lawful) after the form and terms of that disclosure have been notified to the other Parties and the other Parties have had a reasonable opportunity to comment on the form and terms;
  - (c) which has already come into the public domain through no fault of the other Parties or the other Parties' Authorised Persons; or
  - (d) that is known by a Party before the date of this Agreement and that was not obtained on a confidential basis from any other Party in the course of proposing, negotiating or implementing the Transaction.
- 15.3 Each Party must:
- (a) use the Confidential Information solely for the purposes of proposing, negotiating or implementing the Transaction; and
  - (b) not use or exploit the Confidential Information (or allow its Authorised Persons or Related Bodies Corporate to do so) for any purposes other than that described in clause 15.3(a),

without the prior written consent of the relevant disclosing Party.

- 15.4 This Agreement does not give a Party (or any of its Authorised Persons or Related Bodies Corporate) any right, title or interest in other Party's Confidential Information.
- 15.5 If the Transaction does not proceed, each Party must return all Confidential Information to the other Parties, together with all copies, notes and memoranda relating to it, or destroy the Confidential Information, and certify that all of the relevant Confidential Information has been returned or destroyed (as applicable).
- 15.6 Each Party acknowledges that:
- (a) none of the other Parties (nor any of the other Parties' Related Bodies Corporate) have made or makes any representation or warranty, express or implied, as to the accuracy, content or completeness of the Confidential Information;
  - (b) each Party is under no obligation, by this Agreement, to notify the other Parties, or provide any further information to the other Parties, if it becomes aware of any inaccuracy, incompleteness or change in the Confidential Information; and
  - (c) it must make its own assessment of all Confidential Information provided to it and satisfy itself as to the accuracy, content or completeness of that Confidential Information.

### **Public Announcements on signing**

- 15.7 Immediately after the date of this Agreement, Afterpay and Touchcorp must issue public announcements in a form previously agreed to in writing between them.

### **Further public announcements**

- 15.8 Subject to clause 15.9, any further public announcements by Afterpay or Touchcorp in relation to, or in connection with, the Transaction or any other transaction the subject of this Agreement or the Afterpay Scheme or the Touchcorp Scheme may only be made in a form approved by each Party in writing (acting reasonably) subject to where a Party is required by law or the Listing Rules to make any announcement or to make any disclosure in relation to, or in connection with, the Transaction or any other transaction the subject of this Agreement or the Afterpay Scheme or the Touchcorp Scheme.
- 15.9 Where Afterpay and/or Touchcorp (as applicable) is required by law and/or the Listing Rules to make any announcement or make any disclosure in relation to the Transaction, Afterpay and/or Touchcorp (as applicable) may do so only after Afterpay and/or Touchcorp (as applicable) has given as much notice as is reasonable in all the circumstances to, and has consulted (to the fullest extent reasonable in the circumstances) with, the other Parties or their Advisers.

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## **16. Notices**

### **Service of notices**

- 16.1 A notice, consent or other communication under this Agreement (**Notice**) is only effective if:
- (a) it is in writing, signed by or on behalf of the party giving it; and
  - (b) it is directed to the recipient's address for notices as follows:

**Afterpay**

Address: Level 16, 380 LaTrobe Street, Melbourne, VIC 3000  
E-mail: ant@afterpay.com.au  
Attn: Anthony Eisen

with a copy to Baker McKenzie:

Address: Level 27, AMP Centre  
50 Bridge Street, Sydney, NSW 2000  
Facsimile: +61 2 9225 1595  
E-mail: [guy.sanderson@bakermckenzie.com](mailto:guy.sanderson@bakermckenzie.com)  
Attn: Guy Sanderson

**Touchcorp**

Address: 19 Par-La-Ville Road, Hamilton, Bermuda HM 11 and  
Level 1, 61 Spring Street, Melbourne VIC 3000  
E-mail: sk@ccounsel.com.au  
Attn: Sophie Karzis

with a copy to King & Wood Mallesons:

Address: Level 50, Bourke Place, 600 Bourke Street,  
Melbourne VIC 3000  
Facsimile: +61 3 9643 5999  
E-mail: diana.nicholson@au.kwm.com  
Attn: Diana Nicholson

**NewCo**

Address: Level 16, 380 LaTrobe Street, Melbourne, VIC 3000  
Attn: Company Secretary

with a copy to the other Party not giving the notice in accordance with the above.

- 16.2 If a Party changes address and fails to notify the other Parties of this change and the new address, delivery of Notices to a new address, or otherwise brought to the attention of the addressee, are deemed compliance with the notice obligations under clause 16.1.
- 16.3 A Notice given in accordance with clause 16.1 takes effect when received (or at a later time specified in it), and is taken to be received:
- (a) if hand delivered, on delivery;
  - (b) if sent by prepaid post, the second Business Day after the date of posting (or the seventh Business Day after the date of posting if posted to or from outside Australia);
  - (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight hours after the transmission, the recipient informs the sender that it has not received the entire Notice; or
  - (d) if sent by email:
    - (i) when the sender receives an automated message confirming delivery; or



- (ii) 2 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first,

but if the delivery or transmission under clause 16.3(a) or 16.3(b) is not on a Business Day or after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the Business Day after that delivery, receipt or transmission.

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## 17. General

### Further acts

- 17.1 Each Party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Party) required by law or reasonably requested by any other Party to give effect to this Agreement.

### Payments

- 17.2 Unless otherwise expressly provided in this Agreement, where an amount is required to be paid to a Party (the **Receiving Party**) by another Party under this Agreement, that amount must be paid:
- (a) in immediately available and irrevocable funds by electronic transfer to a bank account or accounts notified by the Receiving Party in writing on or before the due date for payment, or in other such immediately payable funds as the parties may agree; and
  - (b) without deduction, withholding or set-off.

### Consents or approvals

- 17.3 Except as expressly provided in this Agreement, a Party may conditionally or unconditionally in its absolute discretion give or withhold any consent or approval under this Agreement.

### GST

- 17.4 Any reference in this clause 17 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- 17.5 Unless *expressly* included, the consideration for any supply under or in connection with this Agreement does not include GST.
- 17.6 To the extent that any supply made by a Party (**Supplier**) to another Party (**Recipient**) under or in connection with this Agreement is a taxable supply, the Recipient must pay to the Supplier, in addition to the consideration to be provided under this Agreement but for the application of this clause 17.6 for that supply (**GST Exclusive Consideration**), an amount equal to the amount of the GST Exclusive Consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. This clause 17.6 does not apply to any taxable supply under or in connection with this Agreement that is expressly stated to include GST.

- 17.7 The amount on account of GST payable in accordance with this clause 17 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided, subject to the Supplier issuing a tax invoice.
- 17.8 Any reference in the calculation of any consideration or of any indemnity, reimbursement or similar amount to a cost, expense or liability incurred by a person (**Relevant Expense**) is a reference to the relevant expense reduced by an amount equal to any input tax credit entitlement of that person (or of the representative member of any GST group to which the person belongs) in relation to the Relevant Expense. A Party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the relevant payment or consideration must be provided.
- 17.9 Unless expressly included, any monetary thresholds specified in this Agreement are exclusive of GST.

### **Stamp duty**

- 17.10 NewCo must pay all stamp duties (if any) and any fines and penalties with respect to stamp duty in respect of this Agreement or the Afterpay Scheme or the Touchcorp Scheme or the steps to be taken under this Agreement or the Afterpay Scheme or the Touchcorp Scheme (including the acquisition or transfer of Afterpay Scheme Shares pursuant to the Afterpay Scheme and of Touchcorp Scheme Shares pursuant to the Touchcorp Scheme, and the issue of NewCo Shares under the same).

### **Expenses**

- 17.11 Except as otherwise provided in this Agreement:
- (a) each of Afterpay and Touchcorp will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this Agreement, the Afterpay Scheme Booklet and the Touchcorp Scheme Booklet, and the proposed, attempted or actual implementation of this Agreement, the Afterpay Scheme and the Touchcorp Scheme; and
  - (b) Afterpay and Touchcorp will be responsible for 50% of all of NewCo's costs and expenses incurred in relation to the Transaction.

### **Amendments**

- 17.12 This Agreement may only be varied by a document signed by or on behalf of each of the Parties.

### **Assignment**

- 17.13 Subject to clause 2.4, a Party must not assign or novate this Agreement or otherwise deal with the benefit of it or a right under it, or purport to do so, without the prior written consent of the other Parties, which consent may be withheld at the absolute discretion of the Party from whom consent is sought.

### **Waiver**

- 17.14 Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Agreement by any Party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this Agreement.

- 17.15 Any waiver or consent given by any Party under this Agreement will only be effective and binding on that Party if it is given or confirmed in writing by that Party.
- 17.16 No waiver of a breach of any term of this Agreement will operate as a waiver of another breach of that term or of a breach of any other term of this Agreement.
- 17.17 Nothing in this Agreement obliges a Party to exercise a right to waive any conditional term of this Agreement that may be in its power.

### **Counterparts**

- 17.18 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts. Each counterpart constitutes the agreement of each Party who has executed and delivered that counterpart. Each counterpart is an original but the counterparts together are one and the same agreement.
- 17.19 This Agreement is binding on the Parties on the exchange of duly executed counterparts.
- 17.20 The Parties agree that a copy of an original executed counterpart sent by facsimile machine to the facsimile number or by email to the email address of the other Party specified in clause 16, instead of the original, is sufficient evidence of the execution of the original and may be produced in evidence for all purposes in place of the original.

### **Entire agreement**

- 17.21 This Agreement:
- (a) embodies the entire understanding of the Parties and constitutes the entire terms agreed on between the Parties; and
  - (b) supersedes the Heads of Agreement, the NDA and any other prior agreement (whether or not in writing) between the Parties.

### **No representation or reliance**

- 17.22 Each Party acknowledges that no Party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this Agreement, except for representations or inducements expressly set out in this Agreement.
- 17.23 Each Party acknowledges and confirms that it does not enter into this Agreement in reliance on any representation or other inducement by or on behalf of any other Party, except for any representation or inducement expressly set out in this Agreement.

### **No merger**

- 17.24 The rights and obligations of the Parties will not merge on completion of any transaction under this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transaction.

### **Governing law**

- 17.25 This Agreement is governed by and will be construed according to the laws of Victoria.
- 17.26 Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and of the courts competent to determine appeals from those courts.

## Schedule 1

### Indicative Timetable for Transaction

#### Afterpay Scheme

Event	Date
Enter into Merger Implementation Agreement	30 March 2017
Lodge Afterpay Scheme Booklet with ASIC for review and comment	13 April 2017
Afterpay First Court Date	2 May 2017
Afterpay Scheme Booklet registered with ASIC	2 May 2017
Dispatch Afterpay Scheme Booklet to Afterpay Shareholders	9 May 2017
Afterpay Scheme Meeting	9 June 2017
Afterpay Second Court Date	21 June 2017
Effective Date for Afterpay Scheme (Lodge office copy of Australian Court order approving the Afterpay Scheme with ASIC)	21 June 2017
Afterpay Record Date	26 June 2017
Afterpay Implementation Date (Issue Afterpay Scheme Consideration to Afterpay Scheme Shareholders)	29 June 2017

#### Touchcorp Scheme\*

Event	Date
Enter into Merger Implementation Agreement	30 March 2017
Touchcorp First Court Date	5 May 2017
Dispatch Touchcorp Scheme Booklet to Touchcorp Shareholders	9 May 2017
Touchcorp Scheme Meeting	9 June 2017
Touchcorp Second Court Date	16 June 2017
Effective Date for Touchcorp Scheme (Lodge copy of Bermudan Court order approving the Touchcorp	20 June 2017

Scheme with Bermuda Registrar of Companies)	
Touchcorp Record Date	26 June 2017
Touchcorp Implementation Date (Issue Touchcorp Scheme Consideration to Touchcorp Scheme Shareholders)	29 June 2017

\*References to relevant dates requiring action in Bermuda are to dates in Bermuda (not Melbourne time)

## Schedule 2

### Escrowed Shares

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Escrowed Shareholder	Escrowed Shares
Anthony Matthew Eisen	25,000,000
Nicholas Molnar Pty Ltd as trustee for the Nicholas David Family Trust	25,000,000
Julie Jefferies as trustee for The Jefferies Super Fund and Michael Jefferies as trustee for The Jefferies Super Fund	200,000
Clifro Pty Ltd as trustee for the Clifro Trust	800,000
Fiona Kate Hancock	2,000,000

## Execution

**Executed** as an agreement.

Signed by  
**Afterpay Holdings Limited**  
in accordance with section 127 of the  
*Corporations Act 2001* by a director and  
secretary/director:



Signature of director

Anthony Eisen

Name of director (please print)



Signature of director/secretary

Nicholas Molnar

Name of director/secretary (please print)

Signed for and on behalf  
of **Touchcorp Limited**  
by its duly authorised representative  
in the presence of:



Signature of witness

Sophie Karzis

Name of witness (please print)



Signature of authorised representative

Michael Jefferies

Name of authorised representative  
(please print)

Signed by  
**Afterpay Touch Group Limited**  
in accordance with section 127 of the  
*Corporations Act 2001* by a director and  
secretary/director:



Signature of director

Elana Rubin

Name of director (please print)



Signature of director/secretary

Clifford Rosenberg

Name of director/secretary (please print)