

## Beyond enters into Scheme Implementation Deed with Banijay

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- Beyond and Banijay have entered into a Scheme Implementation Deed pursuant to which Banijay (or its subsidiary) will acquire 100% of the share capital of Beyond by way of scheme of arrangement
- If the conditions to the Scheme are met and it is implemented, Beyond shareholders will receive **\$0.7744 cash per Beyond share**, representing a 57% premium to the Beyond one-month volume weighted average price up to and including 30 September 2022
- The Scheme is subject to certain conditions which must be satisfied or waived before the Scheme can be implemented
- The Beyond Directors unanimously recommend that Beyond shareholders vote in favour of the scheme of arrangement, in the absence of a Superior Proposal and subject to an Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of Beyond shareholders
- Beyond shareholders do not need to take any action at the present time

Beyond International Limited (ASX: BYI) ("**Beyond**") today announced that it has entered into a binding Scheme Implementation Deed ("**SID**") with Banijay Entertainment SAS ("**Banijay**"), for the acquisition of all of the issued shares in Beyond pursuant to a scheme of arrangement ("**Scheme**").

Under the Scheme, it is intended that Beyond shareholders will receive \$0.7744 per share in cash.

The scheme consideration of per share represents:

- a 55% premium to Beyond's closing price of \$0.50 on 30 September 2022;
- a 57% premium to the 1 month VWAP to 30 September 2022 of \$0.4958;
- a 92% premium to the 3 month VWAP to 30 September 2022 of \$0.4001.

Beyond Chief Executive Officer and Managing Director, Mikael Borglund said:

"The Beyond Board is very supportive of entering into the SID which would see the Company joining the Banijay group, thereby bolstering its standing in an increasingly competitive market. This is a very exciting opportunity for the Company, and we look forward to collaborating on newfound opportunities with Banijay. At the same time, the transaction will allow the existing shareholders of Beyond to realise their investment in the business at a premium to its recent market price "

Chief Executive Officer of Banijay, Marco Bassetti said:

"As content demand continues to soar, catalogue remains key, and in acquiring Beyond, we would take our offering up considerably. Primarily bolstering our IP and production portfolio in the English-language and factual space, with Beyond's complementary content, the deal can enhance our position as a leading go-to for clients and commercial partners alike."

## Recommendation

The Board of Beyond has agreed to unanimously recommend that Beyond shareholders vote in favour of the Scheme, in the absence of a Superior Proposal<sup>1</sup> and subject to an Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of Beyond shareholders. Subject to these qualifications, each Beyond Director has confirmed that they intend to vote any shares that they hold or control in favour of the Scheme.

The Board of Beyond has formed its recommendation following careful consideration, having regard to the circumstances of the company and confidential engagement with other interested parties. In relation to one other interested party, a reimbursement arrangement was entered into which may result in an amount of \$300,000 becoming payable by Beyond if the Scheme (or another competing proposal received by 19 October 2022) is completed by 19 July 2023. This fee does not reduce the consideration payable to Beyond Shareholders under the Scheme.

## Overview of Scheme Implementation Deed

The implementation of the Scheme is subject to conditions customary for a transaction of this nature, including:

- Beyond shareholder approval of the Scheme;
- Court approval of the Scheme;
- the Independent Expert concluding (and continuing to conclude) the Scheme is in the best interests of Beyond's shareholders;
- no restraints likely to have the effect of temporarily or permanently restraining, prohibiting or materially impeding implementation of the Scheme;
- no Beyond Material Adverse Change;
- no Beyond Prescribed Occurrence; and
- no Beyond Regulated Event.

The Scheme is not subject to financing or due diligence conditions.

The SID contains customary exclusivity provisions, including no shop, no talk and no due diligence obligations, notification obligations and a matching right. A break fee of \$475,000 will be payable by Beyond to Banijay in certain circumstances, and a reverse break fee of \$475,000 will be payable by Banijay to Beyond in certain circumstances.

A full copy of the SID, including all applicable conditions of the Scheme, is attached to this announcement.

## Next Steps and Indicative Timetable

Beyond shareholders do not need to take any action at this stage.

A Scheme Booklet containing information relating to the Scheme and the Scheme Meeting, the reasons for the Directors' recommendation and the Independent Expert Report will be dispatched to shareholders in advance of the Scheme Meeting.

Beyond shareholders will be given the opportunity to vote on the Scheme at a Scheme Meeting, which is currently expected to be held in December 2022 with implementation before the end of January 2023. An indicative timetable for the Scheme is set out below:

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<sup>1</sup> As defined in the SID.

Event	Date
First Court Hearing	November 2022
Scheme Meeting	December 2022
Second Court Hearing	December 2022
Effective Date	December 2022
Scheme Record Date	December 2022 / January 2023
Implementation Date	December 2022 / January 2023

These dates are indicative, subject to change and conditional on (among other things) shareholder approval at the Scheme Meeting.

## Advisers

Beyond is being advised by Herbert Smith Freehills and Narev Advisory.

This announcement has been authorised for release by the Beyond Board.

## Enquiries / further information

All enquiries should be directed to:

Mr Mikael Borglund, Managing Director, Beyond International Limited

Telephone 02 9437 2000 or email [investor\\_relations@beyond.com.au](mailto:investor_relations@beyond.com.au)

## About Beyond

Beyond is a leading international producer and manager of media content for distribution internationally by means of multiple platforms including AVOD, SVOD and broadcast.

Beyond has two operating business segments – international media production and media rights management and distribution.

Beyond is a leading international production company with more than 5,000 hours of global television produced to date. Based in Los Angeles, London and Sydney, its programs have won multiple Emmy Awards across several genres, with a focus on factual entertainment, premium documentary programs and drama series. Beyond is currently in production on its fourth original series with Netflix and new commissions with Hulu, Disney+ and National Geographic.

Television series produced by Beyond include MythBusters, White Rabbit Project, My Lottery Dream Home, Pooch Perfect, Love It Or List It Australia, Deadly Women, Troppo and Halifax Retribution.

Beyond's international distribution business manages and markets an extensive program catalogue sourced from third party producers and inhouse production. The Company has

a management team with vast experience in rights acquisition, management and exploitation.

Beyond licenses programming to multiple platforms throughout the world including AVOD, SVOD and broadcast. The growth in direct-to-consumer internet distribution has led to an increase in demand for quality content across multiple platforms. The business is headquartered in Dublin, with offices in London and Sydney.

## **About Banijay**

A leading content producer and distributor, Banijay is home to over 120 production companies across 22 territories, and a multi-genre catalogue boasting over 130,000 hours of original standout programming.

A collective of creative entrepreneurs, the group represents some of the biggest global brands including Survivor, Big Brother, Starstruck, Peaky Blinders, MasterChef, Rogue Heroes, Mr Bean, Hunted, Blow Up, Black Mirror, Marie Antoinette, Love Triangle and Limitless Win, among others. Imagining and delivering high-quality multi-genre IP that was born locally and travels globally, the business offers the best stories told the best way.

Built on independence, creative freedom, collaborative entrepreneurialism and commercial acumen, the company, launched in 2008, operates under the direction of Chief Executive Officer, Marco Bassetti.

## Attachment – Scheme Implementation Deed

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Attached.



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## Deed

Project Paris

# Scheme implementation deed

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Beyond International Limited

Banijay Entertainment SAS



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**Deed poll**

#### **Attachment 4**

**Conditions Precedent certificate**

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## Scheme implementation deed

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Date ► 6 October 2022

Between the parties

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Beyond

**Beyond International Limited**

ACN 003 174 409 of 109 Reserve Road, Artarmon NSW 2064

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Bidder

**Banijay Entertainment SAS**

Paris commercial registry number 503 069 965 of 5 rue François 1er,  
75008 Paris, France

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Recitals

- 1 The parties have agreed that Bidder (or its Nominee) will acquire all of the ordinary shares in Beyond by means of a scheme of arrangement under Part 5.1 of the Corporations Act between Beyond and the Scheme Shareholders.
  - 2 The parties have agreed to implement the scheme of arrangement on the terms and conditions of this deed.
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This deed witnesses as follows:

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# 1 Definitions and interpretation

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## 1.1 Definitions

The meanings of the terms used in this deed are set out in Schedule 2.

## 1.2 Interpretation

Schedule 2 contains the interpretation rules for this deed.

## 1.3 Deed components

This deed includes any schedule.

## 1.4 Beyond knowledge, belief or awareness

- (a) In this deed, a reference to the knowledge, belief or awareness of Beyond or a Beyond Group Member's knowledge, belief or awareness is limited to the actual knowledge, belief or awareness of the persons agreed between the parties in writing as at the date of this deed. The knowledge, belief or awareness of any other person will not be imputed to Beyond nor any other Beyond Group Member (except to the extent referred to in this clause 1.4(a) or as agreed in the Disclosure Letter).
- (b) Without limiting clause 7, none of the persons referred to in clause 1.4(a) as being agreed between the parties in writing will bear any personal liability in respect of the Beyond Representations and Warranties or otherwise under this deed, except where such person has engaged in wilful misconduct, wilful concealment or fraud.

## 1.5 Bidder knowledge, belief or awareness

- (a) In this deed, a reference to the knowledge, belief or awareness of Bidder or a Bidder Group Member's knowledge, belief or awareness is limited to the actual knowledge, belief or awareness of the persons agreed between the parties in writing as at the date of this deed:
  - (1) having made reasonable enquiries of each other and their direct reports; and
  - (2) where each such person is deemed to have knowledge of all due diligence reports prepared as at the date of this deed by or for the benefit of the Bidder Group or any debt or equity financier of the Bidder Group in respect of the Beyond Group in connection with the Transaction (including any such legal, financial, accounting or tax due diligence report).
- (b) The knowledge, belief or awareness of any person other than the persons referred to in clause 1.5(a) will not be imputed to Bidder nor any other Bidder Group Member (except to the extent referred to in clause 1.5(a) or as agreed in the Disclosure Letter).



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- (c) Without limiting clause 7, none of the persons referred to in clause 1.5(a) as being agreed between the parties in writing will bear any personal liability in respect of the Bidder Representations and Warranties or otherwise under this deed, except where such person has engaged in wilful misconduct, wilful concealment or fraud.

## 2 Agreement to proceed with the Transaction

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- (a) Beyond agrees to propose the Scheme on and subject to the terms and conditions of this deed.
- (b) Bidder agrees to assist Beyond to propose the Scheme on and subject to the terms and conditions of this deed.
- (c) Beyond and Bidder agree to implement the Scheme on and subject to the terms and conditions of this deed.

## 3 Conditions Precedent and pre-implementation steps

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### 3.1 Conditions Precedent

Subject to the remaining provisions in this clause 3, the Scheme will not become Effective, and the respective obligations of the parties in relation to the implementation of the Scheme are not binding, unless and 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) **Shareholder approval:** Beyond Shareholders approve the Scheme Resolution at the Scheme Meeting by the Requisite Majorities;
- (b) **Independent Expert:** the Independent Expert:
  - (1) issues an Independent Expert's Report which concludes that the Scheme is in the best interests of Beyond Shareholders before the time when the Scheme Booklet is registered by ASIC; and
  - (2) does not formally change its conclusion or withdraw its Independent Expert's Report before 8.00am on the Second Court Date;
- (c) **Court approval:** the Court approves the Scheme in accordance with paragraph 411(4)(b) of the Corporations Act (either unconditionally and without modification or with modifications or conditions consented to by Bidder (acting reasonably) in accordance with clause 4.2, unless such modifications or conditions are required by law, in which case Bidder consent is not required);
- (d) **Restraints:** no law, rule, regulation, restraining order, preliminary or permanent injunction or other preliminary or final decision, order, decree or request is made by a court of competent jurisdiction or Government Agency, which is likely to result in or have the effect of temporarily or permanently restraining, prohibiting or materially impeding implementation of the Scheme, is in effect at 8.00am on the Second Court Date;
- (e) **No Beyond Material Adverse Change:** no Beyond Material Adverse Change occurs between (and including) the date of this deed and 8.00am on the Second Court Date (subject to clause 3.2(e)); and



- (f) **No Beyond Prescribed Occurrence:** no Beyond Prescribed Occurrence occurs between (and including) the date of this deed and 8.00am on the Second Court Date (subject to clause 3.2(e)).
- (g) **No Beyond Regulated Event:** no Beyond Regulated Event occurs between (and including) the date of this deed and 8.00am on the Second Court Date (subject to clause 3.2(e)).

### 3.2 Satisfaction of conditions

- (a) Beyond must, to the extent it is within its power to do so, use its best endeavours to procure that each of the Conditions Precedent in clauses 3.1(a) (*Shareholder approval*), 3.1(c) (*Court approval*), 3.1(e) (*No Beyond Material Adverse Change*), 3.1(f) (*No Beyond Prescribed Occurrence*) and 3.1(g) (*No Beyond Regulated Event*) are satisfied as soon as practicable after the date of this deed and continue to be satisfied at all times until the last time that the relevant clause provides that such Condition Precedent is to be satisfied.
- (b) Each party must, to the extent it is within its respective power to do so, use its best endeavours to procure that:
  - (1) the Condition Precedent in clause 3.1(d) (*Restraints*) is not triggered; and
  - (2) there is no occurrence or non-occurrence within its control or the control of, in the case of Beyond, any other Beyond Group Member, or, in the case of Bidder, any other Bidder Group Member, that would (or would be reasonably likely to) prevent any of the Conditions Precedent being or remaining satisfied.
- (c) Beyond will not be in breach of its obligations under clause 3.2(a) or clause 3.2(b) to the extent that it takes an action or omits to take an action:
  - (1) as required or expressly permitted to be done or expressly permitted not to be done, by this deed;
  - (2) in connection with responding to an actual, proposed or potential Competing Proposal to the extent such action or omission is expressly permitted by clause 10;
  - (3) which is Fairly Disclosed in the Disclosure Materials;
  - (4) which has been Fairly Disclosed to ASX by Beyond in the two years prior to the date of this deed; or
  - (5) which has been expressly consented to in writing by Bidder (such consent not to be unreasonably withheld or delayed).
- (d) In respect of the Condition Precedent in clause 3.1(d) (*Restraints*):
  - (1) Bidder and Beyond must each use their best endeavours to challenge or otherwise seek to release or overturn the applicable law, rule, regulation, restraining order, preliminary or permanent injunction or other preliminary or final decision, order, decree or request prior to 8.00am on the Second Court Date; and
  - (2) if any restraint contemplated in the Condition Precedent in clause 3.1(d) (*Restraints*) is in effect at 5.00pm on the Business Day prior to the Second Court Date, Bidder and Beyond shall consult with each other (each acting reasonably and in good faith) to consider delaying the Second Court Date and, if applicable, extend the End Date in



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order to facilitate the satisfaction of the Condition Precedent in clause 3.1(d) (*Restraints*),

provided that the obligation to use best endeavours in clause 3.2(b) and in this clause 3.2(d), does not impose any obligation on a party to accept any undertakings or conditions required by a Government Agency.

- (e) In respect of the Conditions Precedent in clauses 3.1(e) (*No Beyond Material Adverse Change*) and 3.1(f) (*No Beyond Prescribed Occurrence*) and 3.1(g) (*No Beyond Regulated Event*), if:
- (1) a Beyond Material Adverse Change occurs between (and including) the date of this deed and 8.00am on the Second Court Date, the Condition Precedent in clause 3.1(e) (*No Beyond Material Adverse Change*) will not be taken to have been breached or not satisfied;
  - (2) a Beyond Prescribed Occurrence occurs between (and including) the date of this deed and 8.00am on the Second Court Date, the Condition Precedent in clause 3.1(f) (*No Beyond Prescribed Occurrence*) will not be taken to have been breached or not satisfied;  
or
  - (3) a Beyond Regulated Event occurs between (and including) the date of this deed and 8.00am on the Second Court Date, the Condition Precedent in clause 3.1(g) (*No Beyond Regulated Event*) will not be taken to have been breached or not satisfied,
- unless:
- (4) Bidder has given written notice to Beyond in accordance with clause 3.5, and such notice also sets out the relevant circumstances of the breach; and
  - (5) Beyond has failed to remedy the breach within 10 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which such notice is given.

### 3.3 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a) (*Shareholder approval*) and 3.1(c) (*Court approval*) cannot be waived.
- (b) The Conditions Precedent in clauses 3.1(e) (*No Beyond Material Adverse Change*), 3.1(f) (*No Beyond Prescribed Occurrence*) and clause 3.1(g) (*No Beyond Regulated Event*) are for the sole benefit of Bidder and may only be waived by Bidder (in its absolute discretion) in writing.
- (c) The Condition Precedent in clause 3.1(b) (*Independent Expert*) is for the sole benefit of Beyond and may only be waived by Beyond (in its absolute discretion) in writing.
- (d) The Condition Precedent in clause 3.1(d) (*Restraints*) is for the benefit of both parties and may only be waived by written agreement between Bidder and Beyond (in each case in their respective absolute discretion).
- (e) If Beyond or Bidder waives the breach or non-satisfaction of any of the Conditions Precedent, that waiver does not prevent that party from suing the other party for any breach of this deed that resulted in the breach or non-satisfaction of the relevant Condition Precedent.
- (f) Waiver of a breach or non-satisfaction in respect of one Condition Precedent does not constitute:



- (1) a waiver of breach or non-satisfaction of any other Condition Precedent resulting from the same event; or
- (2) a waiver of breach or non-satisfaction of that Condition Precedent resulting from any other event.

### 3.4 Termination on failure of Condition Precedent

- (a) If there is an event or occurrence that would, does or will prevent any of the Conditions Precedent being satisfied (including, for the avoidance of doubt, if Beyond Shareholders do not approve the Scheme Resolution at the Scheme Meeting by the Requisite Majorities), or if any of the Conditions Precedent becomes incapable of being satisfied, by the earlier of:
  - (1) the time and date specified in this deed for the satisfaction of that Condition Precedent; and
  - (2) the End Date,
 or such Condition Precedent is otherwise not satisfied by that specified time and date or by the End Date (as applicable), and the breach or non-fulfilment of the relevant Condition Precedent that has occurred or would otherwise occur has not been or cannot be waived in accordance with clause 3.3, or the Scheme has not otherwise become Effective on the End Date, then Beyond may give Bidder or Bidder may give Beyond written notice (**Consultation Notice**) requiring Beyond and Bidder to consult in good faith to:
  - (3) consider and, if agreed, determine, whether the Transaction may proceed by way of alternative means or methods, or whether, in the case of a breach of the Condition Precedent in clauses 3.1(e) (*No Beyond Material Adverse Change*) or 3.1(f) (*No Beyond Prescribed Occurrence*) or 3.1(g) (*No Beyond Regulated Event*), the breach is still reasonably capable of being remedied before the expiry of the period in clause 3.2(e)(5);
  - (4) consider changing and, if agreed, change, the date of the application made to the Court for an order under paragraph 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed to in writing by Bidder and Beyond, unless there is no reasonable prospect that the Condition Precedent will be satisfied before the End Date; or
  - (5) consider extending and, if agreed, extend, the time and date specified in this deed for the satisfaction of that Condition Precedent or the End Date (as applicable),
 respectively.
- (b) Subject to clauses 3.4(c) and 3.4(d), if Beyond and Bidder are unable to reach agreement under clause 3.4(a) within the earlier of 5 Business Days after the date on which the Consultation Notice is given and 5 Business Days before the time and date specified in this deed for the satisfaction of the Condition Precedent, then, unless:
  - (1) the relevant Condition Precedent has been waived in accordance with clause 3.3; or
  - (2) the party, or in the case of clause 3.3(d), each party, entitled to waive the relevant Condition Precedent in accordance with clause 3.3 confirms in writing to the other party that it will not rely on the event or occurrence that would or does prevent the relevant Condition





Precedent from being satisfied, or would mean the relevant Condition Precedent would or will not otherwise be satisfied,

either Beyond or Bidder may terminate this deed without any liability to the other because of that termination (in which case, for the avoidance of doubt, clause 14.3 applies).

- (c) A party may not terminate this deed pursuant to clause 3.4(b) if:
  - (1) the relevant occurrence or event, the failure of the Condition Precedent to be satisfied, or the failure of the Scheme to become Effective, arises out of a breach of clauses 3.2 or 3.5 by that party, although in such circumstances the other party may still terminate this deed; or
  - (2) the relevant Condition Precedent is stated in clause 3.3 to be for the sole benefit of the other party.
- (d) If the Condition Precedent in clause 3.1(a) (*Shareholder Approval*) is not satisfied only because of a failure to obtain the majority required by sub-subparagraph 411(4)(a)(ii)(A) of the Corporations Act, then either Beyond or Bidder may by written notice to the other within 5 Business Days after the date of the conclusion of the Scheme Meeting require the approval of the Court to be sought, pursuant to the Court's discretion in that sub-subparagraph, provided the party has, in good faith formed the view that the prospect of the Court exercising its discretion in that way is reasonable (including, but not limited to, because the relevant party considers (acting reasonably) that the splitting by one or more Beyond Shareholders of a holding of Beyond Shares into two or more parcels of Beyond Shares (whether or not it results in any change in beneficial ownership of the Beyond Shares) or some other abusive or improper conduct may have caused or contributed to the majority required by sub-subparagraph 411(4)(a)(ii)(A) of the Corporations Act not having been obtained). If such a notice is given, Beyond must make such submissions to the Court and file such evidence as counsel engaged by Beyond to represent it in Court proceedings related to the Scheme, in consultation with Bidder, considers is reasonably required to seek to persuade the Court to exercise its discretion under sub-subparagraph 411(4)(a)(ii)(A) of the Act. If the Court's approval is given, the Condition Precedent in clause 3.1(a) (*Shareholder Approval*) is deemed to be satisfied for all purposes.

### 3.5 Certain notices relating to Conditions Precedent

If a party becomes aware of:

- (a) the satisfaction of a Condition Precedent or of any material progress towards such satisfaction; or
- (b) the happening of an event or occurrence that would, does, will, or would reasonably be likely to:
  - (1) prevent a Condition Precedent being satisfied; or
  - (2) mean that any Condition Precedent will not otherwise be satisfied,
 before the time and date specified for its satisfaction (or being satisfied by the End Date, if no such time and date is specified) or such Condition Precedent is not otherwise satisfied by that time and date (including, for the avoidance of doubt, if Beyond Shareholders do not approve the Scheme Resolution at the Scheme Meeting by the Requisite Majorities),



it must advise the other party by notice in writing, as soon as possible (and in any event within 2 Business Days of the event, occurrence or circumstance referred to in clauses 3.5(a) or 3.5(b) occurring). For the avoidance of doubt, multiple notices may be required under this clause 3.5.

## 4 Transaction steps

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### 4.1 Scheme

Beyond must propose the Scheme to Beyond Shareholders on and subject to the terms of this deed.

### 4.2 No amendment to the Scheme without consent

Beyond must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of Bidder, which must not be unreasonably withheld or delayed, unless such modifications, amendments or conditions are required by law, in which case Bidder consent is not required.

### 4.3 Bidder may elect Nominee

- (a) Bidder may nominate, under this clause 4.3, a directly or indirectly wholly-owned Subsidiary of Bidder (**Nominee**) to perform its obligations to acquire all of the Scheme Shares by giving written notice to Bidder of the Nominee on or before 21 October 2022.
- (b) Bidder undertakes and warrants to Beyond that, if it elects a Nominee to acquire all of the Scheme Shares:
  - (1) unless the context requires otherwise, any references in this deed, the Deed Poll or the Scheme to Bidder acquiring the Scheme Shares or taking any other action under or in respect of this deed, the Deed Poll or the Scheme are to be read as references to the Nominee doing so, and the parties shall document the necessary modifications to Attachments 2 and 3 to this deed prior to the First Court Date to reflect this;
  - (2) Bidder and the Nominee will both enter into the Deed Poll;
  - (3) Bidder will continue to be bound by this deed and Deed Poll as if it was still the acquiring entity;
  - (4) Bidder will ensure that the Nominee completes the acquisition in accordance with, and otherwise complies with, the terms of this deed and the Deed Poll; and
  - (5) Bidder guarantees the performance of the obligations of the Nominee under this deed and the Deed Poll in accordance with clause 17.

### 4.4 Scheme Consideration

- (a) If the Scheme becomes Effective, each Scheme Shareholder will be entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder, in accordance with the terms and conditions of this deed and the Scheme.



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- (b) Bidder undertakes and warrants to Beyond (in its own right and separately as trustee on behalf of the Scheme Shareholders) that, in consideration of the transfer to Bidder of each Beyond Share held by a Scheme Shareholder under the terms of the Scheme, on the Implementation Date, Bidder will accept that transfer and provide to each Scheme Shareholder (or procure the provision to each Scheme Shareholder of) the Scheme Consideration for each Scheme Share in accordance with and subject to the terms and conditions of this deed and the Scheme.
- (c) The Scheme Consideration per Beyond Share will be reduced by the aggregate cash amount per Beyond Share of any dividends which are declared or determined by Beyond and paid by Beyond to Beyond Shareholders on or before the Implementation Date, but will not be reduced by the value attributed to any franking credits attached to any dividends declared or determined by Beyond or paid by Beyond to Beyond Shareholders at any time before the Implementation Date, provided that the cash amount of the dividend that has been paid will be taken to be the cash amount as declared or determined to be paid by Beyond with no reduction or offset for any dividend withholding tax, any withholding on account of non-quotation of an ABN or TFN, or any other withholding or reduction in the amount received by any Beyond Shareholder.

#### **4.5 Provision of Beyond Share Register**

- (a) In order to facilitate the provision of the Scheme Consideration, Beyond must provide, or procure the provision of, to Bidder a complete copy of the Beyond Share Register as at the Scheme Record Date (which must include the name, Registered Address and registered holding of each Scheme Shareholder as at the Scheme Record Date), within 1 Business Day after the Scheme Record Date.
- (b) The details and information to be provided under clause 4.5(a) must be provided in such form as Bidder may reasonably require.

## **5 Implementation**

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### **5.1 General obligations and Timetable**

- (a) Subject to clause 5.1(b), without limiting the parties' obligations under clauses 5.2 to 5.11 (inclusive), the parties must each use all reasonable endeavours to commit necessary resources (including management and the resources of external advisers) and ensure that their respective officers and advisers work in good faith and in a timely and cooperative fashion with the other party (including by attending meetings and by providing information) to produce the Scheme Booklet and implement the Scheme as soon as reasonably practicable and in accordance with the Timetable, subject to the terms and conditions of this deed.
- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 5.1(a) to the extent that such failure is due to circumstances and matters outside the party's control (including for the avoidance of doubt, any delays caused by a Government Agency) or is otherwise due to that party taking an action expressly permitted by this deed.
- (c) Each party must keep the other informed about their progress against the Timetable and notify each other if it believes that any of the dates in the Timetable are not achievable.



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- (d) To the extent that any of the dates or timeframes set out in the Timetable become not achievable due to matters outside of a party's control (including for the avoidance of doubt, any delays caused by a Government Agency), the parties will consult in good faith to agree to any necessary extension to ensure such matters are completed within the shortest possible timeframe.

## 5.2 Beyond's obligations

Subject to any change of recommendation by the Beyond Board that is permitted by clause 5.7, Beyond must take all necessary steps to implement the Scheme on and subject to the terms of this deed as soon as is reasonably practicable and, without limiting the foregoing, (i) subject to clause 5.1(b), use all reasonable endeavours to ensure that each step in the Timetable is met by the relevant date set out beside that step (and must consult with Bidder on a regular basis about its progress in that regard), (ii) do any acts it is authorised and able to do on behalf of Beyond Shareholders, and (iii) without limiting the foregoing, do each of the following:

- (a) **preparation of Scheme Booklet:** subject to clauses 5.3(a) and 5.3(b), prepare and despatch the Scheme Booklet in accordance with all applicable laws (including the Corporations Act and the Corporations Regulations), RG 60 and the Listing Rules;

- (b) **Beyond Board's recommendation:** use its best endeavours to include in (i) the Scheme Booklet and (ii) the public announcement contemplated by clause 8.1 a statement by:

- (1) the Beyond Board unanimously recommending that Beyond Shareholders vote in favour of the Scheme Resolution at the Scheme Meeting, in the absence of a Superior Proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of Beyond Shareholders; and
- (2) each Beyond Director that he or she will (subject to the same qualifications as set out in clause 5.2(b)(1)) vote, or procure the voting of, any Beyond Director Shares at the time of the Scheme Meeting in favour of the Scheme Resolution at the Scheme Meeting,

unless there has been a withdrawal, adverse change, adverse modification or adverse qualification of recommendation permitted by clause 5.7(b);

- (c) **paragraph 411(17)(b) statement:** apply to ASIC for the production of:

- (1) an indication of intent letter stating that it does not intend to appear before the Court, or intervene to oppose the Scheme, at the First Court Hearing; and
- (2) a statement under paragraph 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;

- (d) **Court direction:** apply to the Court for orders pursuant to subsection 411(1) of the Corporations Act directing Beyond to convene the Scheme Meeting and, without limiting clause 5.2(f), lodge all relevant documents with the Court and take all other reasonable steps necessary to ensure that such application is heard by the Court at the First Court Hearing;

- (e) **Scheme Meeting:** convene and hold the Scheme Meeting to seek Beyond Shareholders' agreement to the Scheme and despatch the Scheme Booklet to Beyond Shareholders in accordance with the orders made by the Court pursuant to subsection 411(1) of the Corporations Act at the First Court Hearing;



- (f) **Court documents:** prepare, and consult with Bidder in relation to the content of, the documents required for the purpose of each of the Court hearings held for the purpose of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act in relation to the Scheme (including the originating process, affidavits, submissions and draft minutes of Court orders) and:
  - (1) provide drafts of those documents to Bidder in a timely manner;
  - (2) provide Bidder with a reasonable opportunity to review and comment on those documents before they are lodged or filed with the Court; and
  - (3) consider in good faith, for the purpose of amending drafts of those documents, comments from Bidder and its Related Persons on those documents;
- (g) **Court approval:** if the Scheme is approved by Beyond Shareholders under subparagraph 411(4)(a)(ii) of the Corporations Act and it can reasonably be expected that all of the Conditions Precedent (other than the Condition Precedent in clause 3.1(c) (*Court approval*)) will be satisfied or waived in accordance with this deed before 8.00am on the Second Court Date, apply to the Court for orders approving the Scheme as agreed to by the Beyond Shareholders at the Scheme Meeting and, without limiting clause 5.2(f), lodge all relevant documents with the Court and take all other reasonable steps necessary to ensure that such application is heard by the Court at the Second Court Hearing (and, if it becomes apparent that a Condition Precedent (other than the Condition Precedent in clause 3.1(c) (*Court approval*)) will not be satisfied or waived in accordance with this deed before 8.00am on that proposed Second Court Date, apply for an adjournment of that proposed Second Court Date to a date agreed in writing between the parties);
- (h) **certificate:** at the Second Court Hearing, provide to the Court (through Beyond's counsel):
  - (1) a certificate (signed for and on behalf of Beyond) in the form of a deed (substantially in the form set out in Attachment 4) confirming (in respect of matters within its knowledge) whether or not the Conditions Precedent in clause 3.1 (other than the Condition Precedent in clause 3.1(c) (*Court approval*)) have been satisfied or waived in accordance with this deed, a draft of which certificate must be provided by Beyond to Bidder by 4.00pm on the date that is 2 Business Days prior to the Second Court Date; and
  - (2) any certificate provided to it by Bidder pursuant to clause 5.3(j);
- (i) **lodge copy of Court order:** if the Court approves the Scheme, lodge with ASIC an office copy of the Court order in accordance with subsection 411(10) of the Corporations Act approving the Scheme by no later than the Business Day after the date on which the Court order was made (or such later date as agreed in writing by Bidder);
- (j) **Scheme Consideration:** if the Scheme becomes Effective, finalise and close the Beyond Share Register as at the Scheme Record Date for the purposes of determining the identity of the Scheme Shareholders, and determine the Scheme Shareholders' entitlements to the Scheme Consideration, in accordance with the Scheme and the Deed Poll;
- (k) **transfer and registration:** if the Scheme becomes Effective and subject to Bidder having paid the Scheme Consideration in accordance with the Scheme and Deed Poll:



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- (1) execute, on behalf of Scheme Shareholders, instruments of transfer of the Scheme Shares to Bidder; and
  - (2) give effect to and register all transfers of the Scheme Shares to Bidder on the Implementation Date;
- (l) **consultation with Bidder in relation to Scheme Booklet:** consult with Bidder as to the content and presentation of the Scheme Booklet including:
  - (1) providing to Bidder drafts of the Scheme Booklet and the Independent Expert's Report in a timely manner and within a reasonable time before the Regulator's Draft is finalised for the purpose of enabling Bidder to review and comment on those draft documents. In relation to the Independent Expert's Report, Bidder's review is to be limited to a factual accuracy review;
  - (2) considering and taking (and, where applicable, promptly providing to the Independent Expert in writing) all timely and reasonable comments made by Bidder into account in good faith when producing revised drafts of the Scheme Booklet;
  - (3) providing to Bidder a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised and to enable Bidder to review and comment on the Regulator's Draft before the date of its lodgement with ASIC; and
  - (4) obtaining written consent from Bidder for the form and content in which the Bidder Information appears in the Scheme Booklet (which consent must not be unreasonably withheld or delayed);
- (m) **due diligence and verification:** undertake appropriate due diligence and verification processes in relation to the Beyond Information;
- (n) **information:** provide all necessary information, and procure that the Beyond Registry provides all necessary information, in each case in a form reasonably requested by Bidder, about the Scheme, the Scheme Shareholders and Beyond Shareholders to Bidder and its Related Persons, which Bidder reasonably requires in order to:
  - (1) understand the legal and beneficial ownership of Beyond Shares (including the results of directions by Beyond to Beyond Shareholders under Part 6C.2 of the Corporations Act);
  - (2) facilitate the provision by, or on behalf of, Bidder of the Scheme Consideration; or
  - (3) progressively review the tally of proxy appointments and directions received by Beyond prior to the Scheme Meeting;
- (o) **lodgement of Regulator's Draft:** as soon as practicable, but no later than 14 days before the First Court Date, provide the Regulator's Draft to ASIC for its review for the purposes of subsection 411(2) of the Corporations Act, and provide a copy of the Regulator's Draft to Bidder as soon as practicable thereafter;
- (p) **ASIC and ASX review of Scheme Booklet:** keep Bidder reasonably informed of any matters raised by ASIC or ASX in relation to the Scheme Booklet or the Transaction, and consult with, and consider in good faith any reasonable comments made by, Bidder in relation to such matters raised by ASIC or ASX (provided that, where such issues relate to Bidder Information, Beyond must not take any steps to address them without Bidder's prior written consent, which must not be unreasonably withheld or delayed);





- (q) **registration of Scheme Booklet:** if the Court directs Beyond to convene the Scheme Meeting, take all reasonable measures within its control to cause ASIC to register the Scheme Booklet under subsection 412(6) of the Corporations Act on the first Business Day after such Court orders are made or as soon as reasonably practicable thereafter;
- (r) **despatch of Scheme Booklet:** as soon as reasonably practicable following the receipt of Bidder's written consent to the inclusion of the Bidder Information in the form and context in which the Bidder Information appears in such version of the Scheme Booklet (which must not be unreasonably withheld or delayed) and the subsequent registration of the Scheme Booklet by ASIC, despatch the Scheme Booklet to Beyond Shareholders;
- (s) **representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act and allow, and not oppose, any application by Bidder for leave of the Court to be represented by counsel at such a Court hearing;
- (t) **Independent Expert:** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Scheme Booklet (including any updates to such report) and any other materials to be prepared by the Independent Expert for inclusion in the Scheme Booklet (including any updates thereto);
- (u) **compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws, regulations and policy;
- (v) **listing:** subject to clauses 5.2(x) and 5.2(y), not do anything to cause Beyond Shares to cease being quoted on ASX or to become suspended from quotation prior to implementation of the Transaction unless Bidder has agreed in writing;
- (w) **update Scheme Booklet:** until the date of the Scheme Meeting, promptly update or supplement the Scheme Booklet with, or where appropriate otherwise inform the market by way of announcement of, any information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the Scheme Booklet:
  - (1) contains all information that is required to be disclosed to Beyond Shareholders under any applicable law or RG 60; and
  - (2) is not misleading or deceptive in any material respect and does not contain any statement that is or has become false or misleading in a material respect including because of any omission from that statement, and, subject to compliance with this clause 5.2(w), seek the Court's approval for the despatch of any updated or supplementary Scheme Booklet. Beyond must consult with Bidder in good faith as to the need for, form of, and if, applicable, content and presentation of the updated or supplementary Scheme Booklet, or the market announcement, in the manner contemplated by clause 5.2(l). To the extent that the supplementary disclosure relates to (or constitutes) Bidder Information, it may only be made with Bidder's prior written consent (not to be unreasonably withheld or delayed);
- (x) **suspension of trading:** if the Scheme becomes Effective, apply to ASX to suspend trading in Beyond Shares with effect from the close of trading on the Effective Date;
- (y) **removal from quotation:** if the Scheme becomes Effective, apply to ASX to have Beyond removed from the official list of ASX, and quotation of Beyond



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Shares on the ASX terminated, with effect on and from the close of trading on the Trading Day immediately following the Implementation Date (unless otherwise directed by the Bidder in writing);

- (z) **Bidder Information:** without the prior written consent of Bidder, not use the Bidder Information for any purposes other than those expressly contemplated by this deed or the Scheme;
- (aa) **proxy reports:** keep Bidder reasonably informed of the status of proxy forms received for the Scheme Meeting, including over the period commencing 10 Business Days before the Scheme Meeting and ending on the deadline for receipt of proxy appointments;
- (bb) **implementation of Scheme:** if the Scheme becomes Effective, do all things expressly required of it under the Scheme and all other things (if any) necessary for Beyond to do to lawfully give effect to the Scheme including all things reasonably required to give effect to, the Scheme and the orders of the Court approving the Scheme under section 411(4)(b) of the Corporations Act; and
- (cc) **promote Transaction:** participate in efforts reasonably requested by Bidder to promote the merits of the Transaction and the Scheme Consideration, including where required by Bidder, meeting with key Beyond Shareholders and, in consultation with Bidder, undertaking reasonable shareholder engagement and proxy solicitation actions to encourage Beyond Shareholders to vote for the Scheme in accordance with the recommendation of the Beyond Board, subject to applicable law and ASIC policy.

### 5.3 Bidder's obligations

Bidder must take all necessary steps to implement the Scheme on and subject to the terms of this deed as soon as is reasonably practicable and, without limiting the foregoing, must (i) subject to clause 5.1(b), use all reasonable endeavours to ensure that each step in the Timetable is met by the date set out beside that step (and must consult with Beyond on a regular basis about its progress in that regard), and (ii) do each of the following:

- (a) **Bidder Information:** as soon as reasonably practicable after the date of this deed, prepare and promptly provide to Beyond the Bidder Information for inclusion in the Scheme Booklet, and consent to the inclusion of that information in the Scheme Booklet (which consent must not be unreasonably withheld or delayed);
- (b) **Scheme Booklet and Court documents:** promptly provide any assistance or information reasonably requested by Beyond in connection with the preparation of the Scheme Booklet (including any updated or supplementary Scheme Booklet) and any documents required to be filed with the Court in respect of the Scheme, promptly review the drafts of the Scheme Booklet (including any updated or supplementary Scheme Booklet) prepared by Beyond and provide comments on those drafts in a timely manner and in good faith;
- (c) **Independent Expert's Report:** subject to the Independent Expert entering into arrangements with Bidder including in relation to confidentiality in a form reasonably acceptable to Bidder, provide any assistance or information reasonably requested by Beyond or by the Independent Expert in connection with the preparation of the Independent Expert's Report to be sent together with the Scheme Booklet (including any updates to such report) and any other materials to be prepared by the Independent Expert for inclusion in the Scheme Booklet (including any updates thereto);





- (d) **representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act;
- (e) **Deed Poll:** by no later than the Business Day prior to the First Court Date, execute and deliver to Beyond the Deed Poll;
- (f) **due diligence and verification:** undertake appropriate due diligence and verification processes in relation to the Bidder Information;
- (g) **accuracy of Bidder Information:** before the Regulator's Draft is lodged with ASIC and again before the Scheme Booklet is despatched to Beyond Shareholders, confirm in writing to Beyond that the Bidder Information in the Scheme Booklet is not misleading or deceptive in any material respect, including by way of omission;
- (h) **share transfer:** if the Scheme becomes Effective:
  - (1) accept a transfer of the Scheme Shares as contemplated by clause 4.4(b); and
  - (2) execute instruments of transfer in respect of the Scheme Shares;
- (i) **Scheme Consideration:** if the Scheme becomes Effective, provide the Scheme Consideration in the manner and amount contemplated by clause 4 and the terms of the Scheme and the Deed Poll;
- (j) **certificate:** before the commencement of the hearing on the Second Court Date provide to Beyond for provision to the Court at that hearing a certificate (signed for and on behalf of Bidder) in the form of a deed (substantially in the form set out in Attachment 4) confirming whether or not the Conditions Precedent in clause 3.1 (other than the Condition Precedent in clause 3.1(c)) have been satisfied (in respect of matters within its knowledge) or waived in accordance with this deed, a draft of which certificate must be provided by Bidder to Beyond by 4.00pm on the date that is 2 Business Days prior to the Second Court Date;
- (k) **update Bidder Information:** until the date of the Scheme Meeting, promptly provide to Beyond any information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the Bidder Information contained in the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any statement that is or has become false or misleading in a material respect including because of any omission from that statement;
- (l) **assistance:** up to (and including) the Implementation Date and subject to obligations of confidentiality owed to Third Parties and undertakings to Government Agencies, provide Beyond and its Related Persons with reasonable access during normal business hours to information and personnel of Bidder Group that Beyond reasonably requests for the purpose of preparation of the Scheme Booklet and implementation of the Transaction; and
- (m) **compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations.

## 5.4 Conduct of business

- (a) Subject to clause 5.4(b), from the date of this deed up to and including the Implementation Date, without limiting any other obligations of Beyond under this deed, Beyond must, and must procure that each of the other Beyond Group Members:



- (1) conduct its businesses and operations (including the business of the Beyond Group as a whole) in the ordinary and usual course and in a manner generally consistent with past practice;
  - (2) keep Bidder informed of material developments concerning the conduct of its business, provided that:
    - (A) nothing in this clause will require Beyond to provide information concerning Beyond's directors and management's consideration of the Scheme or any Competing Proposal; and
    - (B) it does not, in the reasonable opinion of Beyond, result in unreasonable disruptions to the Beyond Group's business or require Beyond to make any further disclosure to any other entity or Government Agency or disclosure that would compromise legal privilege;
  - (3) comply in all material respects, with all material contracts to which it is party;
  - (4) use reasonable endeavours to:
    - (A) maintain its businesses and assets in the ordinary course and consistent with past practice;
    - (B) keep available the services of its officers and employees;
    - (C) preserve its relationships with (i) Government Agencies and (ii) material clients, suppliers, landlords, licensors, licensees, joint venture partners and others having business dealings with Beyond or any other Beyond Group Member;
    - (D) maintain (and, where necessary, use reasonable efforts to renew) each of its material authorisations, accreditations and licenses applicable to each Beyond Group Member and promptly notify Bidder if any renewal is not accepted by the relevant Government Agency;
    - (E) subject to clause 7.3, maintain (and, where necessary, use reasonable efforts to renew) the policies of insurance held by the Beyond Group that are in force as at the date of this deed and promptly notify Bidder if any renewal proposal is not accepted by the relevant insurer; or
    - (F) not enter into any line of business or other activity, in each case which is material, in which the Beyond Group is not engaged as of the date of this deed;
    - (G) comply with all applicable authorisations, laws and regulations (including the Listing Rules) in all material respects; and
  - (5) ensure that no Beyond Prescribed Occurrence or Beyond Regulated Event occurs and there is no occurrence within a Beyond Group Member's reasonable control that would constitute or be likely to constitute a Beyond Material Adverse Change (and Beyond must take all steps reasonably within its power to ensure that any such events do not occur).
- (b) Nothing in clause 5.4(a) restricts the ability of Beyond, or any Beyond Group Member, to take or not take any action:
- (1) which is required or expressly permitted by this deed or the Scheme;



- (2) which has been agreed to by Bidder in writing (which agreement must not be unreasonably withheld or delayed) or requested by Bidder in writing;
- (3) except with respect to any Beyond Prescribed Occurrence or Beyond Regulated Event, which is within the actual knowledge of Bidder as at the date of this deed;
- (4) which is required by any applicable law, regulation, generally accepted accounting standards or generally accepted accounting principles (and in the case of accounting standards and generally accepted accounting principles, as consistently applied by Beyond before the date of this deed), binding contract (but only to the extent such contract was entered into, and a copy of which was Fairly Disclosed to Bidder, before the date of this deed or otherwise permitted in accordance with this deed) or by a Government Agency;
- (5) except with respect to:
  - (A) items 6 to 11 and 13 to 17 of the definition Beyond Prescribed Occurrence;
  - (B) terminating a material contract under item 8 of the definition of Beyond Regulated Event outside of the ordinary course of business consistent with past practice;
  - (C) entering into any new contract or commitment (or series of related contracts or commitments) under item 10 of the definition of Beyond Regulated Event; and
  - (D) items 6, 7, 9, 11, 12, 14, 15, 17, 19 and 22 of the definition of Beyond Regulated Event;

to reasonably and prudently respond to changes in market and operating conditions affecting the business of Beyond or a Beyond Group Member to a material extent which arise from the Coronavirus or Covid-19 pandemic (or any mutation, variation or derivative thereof), including the outbreak, escalation or any impact of, or recovery from, the Coronavirus or Covid-19 pandemic (or any mutation, variation or derivative of), and including in connection with lockdowns, travel restrictions, quarantining, closures, social distancing and restrictions of and on activities, venues and gatherings, having regard to any applicable recommendations, guidance or directions of a Government Agency and provided, to the extent reasonably practicable, that Beyond has consulted with Bidder in good faith in respect of the proposal to take such action or not take such action (as applicable) and considers any reasonable comments or requests of Bidder in relation to such proposal in good faith;
- (6) to reasonably and prudently respond to regulatory or legislative changes (including without limitation changes to subordinate legislation) affecting the business of Beyond or a Beyond Group Member to a material extent, provided, to the extent reasonably practicable, that Beyond has consulted with Bidder in good faith in respect of the proposal to take such action or not take such action (as applicable) and considers any reasonable comments or requests of Bidder in relation to such proposal in good faith;
- (7) except with respect to:
  - (A) items 6 to 11 and 13 to 17 of the definition Beyond Prescribed Occurrence;



- (B) terminating a material contract under item 8 of the definition of Beyond Regulated Event outside of the ordinary course of business consistent with past practice;
  - (C) entering into any new contract or commitment (or series of related contacts or commitments) under item 10 of the definition of Beyond Regulated Event; and
  - (D) items 6, 7, 9, 11, 12, 14, 15, 17, 19 and 22 of the definition of Beyond Regulated Event;
- (8) to reasonably and prudently respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property, or a disease epidemic or pandemic, including the outbreak, escalation or any impact of, or recovery from, the Coronavirus or Covid-19 pandemic (or any mutation, variation or derivative thereof)), provided that, to the extent reasonably practicable having regard to the nature of the relevant emergency or disaster, Beyond has consulted with Bidder in good faith in respect of the proposal to take such action or not take such action (as applicable) and considers any reasonable comments or requests of Bidder in relation to such proposal in good faith;
- (9) which is Fairly Disclosed in:
  - (A) the Disclosure Materials;
  - (B) the Public Register Information; or
- (10) in connection with an actual, proposed or potential Competing Proposal to the extent such action is expressly permitted by clause 10.

## 5.5 Change of control provisions

As soon as practicable after the date of this deed, Beyond and Bidder must seek to identify any change of control or unilateral termination or amendment rights in any Material Contract that would be triggered by the implementation of the Transaction (**Change of Control Requirements**). In respect of those Material Contracts, the parties agree as follows:

- (a) Beyond and Bidder will, each acting reasonably, agree a proposed course of action to obtain any consents or waivers required in accordance with the terms of any identified Change of Control Requirements and then jointly initiate contact with the relevant counterparties and request that they provide any consents or waivers required as soon as reasonably practicable following the date of this deed. Bidder and its Related Persons must not contact any counterparties for this purpose without Beyond being present or without Beyond's prior written consent (which is not to be unreasonably withheld or delayed).
- (b) Beyond must cooperate with, and use reasonable endeavours to obtain such consents or waivers as expeditiously as possible, including by promptly providing any information reasonably required by counterparties (but nothing in this clause requires Beyond to incur material external expense).
- (c) Beyond must consult with Bidder and must:
  - (1) keep Bidder informed of any material discussions with any counterparty in connection with clause 5.5(b);



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- (2) give Bidder a reasonable opportunity to review drafts of any material communications with counterparties in connection with clause 5.5(b) and, acting reasonably and in good faith, take into account any reasonable comments provided by Bidder or its Related Persons on such drafts; and
- (3) promptly provide Bidder with copies of all material communications received from counterparties in connection with clause 5.5(b), in each case, unless restricted by law or the relevant contract; and
- (d) Bidder must cooperate with, and provide all reasonable assistance to Beyond, to obtain the relevant consent or waiver, including:
  - (1) providing any information reasonably required; and
  - (2) making officers and employees available where necessary to meet with counterparties to deal with any issues arising in relation to the relevant consent or waiver.
- (e) Provided that Beyond has complied with this clause 5.5, a failure by a Beyond Group Member to obtain any third party consent or waiver in respect of a Change of Control Requirement will not, by itself, constitute a breach of this deed by Beyond and, together with any consequences that arise as a consequence of that failure, by itself, will be disregarded when assessing the operation of any other provision of this deed.

## 5.6 Appointment and resignation of directors

Beyond must, with effect from the time that all Scheme Shares are transferred to Bidder in accordance with the terms of the Scheme, take all actions necessary to:

- (a) cause the appointment of the nominees of Bidder to the Beyond Board in accordance with the constitution of Beyond;
- (b) ensure that all directors on the Beyond Board, other than Bidder nominees appointed pursuant to clause 5.6(a) and any existing Beyond Director which Bidder has agreed in writing will remain on the Beyond Board:
  - (1) resign in accordance with the constitution of Beyond; and
  - (2) acknowledge in the notice of resignation that each such director has no outstanding claims against Beyond or any other Beyond Group Member in relation to unpaid director's fees as at the date of the resignation; and
- (c) ensure that all directors on the boards of Beyond's Subsidiaries, other than any existing Beyond Subsidiary director which Bidder has agreed in writing will remain on the board of the relevant Beyond Subsidiary:
  - (1) resign in accordance with the constitution of the relevant Beyond Subsidiary; and
  - (2) acknowledge in the notice of resignation that each such director has no outstanding claims against Beyond or the relevant Beyond Group Member in relation to unpaid director's fees as at the date of the resignation,

and to cause the appointment of nominees of Bidder to those boards in accordance with the constitution of each relevant Beyond Subsidiary.



## 5.7 Beyond Board Recommendation

- (a) Beyond represents and warrants to Bidder that, as at the date of this deed, each Beyond Director has confirmed in writing that:
- (1) his or her recommendation is that Beyond Shareholders vote in favour of the Scheme Resolution at the Scheme Meeting; and
  - (2) he or she intends to vote, or cause to be voted, all Beyond Director Shares which he or she controls in favour of the Scheme at the Scheme Meeting,
- in each case, in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report (or any update of, or any revision, amendment or supplement to, the Independent Expert's Report) that the Scheme is in the best interests of Beyond Shareholders (**Recommendation**) and Beyond must use all reasonable endeavours to procure that, subject to clause 5.7(b), the Beyond Directors unanimously recommend that Beyond Shareholders vote in favour of the Scheme at the Scheme Meeting in accordance with the Recommendation, and that the Scheme Booklet includes a statement by the Beyond Board to that effect.
- (b) Beyond must use its best endeavours to procure that the Beyond Board collectively, and the Beyond Directors individually, do not withdraw, adversely change, adversely modify or adversely qualify (including by making any public statement supporting, endorsing or recommending a Competing Proposal and/or to the effect that she or he no longer supports the Scheme), its or their Recommendation unless:
- (1) the Independent Expert concludes in the Independent Expert's Report (or any update of, or any revision, amendment or supplement to, that report) that the Scheme is not in the best interests of Beyond Shareholders;
  - (2) Beyond has received a Competing Proposal and the Beyond Board has determined, after the procedure in clause 10.4 has been complied with, that the Competing Proposal constitutes a Superior Proposal; or
  - (3) the adverse change, withdrawal, adverse modification or adverse qualification in respect of a Beyond Director occurs because of a requirement by a court of competent jurisdiction or ASIC or the Takeovers Panel that the relevant Beyond Director abstains from making a recommendation that Beyond Shareholders vote in favour of the Scheme after the date of this deed; or
  - (4) the Beyond Board or a Beyond Director has determined, after receiving advice from Beyond's reputable external Australian legal advisers specialising in the area of corporate law, that, by virtue of the fiduciary or statutory duties of the Beyond Board or relevant Beyond Director, the Beyond Board or relevant Beyond Director (as applicable) is required to adversely change, withdraw, adversely modify or adversely qualify its or their Recommendation.
- (c) without limiting clause 10:
- (1) Beyond represents and warrants to Bidder that each Beyond Director has confirmed in writing that he or she:
    - (A) intends to notify Beyond and Bidder in writing as soon as reasonably practicable and in any event within 1 Business





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- Day of any intention to adversely change, withdraw, modify or qualify his or her Recommendation in the circumstances set out in clauses 5.7(b)(1) to 5.7(b)(4), including reasonable details of the reasons for such change, withdrawal, modification or qualification (as the case may be);
- (B) will, if they propose to rely on clause 5.7(b)(4) to change their Recommendation and the primary reason for the change is the fairness of the value of the consideration being offered, seek the opinion of the Independent Expert in respect of such value by way of update, revision, amendment or addendum, to the Independent Expert's Report, unless to discharge their duties in the relevant circumstances time does not permit seeking such opinion (provided that, if such timing circumstances arise, Beyond and Bidder will consult and to the extent required agree to delay the Timetable if this is possible and in the best interest of Beyond Shareholders); and
- (C) will not change, withdraw, modify or qualify that Recommendation until the end of the consultation period referred to in clause 5.7(c)(2); and
- (2) Beyond and Bidder must consult in good faith for 5 Business Days after the date on which the notification in clause 5.7(c)(1)(A) is given to consider and determine whether the Recommendation in place at the time can be maintained.
- (d) Beyond represents and warrants to Bidder that each Beyond Director has given written consent for the statements of intention in clauses 5.7(a) to 5.7(c) to be publicly disclosed with this deed and the announcement in clause 8.1.
- (e) For the purposes of clause 5.7(b), customary qualifications and explanations contained in the Scheme Booklet and any public announcements in relation to a Recommendation to the effect that the Recommendation is made:
- (1) in the absence of a Superior Proposal;
  - (2) in respect of any public announcement issued before the issue of the Scheme Booklet, 'subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interests of Beyond Shareholders'; and
  - (3) in respect of the Scheme Booklet and any public announcements issued at the time of or after the issue of the Scheme Booklet, 'subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Beyond Shareholders',
- will not be regarded as a failure to make, or an adverse change, withdrawal, adverse modification or adverse qualification of, a Recommendation.
- (f) Despite anything to the contrary in this clause 5.7 or elsewhere in this deed, a statement made by Beyond, the Beyond Board or any Beyond Director to the effect that no action should be taken by Beyond Shareholders pending the assessment of a Competing Proposal by the Beyond Board or the completion of the matching right process set out in clause 10.4 shall not contravene this clause 5.7 or any other provision of this deed.
- (g) For the avoidance of doubt, Beyond will not be in breach of any term of this deed, and will not be liable to Bidder under this deed other than in accordance with its terms (including the obligation to pay the Break Fee under clause 11), solely as a result of a Beyond Director publicly (or otherwise) adversely



changing, withdrawing, adversely modifying or adversely qualifying his or her recommendation to vote in favour of the Scheme as expressly permitted by clauses 5.7(b)(1) to (4).

## **5.8 Conduct of Court proceedings**

- (a) Beyond and Bidder are entitled to separate representation at all Court proceedings affecting the Transaction.
- (b) This deed does not give Beyond (on the one hand), or Bidder (on the other hand) any right or power to give undertakings to the Court for or on behalf of Bidder (in the case of Beyond) or Beyond (in the case of Bidder) without that party's written consent.
- (c) each of Beyond and Bidder must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Transaction as contemplated by this deed.

## **5.9 Scheme Booklet content and responsibility statements**

- (a) The Scheme Booklet will contain a responsibility statement to the effect that:
  - (1) Bidder is responsible for the Bidder Information contained in the Scheme Booklet;
  - (2) Beyond is responsible for the Beyond Information contained in the Scheme Booklet; and
  - (3) the Independent Expert is responsible for the Independent Expert's Report, and none of Beyond, Bidder or their respective directors or officers assumes any responsibility for the accuracy or completeness of the Independent Expert's Report.
- (b) If the parties disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form of the Scheme Booklet.
- (c) If after 5 Business Days of consultation under clause 5.9(b), Beyond and Bidder are unable to agree on the form or content of the Scheme Booklet:
  - (1) where the determination relates to Bidder Information, Bidder will make the final determination as to the form and content of the Bidder Information; and
  - (2) in any other case, Beyond will make the final determination as to the form and content of the Scheme Booklet.

## **5.10 Access to information and management**

Between (and including) the date of this deed and the Implementation Date, Beyond must, and must cause each other Beyond Group Member to, provide to Bidder and Bidder Group Members and a reasonable number of their respective representatives (in accordance with the terms of the Confidentiality Agreement) reasonable access to information, premises and such senior executives of any Beyond Group Member as reasonably requested by Bidder at mutually convenient times, and provide Bidder reasonable co-operation, for the sole purpose of:

- (a) the implementation of the Scheme (including seeking and obtaining any necessary approvals, consents or waivers);
- (b) Bidder developing and implementing plans for transition of the businesses of the Beyond Group to Bidder following implementation of the Scheme;





- (c) finalisation of Bidder's structuring arrangements for the Transaction; and
  - (d) any other purpose agreed in writing between the parties (each acting reasonably),
- provided that:
- (e) nothing in this clause 5.10 will require Beyond to provide, or procure the provision of, information concerning or in connection with:
    - (1) any Beyond Director's, the Beyond Board's (or any sub-committee of the Beyond Board's) and management's (a **Relevant Person**) consideration of the Scheme or any proposal by Bidder at any time in relation to the acquisition of an interest in Beyond; or
    - (2) any actual, proposed or potential Competing Proposal (including a Relevant Person's consideration of any actual, proposed or potential Competing Proposal) except as otherwise provided in this deed;
  - (f) the provision of information pursuant to this clause 5.10 must not result in unreasonable disruptions to, or interference with, the Beyond Group's business and day to day operations it being noted that the business of the Beyond Group will need to continue to operate with requisite management attention;
  - (g) Bidder must, and must procure that its representatives, each other Bidder Group Member and their respective representatives:
    - (1) keep all information obtained by it or them as a result of this clause 5.10 confidential in accordance with the terms of the Confidentiality Agreement;
    - (2) provide Beyond with reasonable notice of any request for information or access; and
    - (3) comply with the requirements of Beyond in relation to any access granted; and
  - (h) nothing in this clause 5.10:
    - (1) gives Bidder or any other Bidder Group Member any rights to undertake further due diligence investigations, or any rights as to the decision making of any Beyond Group Member or its business;
    - (2) will require Beyond to provide, or procure the provision of, information concerning the Beyond Group's business that is, in the reasonable opinion of Beyond, any commercially sensitive, including any specific pricing and margin information or customer details; and
    - (3) will require Beyond to provide, or procure the provision of, information if to do so would or would be reasonably likely to:
      - (A) breach any confidentiality obligation owed to a third party (provided that Beyond must use reasonable endeavours to seek consent to the disclosure from such third party), applicable law, regulatory requirement, authorisation or court order; or
      - (B) result in a waiver or loss of legal professional privilege.

## 5.11 Appeal process

If the Court refuses to make any orders directing Beyond to convene the Scheme Meeting or approving the Scheme, Beyond and Bidder must:



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- (a) consult with each other in good faith as to whether to appeal the Court's decision; and
- (b) appeal the Court's decision unless the parties agree otherwise under clause 5.11(a) or an independent senior counsel opines that, in his or her view, an appeal would have no reasonable prospect of success.

## 6 Representations and warranties

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### 6.1 Bidder's representations and warranties

Bidder represents and warrants to Beyond (in its own right and separately as trustee or nominee for each of the other Beyond Indemnified Parties) that each of the Bidder Representations and Warranties is true and correct.

### 6.2 Bidder's indemnity

Bidder agrees with Beyond (in its own right and separately as trustee or nominee for each of the other Beyond Indemnified Parties) to indemnify Beyond and each of the Beyond Indemnified Parties against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Beyond or any of the other Beyond Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Bidder Representations and Warranties.

### 6.3 Beyond's representations and warranties

Subject to clause 6.5, Beyond represents and warrants to Bidder (in its own right and separately as trustee or nominee for each Bidder Indemnified Party) that each of the Beyond Representations and Warranties is true and correct.

### 6.4 Beyond's indemnity

Subject to clause 6.5, Beyond agrees with Bidder (in its own right and separately as trustee or nominee for each Bidder Indemnified Party) to indemnify Bidder and each of the Bidder Indemnified Parties from any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Bidder or any of the other Bidder Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Beyond Representations and Warranties.

### 6.5 Qualifications on Beyond's representations, warranties and indemnities

The Beyond Representations and Warranties made or given in clause 6.3 and the Beyond Indemnity, are each subject to matters that:

- (a) have been Fairly Disclosed in:
  - (1) the Disclosure Materials;
  - (2) the Public Register Information;
- (b) are required or expressly permitted by this deed or the Scheme;
- (c) are within the actual knowledge of Bidder as at the date of this deed.



## 6.6 Survival of representations and warranties

Each representation and warranty made or given in clause 6.1 or clause 6.3 (as applicable):

- (a) is severable;
- (b) survives the termination of this deed; and
- (c) is given with the intention that liability under it is not confined to breaches that are discovered before the date of termination of this deed.

## 6.7 Survival of indemnities

Each indemnity in this deed (including those in clauses 6.2 and 6.4):

- (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 deed; and
- (d) survives the termination of this deed.

## 6.8 Timing of representations and warranties

- (a) Subject to clauses 6.8(b), 6.8(c) and 6.8(d), each representation and warranty made or given under clauses 6.1 or 6.3 is given:
  - (1) at the date of this deed;
  - (2) at 5:00pm on the date that is five Business Days before the Second Court Date; and
  - (3) at 8.00am on the Second Court Date.
- (b) Each Bidder Representation and Warranty in clauses (k) (*reasonable basis*) and (l) (*unconditional cash reserves*) of Schedule 3 is given at the date of this deed and repeated continuously thereafter until and including the Implementation Date.
- (c) The Beyond Representation and Warranty in clause (l) (*continuous disclosure*) of Schedule 4 is only given at the date of this deed.
- (d) Each:
  - (1) Bidder Representation and Warranty in clauses (a) (*Bidder Information*), (b) (*basis of Bidder Information*) and (c) (*new information*) of Schedule 3 is also given on the date that the Scheme Booklet is despatched to Beyond Shareholders; and
  - (2) Beyond Representation and Warranty in clauses (a) (*Beyond Information*), (b) (*basis of Beyond Information*) and (c) (*new information*) of Schedule 4 is also given on the date that the Scheme Booklet is despatched to Beyond Shareholders.

## 6.9 Notification obligations

- (a) Beyond must notify Bidder in writing as soon reasonably practicable after Beyond becomes aware of any fact, matter or circumstance that has resulted in, or might reasonably be expected to result in, a breach of a Beyond Representation and Warranty. A notice provided by Beyond to Bidder under



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this clause must contain reasonable details of the relevant fact, matter or circumstance that resulted in, or might reasonably be expected to result in, a breach of a Beyond Representation and Warranty.

- (b) Bidder must notify Beyond in writing as soon reasonably practicable after Bidder becomes aware of any fact, matter or circumstance that has resulted in, or might reasonably be expected to result in, a breach of a Bidder Representation and Warranty. A notice provided by Bidder to Beyond under this clause must contain reasonable details of the relevant fact, matter or circumstance that resulted in, or might reasonably be expected to result in, a breach of a Bidder Representation and Warranty.

## 6.10 No representation or reliance

- (a) 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 deed, except for representations or inducements expressly set out in this deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this deed 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 deed.

## 7 Releases

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### 7.1 Beyond and Beyond directors and officers

- (a) Bidder agrees with Beyond (in its own right and separately as trustee or nominee for each other Beyond Indemnified Party) that it:
  - (1) releases its right; and
  - (2) will not make, and that after the Implementation Date it will procure that each Beyond Group Member does not make, any claim, against any Beyond Indemnified Party (other than Beyond and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:
    - (3) Beyond's execution or delivery of this deed;
    - (4) any breach of any representations, covenants, warranties and obligations of Beyond or any other Beyond Group Member in this deed;
    - (5) the implementation of the Scheme;
    - (6) any disclosures containing any statement which is false or misleading whether in content or by omission in connection with the this deed or the Scheme; or
    - (7) any failure to provide information in connection with the Scheme, whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Beyond Indemnified Party has



engaged in wilful misconduct, wilful concealment or fraud. For the avoidance of doubt, nothing in this clause 7.1(a) limits Bidder's rights to terminate this deed under clause 14.

- (b) Clause 7.1(a) is subject to any Corporations Act restriction and will be read down accordingly.
- (c) Beyond receives and holds the benefit of this clause 7.1 to the extent it relates to each Beyond Indemnified Party as trustee or nominee for each of them.

## **7.2 Bidder and Bidder directors and officers**

- (a) Beyond agrees with Bidder (in its own right and separately as trustee or nominee for each other Bidder Indemnified Party) that it:
  - (1) releases its rights; and
  - (2) will not make any claim,
 against any Bidder Indemnified Party (other than Bidder and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:
  - (3) Bidder's execution or delivery of this deed;
  - (4) any breach of any representations, covenants, warranties and obligations of Bidder or any other Bidder Group Member in this deed;
  - (5) the implementation of the Scheme;
  - (6) any disclosure containing any statement which is false or misleading whether in content or by omission in connection with this deed or the Scheme; or
  - (7) any failure to provide information in connection with the Scheme,
 whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Bidder Indemnified Party has engaged in wilful misconduct, wilful concealment or fraud. For the avoidance of doubt, nothing in this clause 7.2(a) limits Beyond's rights to terminate this deed under clause 14.
- (b) Clause 7.2(a) is subject to any Corporations Act restriction and will be read down accordingly.
- (c) Bidder receives and holds the benefit of this clause 7.2 to the extent it relates to each Bidder Indemnified Party as trustee or nominee for each of them.

## **7.3 Deeds of indemnity and insurance**

- (a) Subject to the Scheme becoming Effective and the Transaction completing, Bidder undertakes in favour of Beyond and each other Beyond Indemnified Party that it will:
  - (1) for a period of seven years from the Implementation Date, ensure that the constitutions of Beyond and each other Beyond Group Member continue to contain such rules as are contained in those constitutions at the date of this deed that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a Beyond Group Member, provided that nothing in this clause 7.3 prevents or otherwise restricts the reorganisation, winding up or deregistration of any Beyond Group Member; and



- (2) procure that Beyond and each other Beyond Group Member complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and, without limiting the foregoing, ensure that directors' and officers' run-off insurance cover placed pursuant to clause 7.3(b) below is maintained for a period of seven years from the retirement date of each applicable director and officer and not take any action which would prejudice or adversely affect any directors' and officers' run-off insurance cover taken out in accordance with clause 7.3(b).
- (b) Bidder acknowledges that, notwithstanding any other provision of this deed, Beyond may, prior to the Implementation Date, enter into arrangements to secure directors and officers run-off insurance for up to such seven year period referred to in 7.3(a)(2) (**D&O Run-off Policy**), and that any actions to facilitate that insurance or in connection with such insurance will not, by themselves, be a Beyond Material Adverse Change, a Beyond Prescribed Occurrence or a Beyond Regulated Event or a breach of any provision of this deed, or give rise to any right to terminate this deed, and will be disregarded when assessing the operation of any other part of this deed, provided that:
  - (1) Beyond must use reasonable endeavours to obtain the most attractive commercial terms for the D&O Run-off Policy from a reputable insurer;
  - (2) Beyond keeps Bidder informed of progress in relation to the D&O Run-off Policy; and
  - (3) the scope and amount of the cover of the D&O Run-off Policy is on the same terms, or terms that are reasonably the same in all material respects, as the existing insurance policies in place for the directors and officers of Beyond as at the date of this deed (it being acknowledged that the market for cover is dynamic and reasonable regard is to be had to the extent to which the level and type of cover in place under the existing policies is available for the extended run-off),

provided further that Beyond first consults with Bidder in good faith to reasonably determine if substantially equivalent or more favourable cover can be obtained or procured by Bidder, in which case, such cover will be obtained instead of the D&O Run-off Policy.
- (c) The undertakings contained in this clause 7.3 are subject to any Corporations Act restriction and will be read down accordingly.
- (d) Beyond receives and holds the benefit of this clause 7.3, to the extent it relates to the other Beyond Indemnified Parties, as trustee for each of them.

## 8 Public announcement

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### 8.1 Announcement of the Transaction

- (a) Immediately after the execution of this deed, Beyond must issue a public announcement in a form agreed in writing between Beyond and Bidder.
- (b) The Beyond announcement to be issued under clause 8.1(a) must include the statements of intention provided to Beyond by the Beyond Directors in respect of their unanimous intention to recommend and vote Beyond Director Shares in favour of the Scheme and maintain that intention in the terms set out in clauses 5.7(a) to 5.7(b).



## 8.2 Public announcements

Subject to clauses 8.1 and 8.3, no material public announcement or public disclosure of or in relation to the Transaction or any other transaction the subject of this deed or the Scheme (**Proposed Public Announcement**) may be made by a Beyond Group Member or a Bidder Group Member other than in a form approved by each party in writing (such approval not to be unreasonably withheld or delayed). A party must provide the other party with a draft copy of any Proposed Public Announcement as soon as reasonably practicable before it is proposed that such Proposed Public Announcement is made, and must give the other party a reasonable opportunity to comment on the form and content of the draft Proposed Public Announcement and must take into account all reasonable comments from that party on the draft. For the avoidance of doubt, this clause 8.2 does not apply to any announcement or disclosure in connection with an actual, proposed or potential Competing Proposal.

## 8.3 Required disclosure

- (a) Despite any provision of the Confidentiality Agreement, where a party (or in the case of Bidder, FL Entertainment B.V.) is required by applicable law, the Listing Rules or rules of the Euronext Market operated by Euronext Amsterdam, to make any announcement or to make any disclosure in connection with the Transaction, or any other transaction the subject of this deed or the Scheme, it may do so despite clause 8.2.
- (b) Despite any provision of the Confidentiality Agreement, before any disclosure is made in reliance on clause 8.3(a), to the extent reasonably practicable and permitted by the relevant law:
  - (1) the party required to make the disclosure (**Disclosing Party**) must use best endeavours to notify the other party as soon as reasonably practicable after it becomes aware that disclosure is required; and
  - (2) the Disclosing Party must use best endeavours to give the other party a reasonable opportunity to comment on the proposed form of the disclosure and amend any factual inaccuracy, and consider in good faith any other comments of the other party on the form of the disclosure,

other than where such disclosure relates to, or is in connection with, an actual, potential or proposed Competing Proposal.

## 9 Confidentiality

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- (a) Beyond and Bidder acknowledge and agree that, except to the extent of any inconsistency with this deed (in which case this deed prevails), they continue to be bound by the Confidentiality Agreement after the date of this deed (for so long as the relevant Confidentiality Agreement binds that party in accordance with its terms).
- (b) The rights and obligations of the parties under the Confidentiality Agreement survive termination of this deed (for so long as the Confidentiality Agreement binds that party in accordance with its terms).
- (c) Nothing in this deed derogates from the rights and obligations of a party under the Confidentiality Agreement, provided that this deed prevails to the extent of any inconsistency between this deed and the Confidentiality Agreement.





## 10 Exclusivity

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### 10.1 No shop and no talk

- (a) During the Exclusivity Period, Beyond must not, and must ensure that each other Beyond Group Member and each of Beyond and Beyond Group Member's Related Persons do not, directly or indirectly:
- (1) **(no shop):**
    - (A) solicit, invite, encourage, facilitate or initiate any enquiry, expression of interest, offer, proposal, discussion, negotiation or other communication by any person:
      - (i) in relation to, or which may reasonably be expected to encourage or lead to the making of; or
      - (ii) with a view to obtaining, any actual, proposed or potential Competing Proposal; or
    - (B) communicate to any person an intention to do anything referred to in this clause 10.1(a)(1)(A); or
  - (2) **(no talk):** subject to clause 10.2:
    - (A) facilitate, participate in or continue any negotiations or discussions with any person with respect to any enquiry, expression of interest, offer, proposal, discussion, negotiation or other communication by any person in relation to, or which may reasonably be expected to encourage or lead to the making of, any actual, proposed or potential Competing Proposal;
    - (B) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into any agreement, arrangement or understanding regarding any actual, proposed or potential Competing Proposal; or
    - (C) communicate to any person an intention to do anything referred to in clause 10.1(a)(2)(A) or 10.1(a)(2)(B), even if the relevant Competing Proposal was not directly or indirectly solicited, invited, encouraged, facilitated or initiated by Beyond, any other Beyond Group Member, or a Related Person of a Beyond Group Member; or the relevant person has publicly announced the Competing Proposal; or
  - (3) **(no due diligence):** subject to clause 10.2:
    - (A) disclose or otherwise provide or make available any non-public information about the business, assets or affairs of the Beyond Group or any Beyond Group Member (**Non-public Beyond Information**) to a Third Party (other than a Government Agency that has the right to obtain that information and has sought it) in connection with, with a view to obtaining, or which may reasonably be expected to lead to the formulation, development, finalisation, receipt or announcement of any actual, proposed or potential Competing Proposal (including, without limitation, providing such information for the purposes of the conduct of due





diligence investigations in respect of the Beyond Group) whether by that Third Party or another person; or

- (B) communicate to any person an intention to do anything referred to in clause 10.1(a)(3)(A),

provided that nothing in this clause 10.1(a) prevents or restricts Beyond or any of its Related Persons and Related Bodies Corporate or the Related Persons of those Related Bodies Corporate from responding to a Third Party in respect of an enquiry, expression of interest, offer or proposal by that Third Party to make, or which may reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal to merely (A) acknowledge receipt and/or (B) advise that Third Party that Beyond is bound by the provisions of this clause 10.1(a) and is only able to engage in negotiations, discussions or other communications if the fiduciary carve-out in clause 10.2 applies.

- (b) Beyond represents and warrants to Bidder that, as at the date of this deed:
- (1) no Beyond Group Member nor any of its Related Persons is, directly or indirectly, participating in any discussions or negotiations with a Third Party that concern, or that could reasonably be expected to lead to, any actual, proposed or potential Competing Proposal;
  - (2) each Beyond Group Member and its Related Persons has ceased any discussions or negotiations with any Third Party in relation to any actual, proposed or potential Competing Proposal; and
  - (3) each Beyond Group Member and its Related Persons has ceased the provision of any Non-public Information to any Third Party, where the provision of Non-public Information was for the purposes of, or was provided in connection with, any actual, proposed or potential Competing Proposal.
- (c) As soon as practicable after the date of this deed, Beyond must use (and must procure that each Beyond Group Member uses) reasonable endeavours to exercise any rights it has that enable it to require that any Third Party to which it has disclosed information in the 18 months preceding the date of this deed in connection with any actual, proposed or potential Competing Proposal, return or destroy that information.

## 10.2 Fiduciary exception

Clauses 10.1(a)(2), 10.1(a)(3) and 10.3 (to the extent that clause 10.3(c) applies) do not prohibit or restrict any action or inaction by Beyond, any Beyond Group Member, or any of their respective Related Persons, in relation to a bona fide, actual, proposed or potential Competing Proposal if the Beyond Board, acting in good faith, has determined:

- (a) after consultation with Beyond's reputable external Australian legal advisers specialising in the area of corporate law, that the Competing Proposal could reasonably be expected to lead to a Superior Proposal; and
- (b) after receiving written advice from Beyond's reputable external Australian legal advisers specialising in the area of corporate law, that compliance with clause 10.1(a)(2), 10.1(a)(3) and 10.3 (as applicable) would, or would be reasonably likely to, constitute a breach of any of the fiduciary or statutory duties of the Beyond Directors,

provided that the Competing Proposal was not brought about by, or in respect of which there has not been, a breach of clause 10.1(a)(1).



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### 10.3 Notification of approaches

- (a) Subject to clause 10.3(c), during the Exclusivity Period, Beyond must as soon as reasonably practicable (and in any event within 48 hours) notify Bidder in writing if it, any of its Related Bodies Corporate or any of their respective Related Persons, becomes aware of any:
- (1) negotiations, discussions or other communications, or approach, in respect of any inquiry, expression of interest, offer, proposal or discussion in relation to, or that may reasonably be expected to lead to, any actual, proposed or potential Competing Proposal;
  - (2) approach or proposal made to, or received by, Beyond, any of its Related Bodies Corporate or any of their respective Related Persons in connection with, or in respect of any exploration or completion of, or that may reasonably be expected to lead to, any actual, proposed or potential Competing Proposal (or which is otherwise, of itself, a Competing Proposal);
  - (3) any request made by a Third Party for any Non-public Beyond Information (other than where the Beyond Board reasonably believes that such request is not in connection with such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, any actual, proposed or potential Competing Proposal); or
  - (4) provision by Beyond, any of its Related Bodies Corporate or any of their respective Related Persons of any Non-public Beyond Information to any Third Party (other than a Government Agency) in connection with a Competing Proposal, a proposed or potential Competing Proposal, or any of the things described in paragraphs (1) to (3) above (inclusive),
- whether direct or indirect, solicited or unsolicited, and in writing or otherwise (each, a **Notifiable Proposal**). For the avoidance of doubt, any of the acts described in paragraphs (1) to (4) may only be taken by Beyond, its Related Bodies Corporate or their respective Related Persons if permitted by clause 10.2.
- (b) A notification given under clause 10.3(a) must include all material terms and conditions of the Notifiable Proposal (including, but not limited to, price, form of consideration, proposed deal protection provisions, any break or reimbursement fee, proposed timing and conditions precedent) and the identity of the Third Party making the actual, proposed or potential Competing Proposal that could reasonably be expected to lead to a Superior Proposal, in each case to the extent known by Beyond, a Beyond Group Member or any of their Related Persons.
- (c) Beyond is not required to provide a notification under clause 10.3(a) in circumstances where:
- (1) the Beyond Board, in relation to a bona fide, actual, proposed or potential Competing Proposal, acting in good faith, has determined that the conditions in clause 10.2(a) and 10.2(b) apply; and
  - (2) the subject of the notification is not a written proposal in respect of which the Beyond Board:
    - (A) has determined is a Competing Proposal that could reasonably be expected to lead to a Superior Proposal; and



- (B) proposes to take any of the actions set out 10.1(a)(2) and/or 10.1(a)(3) in reliance on clause 10.2.

## 10.4 Matching right

- (a) Without limiting clause 10.1, during the Exclusivity Period, Beyond:
- (1) must not, and must procure that each of its Related Bodies Corporate do not, enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which one or more of a Third Party, Beyond or any Related Body Corporate of Beyond proposes or propose to undertake, implement or give effect to any actual, proposed or potential Competing Proposal, except for a written agreement with a Third Party in relation to a Competing Proposal which the Beyond Board has determined is a Superior Proposal provided that the agreement is subject to Beyond complying with the requirements of paragraphs (3) to (6) of clause 10.4. For the avoidance of doubt, any such legally binding agreement, arrangement or understanding does not include a Beyond Group Member entering into a confidentiality agreement or like agreement including, but not limited to, for the purpose of providing Non-public Beyond Information in relation to an actual, proposed or potential Competing Proposal; and
  - (2) must use its best endeavours to procure that, in relation to a Competing Proposal, none of the Beyond Directors withdraw, adversely change, adversely modify or adversely qualify their Recommendation, publicly recommend, support or endorse any actual, proposed or potential Competing Proposal (or recommend against the Transaction) or make any public statement to the effect that they may do so at a future point (subject to any change of recommendation by Beyond Directors that is permitted by clause 5.7(b) and provided that a statement that no action should be taken by Beyond Shareholders pending the assessment of the Competing Proposal by the Beyond Board or the completion of the matching right process set out in this clause 10.4 shall not, by that statement alone, contravene this clause 10.4),
- unless:
- (3) the Beyond Board has made the determination contemplated by clause 10.2 and determined that the relevant Competing Proposal is a Superior Proposal;
  - (4) Beyond has provided Bidder with a notice stating that it is given for the purposes of this clause 10.4 which:
    - (A) includes notification that the Beyond Board has determined that the Competing Proposal is a Superior Proposal and intends to take the relevant action in clause 10.4(a)(1) or clause 10.4(a)(2) (as applicable) subject only to the process of this clause 10.4; and
    - (B) setting out all material terms and conditions of the Competing Proposal (including, but not limited to, price, form of consideration, proposed deal protection provisions, any break or reimbursement fee, proposed timing and conditions precedent and the identity of the Third Party making such Competing Proposal) (in each case, to the extent known by



- Beyond, a Beyond Group Member or any of their Related Persons);
- (5) Beyond has given Bidder at least five clear Business Days after the date of the provision of the notice referred to in clause 10.4(a)(4) (**Matching Notice Period**) to announce or formally propose to Beyond a counter-proposal to the Competing Proposal (**Bidder Counterproposal**); and
  - (6) either:
    - (A) Bidder has not announced or formally proposed to Beyond a Bidder Counterproposal by the expiry of the Matching Notice Period; or
    - (B) Bidder has announced or formally proposed to Beyond a Bidder Counterproposal by the expiry of the Matching Notice Period, and the Beyond Board has considered the Bidder Counterproposal in accordance with clause 10.4(b) and:
      - (i) determined that the Bidder Counterproposal is not a Matching or Superior Proposal; or
      - (ii) determined that the Bidder Counterproposal is a Matching or Superior Proposal, but Beyond and Bidder have not entered into the Amended Transaction Documents by the end of the Negotiation Period.
- (b) If the Bidder announces or formally proposes to Beyond a Bidder Counterproposal by the expiry of the Matching Notice Period, Beyond must procure that the Beyond Board promptly considers the Bidder Counterproposal and determines, acting in good faith, after consulting with Beyond's reputable external Australian legal advisers specialising in the area of corporate law, whether the Bidder Counterproposal would provide an outcome that is no less favourable (or more favourable) for Beyond Shareholders (as a whole) than the Competing Proposal, taking into account all terms and conditions and other aspects of:
- (1) the Bidder Counterproposal (including the value and type of consideration, funding, any timing considerations, any conditions precedent, the identity, reputation and financial condition of the proponent, the views of Beyond Shareholders in relation to the Bidder Counterproposal compared to the Competing Proposal, the ability of the proponent to complete the transactions contemplated by the Competing Proposal compared to the Bidder Counterproposal, the probability of the Bidder Counterproposal being completed compared to the Competing Proposal and other relevant legal, financial, regulatory and other matters); and
  - (2) the Competing Proposal (including the matters set out in paragraphs (3) and (4) of the definition of "Superior Proposal"),
- (Matching or Superior Proposal).**
- (c) If the Beyond Board determines that a Bidder Counterproposal is a Matching or Superior Proposal, then:
- (1) Beyond must promptly, and in any event within 48 hours, notify Bidder of the determination in writing, stating reasons for that determination; and



- (2) for a period of three Business Days (or such longer period agreed in writing between Beyond and Bidder) after the date on which Beyond gives Bidder the notice contemplated in clause 10.4(c)(1) (**Negotiation Period**), Beyond and Bidder must use their best endeavours to agree any amendments to this deed (and any other transaction documents required) and the contents of the Scheme Booklet which are reasonably necessary to reflect and implement the Bidder Counterproposal (**Amended Transaction Documents**).
- (d) If the Beyond Board determines that a Bidder Counterproposal is not a Matching or Superior Proposal, then Beyond must promptly, and in any event within 48 hours, notify Bidder of the determination in writing, stating reasons for that determination.
- (e) For the purpose of this clause 10.4:
  - (1) each new Competing Proposal or successive material variation or amendment to a Competing Proposal will constitute a new Competing Proposal; and
  - (2) for the avoidance of doubt, the process set out in this clause 10.4 must again be followed in respect of each new Competing Proposal or successive material variation or amendment to a Competing Proposal prior to Beyond or the Beyond Board taking any of the actions referred to in clauses 10.4(a)(1) or 10.4(a)(2).
- (f) Despite any other provision in this deed, a statement by Beyond, Beyond Board or any Beyond Director only to the effect that:
  - (1) the Beyond Board has determined that a Competing Proposal is a Superior Proposal and has commenced the matching right process set out in this clause 10.4; or
  - (2) Beyond Shareholders should take no action pending the completion of the matching right process set out in this clause 10.4,
 does not by itself:
  - (3) constitute an adverse change, withdrawal, adverse modification or adverse qualification of the recommendation by the Beyond Directors or an endorsement of a Competing Proposal;
  - (4) contravene this deed;
  - (5) give rise to an obligation to pay the Break Fee under clause 11.2; or
  - (6) give rise to a termination right under clause 14.1.

## 10.5 Provision of information

During the Exclusivity Period, Beyond must promptly and, in any event within 2 Business Days of it being disclosed or provided to a Third Party, make available to Bidder:

- (a) in the case of written materials, a copy of; and
- (b) in any other case, a written statement of,

any material non-public information about the business or affairs of any Beyond Group Member disclosed or otherwise provided to a Third Party after the date of the Confidentiality Agreement in connection with such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation by that Third Party of, a Competing Proposal, which has not previously been provided to Bidder.



## 10.6 Compliance with law

- (a) If it is finally determined by a court of competent jurisdiction, or the Takeovers Panel, that the agreement by the parties under this clause 10.6 or any part of it:
  - (1) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the Beyond Board;
  - (2) constituted, or constitutes, or would constitute, 'unacceptable circumstances' within the meaning of the Corporations Act; or
  - (3) was, or is, or would be, unlawful for any other reason,
 then, to that extent (and only to that extent) Beyond will not be obliged to comply with that provision of clause 10.
- (b) The parties:
  - (1) must not make or cause or permit to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in this clause 10.6; and
  - (2) agree that if a Third Party makes an application to the Takeovers Panel or a court for or in relation to a declaration or determination regarding any provision of this clause 10, then each party must make submissions in the course of those proceedings supporting (to the fullest extent reasonably practicable) that no such declaration or determination should be made.

## 10.7 Usual provision of information

Nothing in this clause 10 prevents Beyond from:

- (a) providing any information to its Related Persons;
- (b) providing any information to any Government Agency;
- (c) providing any information required to be provided by any applicable law, including to satisfy its obligations under the Listing Rules or to any Government Agency;
- (d) providing any information to its auditors, clients, financiers, joint venturers, suppliers, contractual counterparties or shareholders;
- (e) making presentations to, or responding to enquiries from, brokers, portfolio investors, analysts and other third parties, and engaging with financiers and potential financiers; or
- (f) promoting the merits of the Transaction.

# 11 Break Fee

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## 11.1 Background to Break Fee

- (a) Bidder and Beyond acknowledge that, if they enter into this deed and the Transaction is subsequently not implemented, Bidder will incur significant costs (which will include significant opportunity costs), including those set out in clause 11.4.





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- (b) Beyond and Bidder acknowledge that, in the circumstances referred to in clause 11.1(a), Bidder has requested that provision be made for the Break Fee in accordance with this clause 11, without which Bidder would not have entered into this deed or otherwise agreed to assist Beyond to implement the Scheme.
- (c) Beyond confirms that the Beyond Board believes, having taken advice from its external legal advisers, that the implementation of the Transaction will provide significant benefits to Beyond and Beyond Shareholders and that it is appropriate for Beyond to agree to the Break Fee in accordance with this clause 11 in order to secure Bidder's participation in the Transaction.

## 11.2 Break Fee triggers

Beyond must pay the Break Fee to Bidder if:

- (a) a Competing Proposal of any kind is announced prior to the Effective Date (or, if earlier, the date this deed is terminated under clause 14) (whether or not such proposal is stated to be subject to any pre-conditions) and, within 12 months of the date of such announcement, the Competing Bidder or any Associate of that Competing Bidder:
  - (1) completes a Competing Proposal of the kind referred to in any of paragraphs 2, 3 or 4 of the definition of Competing Proposal; or
  - (2) otherwise acquires a Relevant Interest in, or becomes the holder of, or otherwise acquires, directly or indirectly, 50% or more of Beyond Shares (other than an increase of a Relevant Interest in Beyond in accordance with section 611 (item 9) of the Corporations Act) and that acquisition is unconditional;
- (b) Bidder or Beyond terminates this deed in accordance with clause 14 before the earlier of the Second Court Date and the End Date and:
  - (1) any Beyond Director withdraws, adversely revises or adversely qualifies their support of the Scheme or their recommendation that Beyond Shareholders vote in favour of the Scheme or fails to recommend that Beyond Shareholders vote in favour of the Scheme in the manner described in clause 5.7; or
  - (2) any Beyond Director makes a public statement indicating that they no longer recommend the Transaction or recommend that Beyond Shareholders accept or vote in favour of a Competing Proposal of any kind that is announced (whether or not such proposal is stated to be subject to any pre-conditions),

unless:

  - (3) the Independent Expert concludes in the Independent Expert's Report (or in any update of, or revision, amendment or addendum to that report), that the Scheme is not in the best interests of Scheme Shareholders (other than where the conclusion is due wholly or partly to the existence of a Competing Proposal);
  - (4) at the time of the change referred to in paragraph (1) or (2), Beyond is entitled to terminate this deed pursuant to clause 14.1(a)(1), 14.1(a)(2), or 14.2(b) and has given the appropriate termination notice to Bidder, other than a termination by Beyond pursuant to clause 14.2(b) in circumstances where:
    - (A) such termination is due to a failure of the Condition Precedent at clause 3.1(b); and



- (B) the conclusion of the Independent Expert in the Independent Expert's Report that the Scheme is not in the best interests of Scheme Shareholders is due wholly or partly to the existence of a Competing Proposal; or
- (5) the adverse change, withdrawal, adverse modification or adverse qualification occurs because of a requirement or request by a court or Government Agency that one or more Beyond Directors abstain from making a recommendation that Beyond Shareholders vote in favour of the Scheme after the date of this deed; or
- (c) Bidder or Beyond has terminated this deed pursuant to clause 14.2(b) due to a failure of the Condition Precedent at clause 3.1(b) and such termination is due wholly or partly to the existence of a Competing Proposal; or
- (d) Bidder has terminated this deed pursuant to clauses 14.1(a)(1) or 14.2(a) and the Transaction does not complete.

### 11.3 Payment of Break Fee

- (a) A demand by Bidder for payment of the Break Fee under clause 11.2 must:
  - (1) be in writing;
  - (2) be made after the occurrence of the event in that clause giving rise to the right to the payment of the Break Fee and termination of this deed;
  - (3) state the circumstances which give rise to the demand; and
  - (4) nominate an account in the name of Bidder into which Beyond is to pay the Break Fee.
- (b) Beyond must pay the Break Fee into the account nominated by Bidder, without set-off or withholding, within 10 Business Days after receiving a demand for payment under clause 11.3(a) where Bidder is entitled under clause 11.2 to the Break Fee.

### 11.4 Basis of Break Fee

Beyond and Bidder acknowledge and agree that the amount of the Break Fee has been calculated to reimburse Bidder for costs including the following:

- (a) fees for legal, financial and other professional advice in planning and implementing the Transaction (excluding success fees);
  - (b) reasonable opportunity costs incurred in engaging in the Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
  - (c) costs of management and directors' time in planning and implementing the Transaction;
  - (d) out of pocket expenses incurred by Bidder and Bidder's employees, advisers and agents in planning and implementing the Transaction; and
  - (e) damage to Bidder's reputation associated with a failed transaction and the implications of that damage to Bidder's business,
- in each case, incurred by Bidder directly or indirectly as a result of having entered into this deed and pursuing the Transaction, and Beyond and Bidder agree that:
- (f) the costs actually incurred by Bidder will be of such a nature that they cannot all be accurately ascertained; and
  - (g) the Break Fee is a genuine and reasonable pre-estimate of those costs.





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## 11.5 Compliance with law

- (a) This clause 11 does not impose an obligation on Beyond to pay the Break Fee to the extent (and only to the extent) that the obligation to pay the Break Fee:
  - (1) is declared by the Takeovers Panel to constitute 'unacceptable circumstances'; or
  - (2) is determined to be unenforceable or unlawful (including by virtue of it being a breach of the fiduciary or statutory duties of any Beyond Director) by a court of competent jurisdiction.
- (b) If:
  - (1) clause 11.5(a) applies; and
  - (2) the Takeovers Panel or a court (as applicable) determines that an amount lower than the Break Fee does not constitute unacceptable circumstances or is not unenforceable (as applicable) (**Permitted Break Fee Amount**),
 then:
  - (3) Beyond shall be required to pay the Permitted Break Fee Amount in accordance with clause 11.3; and
  - (4) if the Break Fee has already been paid to Bidder, Bidder will refund to Beyond within 10 Business Days after receipt of a written demand from Beyond an amount equal to the difference between the Break Fee and the Permitted Break Fee Amount to Beyond (unless otherwise required by the Takeovers Panel or a court of competent jurisdiction). For the avoidance of doubt, any part of the Break Fee that would not constitute unacceptable circumstances or that is not unenforceable or unlawful (as applicable) must be paid by Beyond.
- (c) Bidder and Beyond:
  - (1) must not make or cause or permit to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in clause 11.5(a); and
  - (2) agree that if a Third Party makes an application to the Takeovers Panel or a court for or in relation to a declaration or determination regarding any provision of this clause 11, then each party must make submissions in the course of those proceedings supporting (to the fullest extent reasonably practicable) that no such declaration or determination should be made.

## 11.6 Break Fee payable only once

Where the Break Fee becomes payable to Bidder under clause 11.2 and is actually paid to Bidder, Bidder cannot make any claim against Beyond for payment of any subsequent Break Fee.

## 11.7 Other Claims

Despite anything to the contrary in this deed, the maximum aggregate liability of Beyond for any claims under this deed is the Break Fee and in no event will the aggregate liability of Beyond for Claims under this deed and in connection with the Transaction or the Scheme exceed the Break Fee.



## 11.8 Exclusive remedy

Notwithstanding any other provision under this deed, where the Break Fee is paid to Bidder under this deed (or would be payable if a demand was made), Bidder cannot make any claim against Beyond or the other Beyond Indemnified Parties in relation to any event or occurrence referred to in clause 11.2.

## 11.9 No Break Fee in certain circumstances

Despite anything to the contrary in this deed, the Break Fee will not be payable to Bidder if:

- (a) the Scheme becomes Effective; or
- (b) at the time that the Break Fee becomes payable under clause 11.2, Beyond was entitled to terminate this deed under clauses 14.1(a)(1) or 14.2(b), and has given the appropriate termination notice to Bidder,

notwithstanding the occurrence of any event in clause 11.2 and, if this clause 11.9 applies, any amount or part of the Break Fee has already been paid to Bidder must be refunded by Bidder:

- (c) where clause 11.9(a) applies, within 10 Business Days after the Implementation Date; or
- (d) where clause 11.9(b) applies, within 10 Business Days after the date Beyond notifies Bidder that, at the time that the Break Fee became payable under clause 11.2, Beyond was entitled to terminate this deed under clauses 14.1(a)(1) or 14.2(b).

# 12 Reverse Break Fee

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## 12.1 Background to Reverse Break Fee

- (a) Beyond and Bidder acknowledge that, if they enter into this deed and the Transaction is subsequently not implemented, Beyond will incur significant costs, including those set out in clause 12.4.
- (b) Bidder and Beyond acknowledge that, in the circumstances referred to in clause 12.1(a), Beyond has requested that provision be made for the Reverse Break Fee in accordance with this clause 12, without which Beyond would not have entered into this deed or otherwise agreed to implement the Scheme.
- (c) Bidder confirms, and represents and warrants to Beyond, that Bidder believes, having taken advice from its external legal advisers, that the implementation of the Scheme will provide benefits to Bidder and that it is appropriate for Bidder to agree to the Reverse Break Fee in accordance with this clause 12 in order to secure Beyond's participation in the Transaction.
- (d) Bidder and Beyond must not make or cause or permit to be made any application to the Takeovers Panel or a court for or in relation to a declaration or determination that the Reverse Break Fee is invalid or unenforceable.

## 12.2 Reverse Break Fee trigger

Bidder must pay the Reverse Break Fee to Beyond if:



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- (a) Beyond has terminated this deed pursuant to clauses 14.1(a)(1) or 14.2(b) and the Transaction does not complete; or
- (b) the Scheme becomes Effective but Bidder does not pay the Scheme Consideration in accordance with its obligations under this deed and the Deed Poll.

### 12.3 Payment of Reverse Break Fee

- (a) A demand by Beyond for payment of the Reverse Break Fee under clause 12.2 must:
  - (1) be in writing;
  - (2) be made after the occurrence of the event in that clause giving rise to the right to payment of the Reverse Break Fee;
  - (3) state the circumstances which give rise to the demand; and
  - (4) nominate an account in the name of Beyond into which Bidder is to pay the Reverse Break Fee.
- (b) Bidder must pay the Reverse Break Fee into the account nominated by Beyond, without set-off or withholding, within 20 Business Days after receiving a demand for payment under clause 12.3(a) where Beyond is entitled under clause 12.2 to the Reverse Break Fee.

### 12.4 Basis of Reverse Break Fee

Bidder and Beyond acknowledge and agree that the amount of the Reverse Break Fee has been calculated to reimburse Beyond for costs including the following:

- (a) fees for legal, financial and other professional advice in planning and implementing the Transaction (excluding success fees);
- (b) reasonable opportunity costs incurred in engaging in the Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
- (c) costs of management and directors' time in planning and implementing the Transaction;
- (d) out of pocket expenses incurred by Beyond and Beyond's employees, advisers and agents in planning and implementing the Transaction; and
- (e) damage to Beyond's reputation associated with a failed transaction and the implications of that damage to Beyond's business,

in each case, incurred by Beyond directly or indirectly as a result of having entered into this deed and pursuing the Transaction, and Beyond and Bidder agree that:

- (f) the costs actually incurred by Beyond will be of such a nature that they cannot all be accurately ascertained; and
- (g) the Reverse Break Fee is a genuine and reasonable pre-estimate of those costs.

### 12.5 Reverse Break Fee payable only once

Where the Reverse Break Fee becomes payable to Beyond under clause 12.2 and is actually paid to Beyond, Beyond cannot make any claim against Bidder for payment of any subsequent Reverse Break Fee.



## 12.6 Other Claims

Subject to clause 12.7, the maximum aggregate liability of Bidder for any claims under this deed is the Reverse Break Fee and in no event will the aggregate liability of Bidder for Claims under this deed and in connection with the Transaction or the Scheme exceed the Reverse Break Fee.

## 12.7 Claims under the Deed Poll

Nothing in clause 12.6 or otherwise in this deed will limit Bidder's liability under or in connection with a breach of clause 4.4 or 17 of this deed or the Deed Poll.

# 13 Standstill

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## 13.1 No acquisition of Securities

Subject to clause 13.2, the Bidder agrees that, for a period of 6 months after the date of this deed, it will not (and will procure that each of its Related Entities do not):

- (a) **(acquire securities)** directly or indirectly:
  - (1) make or cause to be made any offer, invitation or solicitation for; or
  - (2) purchase or otherwise acquire,
 any of Beyond's Securities, or a relevant interest in any of Beyond's Securities;
- (b) **(acquire economic interest)** enter into any agreement, arrangement or understanding that would involve the conferring of rights on the Bidder, or a Related Entity of the Bidder, the economic effect of which is equivalent, or substantially equivalent, to the Bidder or a Related Entity (as the case may be) acquiring, holding or disposing of Beyond's Securities or a relevant interest in Beyond's Securities (including any cash-settled equity swap or similar derivative relating to any of Beyond's Securities);
- (c) **(solicit proxies)** solicit proxies from holders of Beyond's Securities or otherwise seek to influence or control the management or policy of Beyond; or
- (d) **(assistance)** co-operate with, assist, or enter into any agreement or arrangement of any kind with, any person relating to (or in any way connected with) any action contemplated in clause 13.1(a), 13.1(b) or 13.1(c).

## 13.2 Exceptions

- (a) Clause 13.1 does not apply to the acquisition of Beyond Shares pursuant to implementation of the Scheme or solicitation of proxies in favour of the Scheme.
- (b) The Bidder or any of its Related Entities are not prevented from taking any action referred to in clause 13.1 to the extent the relevant action:
  - (1) occurs after a Third Party publicly announces an intention to make a takeover offer to acquire at least a majority of the Beyond Shares;
  - (2) occurs after Beyond has given its prior written consent to the relevant action being taken; or
  - (3) occurs after:



- (A) a takeover bid is made for all the issued shares in Beyond pursuant to a transaction recommended by the Beyond Board by a person other than Bidder or any of its Related Entities; or
- (B) the Beyond Board recommends a scheme of arrangement proposed by a person other than Bidder or any of its Related Entities under which that person will acquire all the issued shares of Beyond,

(where the takeover described in clause 13.2(b)(3)(A) and the scheme of arrangement described in clause 13.2(b)(3)(A) are each an **Alternate Proposal**) and the relevant action then occurs under a subsequent takeover bid made by Bidder or a Related Entity of it for all of the issued shares in Beyond at a cash price per Beyond share that is higher than that offered under the Alternate Proposal.

## 14 Termination

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### 14.1 Termination

- (a) Either Beyond or Bidder may terminate this deed by written notice to the other party:
  - (1) other than in respect of a breach of either a Bidder Representation and Warranty or a Beyond Representation and Warranty (which are dealt with in clause 14.2), at any time before 8.00am on the Second Court Date, if Bidder (in the case of termination by Beyond) or Beyond (in the case of termination by Bidder) has materially breached this deed (and the relevant breach is material when taken in the context of the Scheme as a whole), the party entitled to terminate has given written notice to the party in breach of this deed setting out the relevant circumstances and stating an intention to terminate this deed, and the other party in breach of this deed has failed to remedy the breach within 10 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given (in which case termination under this clause 14.1(a)(1) will take effect at the expiry of that period);
  - (2) in the circumstances set out in, and in accordance with, clause 3.4; or
  - (3) if Beyond Shareholders have not agreed to the Scheme at the Scheme Meeting by the Requisite Majorities and notice is not given under clause 3.4(d).
- (b) Bidder may terminate this deed by written notice to Beyond at any time before 8.00am on the Second Court Date if:
  - (1) in any circumstances (including where clause 5.7(b) applies), any Beyond Director:
    - (A) fails to recommend the Scheme in the manner described in clause 5.7(a);
    - (B) withdraws, adversely changes, adversely modifies or adversely qualifies their Recommendation; or
    - (C) makes a public statement:



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- (i) to the effect that they no longer support the Scheme; or
  - (ii) indicating that they no longer recommend the Transaction or recommend that Beyond Shareholders accept or vote in favour of a Competing Proposal (but excluding a statement to the effect that no action should be taken by Beyond Shareholders pending assessment of a Competing Proposal by the Board or the completion of the matching right process set out in clause 10.4),

other than, in a respect of a Beyond Director, where that Beyond Director is required by a court of competent jurisdiction or ASIC or the Takeovers Panel to abstain from making a recommendation that Beyond Shareholders vote in favour of the Scheme after the date of this deed; or
- (2) in any circumstances, a Beyond Group Member enters into a definitive agreement in relation to the implementation of a Competing Proposal. For the avoidance of doubt, any such definitive agreement does not include a Beyond Group Member entering into a confidentiality agreement or like agreement including, but not limited to, for the purpose of providing Non-public Beyond Information in relation to an actual, proposed or potential Competing Proposal.
- (c) Beyond may terminate this deed by written notice to Bidder at any time before 8.00am on the Second Court Date if any Beyond Director:
  - (1) fails to recommend the Scheme in the manner described in clause 5.7(a);
  - (2) withdraws, adversely changes or adversely modifies or adversely qualifies their Recommendation in the manner described in clause 5.7(a); or
  - (3) makes a public statement indicating that they no longer recommend the Transaction or recommend a Competing Proposal (but excluding a statement that no action should be taken by Beyond Shareholders pending assessment of a Competing Proposal by the Board or the completion of the matching right process set out in clause 10.4),

in each case, only where expressly permitted to do so in accordance with clause 5.7(b).

## 14.2 Termination for breach of representations and warranties

- (a) Bidder may, at any time prior to 8.00am on the Second Court Date, terminate this deed for a material breach of a Beyond Representation and Warranty only if:
  - (1) Bidder has given written notice to Beyond setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse;
  - (2) the relevant breach continues to exist for 10 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 14.2(a)(1); and



- (3) the relevant breach is material in the context of the Scheme taken as a whole.
- (b) Beyond may, at any time before 8.00am on the Second Court Date, terminate this deed for breach of a Bidder Representation and Warranty only if:
  - (1) Beyond has given written notice to Bidder setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse;
  - (2) the relevant breach continues to exist for 10 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 14.2(b)(1); and
  - (3) the relevant breach is material in the context of the Scheme taken as a whole (other than in respect of each Bidder Representation and Warranty in clauses (k) (*reasonable basis*) and (l) (*unconditional cash reserves*) of Schedule 3, any breach of which will enable Beyond to terminate this deed provided Beyond otherwise complies with this clause 14.2(b)).
- (c) This deed is terminable if agreed to in writing by Bidder and Beyond.

### 14.3 Effect of termination

If this deed is terminated by either party under clauses 3.4, 14.1 or 14.2:

- (a) each party will be released from its obligations under this deed, except that this clause 14.3, and clauses 1, 6.5 to 6.10 (inclusive), 7.1, 7.2, 9, 11, 12, 15, 16, 18 and 19 (except clause 19.9), will survive termination and remain in force;
- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this deed (including in respect of the breach giving rise to termination, if applicable) or that otherwise accrued before termination of this deed; and
- (c) in all other respects (but, for the avoidance of doubt, subject to clause 14.3(a)), all future obligations of the parties under this deed will immediately terminate and be of no further force and effect including any further obligations in respect of the Scheme.

### 14.4 Termination

Where a party has a right to terminate this deed, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this deed and the provision under which it is terminating this deed and otherwise complies with the requirements of the relevant clause of this deed.

### 14.5 No other termination

Neither party may terminate or rescind this deed except as permitted under clauses 3.4, 14.1 or 14.2.





## 15 Duty, costs and expenses

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### 15.1 Stamp duty

Bidder:

- (a) must pay all stamp duties and any fines and penalties with respect to stamp duty in respect of this deed or the Scheme or the steps to be taken under this deed or the Scheme, or any transaction effected under this deed or the Scheme; and
- (b) indemnifies Beyond against any liability arising from its failure to comply with clause 15.1(a).

### 15.2 Costs and expenses

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with the negotiation, preparation, execution, delivery and performance of this deed and the proposed, attempted or actual implementation of this deed and the Transaction.

## 16 GST

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- (a) Any consideration or amount payable under this deed, including any non-monetary consideration (as reduced in accordance with clause 16(e) if required) (**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this deed, an additional amount (**Additional Amount**) is payable by the party providing consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with the GST Law.
- (c) The Additional Amount payable under clause 16(b) is payable at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a Tax Invoice. However, the Additional Amount is only payable on receipt of a valid Tax Invoice.
- (d) If for any reason (including the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under clause 16(b):
  - (1) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as applicable;
  - (2) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
  - (3) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within seven days after receiving such notification, as applicable. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing





to the Recipient an Adjustment Note within 14 days after becoming aware of the occurrence of the Adjustment Event.

- (e) Despite any other provision in this deed if an amount payable under or in connection with this deed (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred.
- (f) Any reference in this clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of a GST Group of which the party is a member is entitled.
- (g) Any term starting with a capital letter in this clause 16 that is not defined in this clause 16 has the same meaning as the term has in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

## 17 Guarantee

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### 17.1 Guarantee and indemnity

In the event that Bidder nominates a Nominee in accordance with clause 4.3, Bidder:

- (a) unconditionally and irrevocably guarantees to Beyond (in its own right and separately as trustee or nominee for each of the other Beyond Indemnified Parties and each Scheme Shareholder) on demand, the due and punctual performance of Nominee's obligations under this deed and the Deed Poll; and
- (b) as a separate and additional liability, indemnifies Beyond (in its own right and separately as trustee or nominee for each of the other Beyond Indemnified Parties and each Scheme Shareholder) against all Loss, actions, proceedings and judgments of any nature, incurred by, brought, made or recovered against Beyond, a Beyond Indemnified Party or a Scheme Shareholder arising from any default or delay in the due and punctual performance of Nominee's obligations under this deed and the Deed Poll.

### 17.2 Extent of guarantee and indemnity

The liability of Bidder under this clause 17 is not affected by anything that, but for this clause 17, might operate to release or exonerate Bidder in whole or in part from its obligations including any of the following, whether with or without the consent of the Bidder:

- (a) the grant to Bidder, Nominee or any other person of any time, waiver or other indulgence, or the discharge or release of Nominee, Bidder or any other person from any liability or obligation;
- (b) any transaction or arrangement that may take place between Beyond, Nominee, Bidder or any other person (including a Beyond Shareholder or Beyond Group Member);
- (c) Beyond exercising or refraining from exercising its rights under any security or any other rights, powers or remedies against Nominee, Bidder or any other person;



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- (d) the amendment, replacement, extinguishment, unenforceability, failure, loss, release, discharge, abandonment or transfer either in whole or in part and either with or without consideration, of any security now or in the future held by Beyond from Nominee, Bidder or any other person or by the taking of or failure to take any security;
- (e) the failure or omission or any delay by Beyond or Nominee to give notice to Bidder of any default by Nominee or any other person under this deed; and
- (f) any legal limitation, disability, incapacity or other circumstances related to Nominee, Bidder or any other person.

### **17.3 Principal and independent obligation**

This clause 17 is a principal obligation and is not to be treated as ancillary or collateral to any other right or obligation and extends to cover this deed or the Deed Poll as amended, varied, supplemented, renewed or replaced.

### **17.4 Continuing guarantee and indemnity**

This clause 17 is a continuing obligation of Bidder, despite the Scheme becoming Effective or the completion or implementation of the Scheme or the Transaction, and remains in full force and effect for so long as Nominee has any liability or obligation to Beyond or a Scheme Shareholder under this deed or the Deed Poll and until all of those liabilities or obligations have been fully discharged.

### **17.5 No withholdings**

- (a) Bidder must make all payments that become due under this clause 17 or the Deed Poll (including the Scheme Consideration), free and clear and without deduction of all present and future withholdings (including taxes, duties, levies, imposts, deductions and charges of Australia or any other jurisdiction).
- (b) If Bidder is compelled by law to deduct any withholding, then in addition to any payment due under this clause 17, it must pay to Beyond and each Scheme Shareholder such amount as is necessary to ensure that the net amount received by Beyond after withholding equals the amount Beyond or Scheme Shareholder would otherwise been entitled to if not for the withholding.

### **17.6 Currency**

Bidder must pay all moneys that it becomes liable to pay under this clause 17 or the Deed Poll in the currency in which they are payable under this deed and the Deed Poll and free of any commissions and expenses relating to foreign currency conversion or any other charges or expenses.

### **17.7 No set off**

Bidder has no right to set off, deduct or withhold any moneys that it may be or become liable to pay under this clause 17 against any moneys that Nominee or any other Bidder Group Member may be, or become, liable to pay to a Beyond Group Member or Scheme Shareholder whether under this deed, the Deed Poll or otherwise.



## 18 Notices

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### 18.1 Form of Notice

A notice or other communication to a party under this deed (**Notice**) must be:

- (a) in writing and in English; and
- (b) addressed to that party in accordance with the details nominated in Schedule 1 (or any alternative details nominated to the sending party by Notice).

### 18.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below.

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (**business hours period**), in the place nominated by the addressee as its address in Schedule 1, then the Notice will instead be regarded as given and received at the start of the following business hours period in that place.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address
By express post to the nominated address	At 9.00am (addressee's time) on the fourth Business Day after the date of posting
By email to the nominated email address	<p>The earlier of:</p> <ol style="list-style-type: none"> <li>1 when the recipient's email server generates a message to the sender confirming that the email has been delivered to that server ("delivery receipt"), or at the time that the recipient "read" the email as stated in an automated message received by the sender ("read receipt");</li> <li>2 the time that the recipient confirms receipt of the email by reply email to the sender; and</li> <li>3 four hours after the time the email is sent (as recorded on the device from which the sender sent the email), unless the sender receives, within that four hour period, an automated message that the email has not been delivered.</li> </ol>

### 18.3 Notice must not be given by electronic communication

A Notice must not be given by electronic means of communication (other than email as permitted in clause 18.2).



## 19 General

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### 19.1 Governing law and jurisdiction

- (a) This deed is governed by the law in force in New South Wales, Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

### 19.2 Service of process

- (a) Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of Notices under clause 18.
- (b) Bidder irrevocably appoints Corrs Chambers Westgarth as its agent for the service of process in Australia in relation to any matter arising out of this deed. If Corrs Chambers Westgarth ceases to be able to act as such or have an address in Australia, Bidder agrees to appoint a new process agent in Australia and deliver to the other party within 10 Business Days a copy of a written acceptance of appointment by the process agent, upon receipt of which the new appointment becomes effective for the purpose of this deed. Bidder must inform Beyond in writing of any change in the address of its process agent within 10 Business Days of the change.
- (c) As soon as reasonably practicable after the date of this deed, and no later than 15 Business Days after the date of this deed, Bidder (and Nominee (if any)) must obtain from its foreign counsel in the jurisdiction in which it is registered, and provide to Beyond, a written legal opinion, in a form agreed to by the parties, confirming that Bidder has duly executed this deed in accordance with the laws of its place of incorporation and constitution or articles of association and that this deed, and the Scheme and the Deed Poll (once executed) are or will be (as applicable) enforceable against Bidder in accordance with its terms.

### 19.3 No merger

The rights and obligations of the parties do not merge on completion of the Transaction. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Transaction.

### 19.4 Invalidity and enforceability

- (a) If any provision of this deed is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 19.4(a) does not apply where enforcement of the provision of this deed in accordance with clause 19.4(a) would materially affect the nature or effect of the parties' obligations under this deed.



## 19.5 Waiver

No party to this deed may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

The meanings of the terms used in this clause 19.5 are set out below.

Term	Meaning
<b>conduct</b>	includes delay in the exercise of a right.
<b>right</b>	any right arising under or in connection with this deed and includes the right to rely on this clause.
<b>waiver</b>	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

## 19.6 Variation

A variation of any term of this deed must be in writing and signed by the parties.

## 19.7 Assignment of rights

- (a) A party may not assign, novate, declare a trust over or otherwise transfer or deal with any of its rights or obligations under this deed without the prior written consent of the other party or as expressly provided in this deed.
- (b) A breach of clause 19.7(a) by a party shall be deemed to be a material breach for the purposes of clause 14.1(a)(1).
- (c) Clause 19.7(b) does not affect the construction of any other part of this deed.

## 19.8 No third party beneficiary

This deed shall be binding on and inure solely to the benefit of each party to it and each of their respective permitted successors and assigns, and nothing in this deed is intended to or shall confer on any other person, other than the Bidder Indemnified Parties and the Beyond Indemnified Parties, in each case to the extent set forth in this deed, any third party beneficiary rights.

## 19.9 Further action to be taken at each party's own expense

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this deed and the transactions contemplated by it.

## 19.10 Entire agreement

This deed (including the documents in the attachments to it), the Confidentiality Agreement and any other document agreed by the parties in writing for the purposes of this clause 19.10 (each a **Relevant Document** and together the **Relevant Documents**) state all the express terms agreed by the parties in respect of their subject matter. The



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Relevant Documents set out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) relied on by the parties and supersede all prior Conduct, discussions and negotiations in respect of their subject matter. Without limiting clause 6.10, no party has relied on or is relying on any other Conduct in entering into this deed and completing the transactions contemplated by it.

### **19.11 Counterparts**

- (a) This deed may be executed in any number of counterparts and by the parties on separate counterparts.
- (b) This deed is binding on the parties on the exchange of duly executed counterparts.
- (c) The parties agree that a copy of an original executed counterpart sent by email to the email address of the other parties specified in clause 18, 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.

### **19.12 Relationship of the parties**

- (a) Nothing in this deed gives a party authority to bind any other party in any way.
- (b) Nothing in this deed imposes any fiduciary duties on a party in relation to any other party.

### **19.13 Remedies cumulative**

Except as provided in this deed and permitted by law, the rights, powers and remedies provided in this deed are cumulative with, and not exclusive of, the rights, powers and remedies provided by law independently of this deed.

### **19.14 Exercise of rights**

- (a) Unless expressly required by the terms of this deed, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this deed.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this deed. Any conditions must be complied with by the party relying on the consent, approval or waiver.



# Schedules

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## Schedule 1

### Notice details

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Name	Attention	Address	Email
Beyond International Limited	Mikael Borglund, CEO and Managing Director	109 Reserve Road, Artarmon NSW 2064, Australia	<a href="mailto:mikael_borglund@beyond.com.au">mikael_borglund@beyond.com.au</a>
- copy to Herbert Smith Freehills	Nicole Pedler, Partner  Raul Vellani, Solicitor	ANZ Tower, Level 33, 161 Castlereagh Street, Sydney NSW 2000, Australia	<a href="mailto:nicole.pedler@hsf.com">nicole.pedler@hsf.com</a> <a href="mailto:raul.vellani@hsf.com">raul.vellani@hsf.com</a>
Bidder	Marco Bassetti CEO  - copy to Nicolas Chazarain Group Chief Legal Officer	Paris commercial registry number 503 069 965 of 5 rue François 1er, 75008 Paris, France	<a href="mailto:m.bassetti@banijay.com">m.bassetti@banijay.com</a>  <a href="mailto:n.chazarain@banijay.com">n.chazarain@banijay.com</a>
- copy to Corrs Chambers Westgarth	Jonathan Farrer, Partner;  Adam Foreman, Partner	25/567 Collins St, Melbourne VIC 3000, Australia	<a href="mailto:jonathan.farrer@corrs.com.au">jonathan.farrer@corrs.com.au</a>  <a href="mailto:adam.foreman@corrs.com.au">adam.foreman@corrs.com.au</a>





## Schedule 2

### Definitions and interpretation

#### 1.1 Definitions

Term	Meaning
<b>Accounting Standards</b>	<ol style="list-style-type: none"> <li>the accounting standards required under the Corporations Act (including the Approved Accounting Standards issued by the Australian Accounting Standards Board) and other mandatory professional reporting requirements issued by the joint accounting bodies (including the Australian Accounting Standards issued either jointly by CPA Australia and Chartered Accountants Australia &amp; New Zealand or by the Australian Accounting Research Foundation on behalf of CPA Australia and Chartered Accountants Australia &amp; New Zealand); and</li> <li>if no accounting standard applies under the Corporations Act or other mandatory professional reporting requirements, the principles set out in Australian Statements of Accounting Concepts.</li> </ol>
<b>Affiliate</b>	<p>in respect of a person (the <b>primary person</b>), a person:</p> <ol style="list-style-type: none"> <li>Controlled directly or indirectly by the primary person;</li> <li>Controlling directly or indirectly the primary person; or</li> <li>who is Controlled, directly or indirectly, by a person or persons who Control the primary person,</li> </ol> <p>where 'Control' means, with respect to any person (other than an individual) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person whether through the ownership of voting securities, by agreement or otherwise, and for the avoidance of doubt, a general partner is deemed to Control a limited partnership of which it is the general partner and, solely for the purposes of this Deed, a fund advised or managed directly or indirectly by a person will also be deemed to be Controlled by such person.</p>
<b>Alternate Proposal</b>	has the meaning given in clause 13.2(b)(3).
<b>Amended Transaction Documents</b>	has the meaning given in clause 10.4(c)(2).
<b>ASIC</b>	the Australian Securities and Investments Commission.



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Term	Meaning
<b>Associate</b>	has the meaning set out in section 12 of the Corporations Act.
<b>ASX</b>	ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.
<b>Australian Government Agency</b>	any Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including any stock or other securities exchange), or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government (including, ASIC and the Takeovers Panel).
<b>Authorisation</b>	any authorisation, consent, approval, registration, filing, agreement, notice of non-objection, notarisation, certificate, licence, permit, authority or exemption from, by or with a Government Agency.
<b>Beyond</b>	Beyond International Limited ACN 003 174 409.
<b>Beyond Board</b>	the board of directors of Beyond.
<b>Beyond Director</b>	any director of Beyond comprising part of the Beyond Board.
<b>Beyond Director Share</b>	any Beyond Share: <ol style="list-style-type: none"> <li>1 held by or on behalf of, or Controlled by, any Beyond Director; or</li> <li>2 listed as an indirect interest in the latest Appendix 3X or Appendix 3Y lodged by Beyond with ASX in respect of any Beyond Director.</li> </ol>
<b>Beyond Group</b>	Beyond and each of its Subsidiaries, and a reference to a <b>Beyond Group Member</b> is to Beyond or any of its Subsidiaries.
<b>Beyond Indemnified Parties</b>	Beyond, its Subsidiaries and their respective directors, officers and employees.
<b>Beyond Indemnity</b>	the indemnity given by Beyond in clause 6.4.



Term	Meaning
<b>Beyond Information</b>	<ol style="list-style-type: none"> <li>1 information regarding the Beyond Group prepared by Beyond for inclusion in the Scheme Booklet that explains the effect of the Scheme and sets out the information prescribed by the Corporations Act and the Corporations Regulations, and</li> <li>2 any other information that is material to the making of a decision by Beyond Shareholders whether or not to vote in favour of the Scheme, being information that is within the knowledge of each of the Beyond Directors,</li> </ol> <p>other than the Bidder Information, the Independent Expert's Report or any description of the taxation effect of the Transaction on Scheme Shareholders prepared by an external adviser to Beyond.</p>
<b>Beyond IP</b>	means all Intellectual Property Rights owned by the Beyond Group.
<b>Beyond Material Adverse Change</b>	<p>an event, change, condition, matter, circumstance or thing occurring (i) after the date of this deed; or (ii) on or before the date of this deed but which only becomes known to the Bidder, or is only announced or publicly disclosed, after the date of this deed which, whether individually or when aggregated with all such events, changes, conditions, matters, circumstances, has had or is reasonably likely to have, the effect of:</p> <ol style="list-style-type: none"> <li>1 a material adverse effect on the liabilities or operation of: (i) the Beyond Group, taken as a whole, as a result of the occurrence of any claims or any investigations from a Government Agency in relation to the Beyond Group; or (ii) the production business carried out by the Beyond Group as a result of the departure of people deemed key persons under applicable production agreements or considered as essential for such production agreements;</li> <li>2 a diminution in the consolidated net assets of the Beyond Group, taken as a whole, by at least \$3,000,000, as compared to what the net assets of the Beyond Group could reasonably be expected to have been but for the relevant event, change, condition, matter, circumstance or thing occurring; or</li> <li>3 a diminution in the consolidated EBIT of the Beyond Group, taken as a whole during any financial year (or during any two consecutive financial years), of at least \$2,000,000 over that financial year (or at least \$2,000,000 in total over those two consecutive financial years), as compared to what the EBIT of the Beyond Group could reasonably be expected to have been but for the relevant event, change, condition, matter, circumstance or thing occurring,</li> </ol> <p>other than those events, changes, conditions, matters, circumstances or things to the extent:</p> <ol style="list-style-type: none"> <li>4 Fairly Disclosed in:             <ul style="list-style-type: none"> <li>– the Disclosure Materials;</li> <li>– the Public Register Information;</li> </ul> </li> </ol>



Term	Meaning
	<p>5 within the actual knowledge of the Bidder prior to the date of this deed;</p> <p>6 arising from changes in economic or business conditions that impact Beyond and its competitors in a similar manner;</p> <p>7 arising from the Coronavirus or Covid-19 pandemic (or any mutation, variation or derivative thereof), including the outbreak, escalation or any impact of, or recovery from, the Coronavirus or Covid-19 pandemic (or any mutation, variation or derivative of), and including in connection with lockdowns, travel restrictions, quarantining, closures, and restrictions of and on activities, venues and gatherings, having regard to any applicable recommendations, guidance or directions of a Government Agency that impact Beyond and its Australian competitors in a similar manner;</p> <p>8 arising from any generally applicable change in law, regulation, generally accepted accounting standards or generally accepted accounting principles or the interpretation of any such standards or principles, or policy of a Government Agency;</p> <p>9 required or expressly permitted to be done or procured by the Beyond Group under this deed or the Scheme;</p> <p>10 agreed to, approved or requested, by the Bidder in writing;</p> <p>11 arising from any act of terrorism, outbreak or escalation of war (whether or not declared) or major hostilities, an act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide, other natural disaster or adverse weather conditions or the like occurring in territories on which Beyond operates, and impacting Beyond and its competitors operating in relevant territory, in a similar manner; or</p> <p>12 arising out of the announcement of the Transaction or the Scheme, including the loss or adverse change in relation to contractual counterparties, creditors, joint venture partners and the like.</p>
<b>Beyond Prescribed Occurrence</b>	<p>other than:</p> <p>1 as Fairly Disclosed in:</p> <ul style="list-style-type: none"> <li>– the Disclosure Materials;</li> <li>– the Public Register Information;</li> </ul> <p>2 as required by any applicable law, regulation, generally accepted accounting standards or generally accepted accounting principles, binding contract (but only to the extent such contract was entered into, and a copy of which was Fairly Disclosed to Bidder, before the date of this deed or otherwise in accordance with this deed) or by a Government Agency;</p> <p>3 within the actual knowledge of Bidder before the date of this deed;</p> <p>4 as required or expressly permitted to be done or procured by the Beyond Group in connection with this deed or the Scheme; or</p>



Term	Meaning
	<p>5 as agreed to, or requested, by Bidder in writing, the occurrence of any of the following:</p> <p>6 Beyond converting all or any Beyond Securities (including the Beyond Shares) into a larger or smaller number;</p> <p>7 Beyond resolving to reduce its share capital in any way;</p> <p>8 a Beyond Group Member:</p> <ul style="list-style-type: none"> <li>– entering into a buy-back agreement; or</li> <li>– resolving to approve the terms of a buy-back agreement under the Corporations Act;</li> </ul> <p>9 a Beyond Group Member issuing shares (including Beyond Securities), or any other securities with voting rights or granting a performance right or an option over its shares, or agreeing to make such an issue or grant such a right or an option, other than to a wholly-owned Subsidiary of Beyond;</p> <p>10 a Beyond Group Member issuing or agreeing to issue securities convertible into shares (including any issue or agreement to issue performance rights or options, debt securities or any other securities with voting rights);</p> <p>11 a Beyond Group Member reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;</p> <p>12 a Beyond Group Member making any change to its constituent documents (including its constitution or articles of association), other than where a Beyond Group Member that is not material in the context of the Beyond Group (taken as a whole) makes a change to its constituent documents (including its constitution or articles of association) that does not materially affect the Transaction or the Beyond Group (or its business);</p> <p>13 a Beyond Group Member disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property (whether by way of a single transaction or series of related transactions);</p> <p>14 a Beyond Group Member creating or granting an Encumbrance, or agreeing to create or grant an Encumbrance, in respect of the whole, or a substantial or material part, of the business, assets or property of the Beyond Group, other than a lien securing an obligation that is not yet due which arises by operation of law, legislation or which arises in the ordinary course of the Beyond Group's business;</p> <p>15 an Insolvency Event occurs in relation to a Beyond Group Member, other than the winding up of special purpose vehicles incorporated in Australia and New Zealand which no longer hold any assets or liabilities at the end of productions in the ordinary course of business consistent with past practice, provided that such winding up has no adverse impact for any Beyond Group Member (resulting, in particular, in the loss of rights, incentive, or claims);</p> <p>16 any Beyond Group Member ceasing, or threatening to cease, the whole or a material part of its business, other than the</p>



Term	Meaning
	<p>winding up of special purpose vehicles incorporated in Australia and New Zealand which no longer hold any assets or liabilities at the end of productions in the ordinary course of business consistent with past practice, provided that such winding up has no adverse impact for any Beyond Group Member (resulting, in particular, in the loss of rights, incentive, or claims);</p> <p>17 any Beyond Group Member creates any new security-based (or phantom security-based) incentive plan or scheme, modifies any existing security-based incentive plan, or issues or makes any offers to participate in any existing security-based incentive plan;</p> <p>18 Beyond Shares cease to be quoted, or are suspended from quotation, on ASX; or</p> <p>19 any Beyond Group Member directly or indirectly authorises, commits or agrees to take any of the actions referred to in paragraphs 6 to 18 above insofar as it applies to the Beyond Group Member the subject of the relevant actions referred to in paragraphs 6 to 18 above.</p>
<b>Beyond Registry</b>	Computershare Limited.
<b>Beyond Regulated Event</b>	<p>other than:</p> <p>1 as Fairly Disclosed in:</p> <ul style="list-style-type: none"> <li>– the Disclosure Materials;</li> <li>– the Public Register Information;</li> </ul> <p>2 as required by any applicable law, regulation, generally accepted accounting standards or generally accepted accounting principles, binding contract (but only to the extent such contract was entered into, and a copy of which was Fairly Disclosed to Bidder, before the date of this deed or otherwise permitted in accordance with this deed) or by a Government Agency;</p> <p>3 which is within the actual knowledge of a Bidder Group Member before the date of this deed;</p> <p>4 as required or expressly permitted by this deed, the Scheme or the transactions contemplated by either; or</p> <p>5 as agreed to, or requested, by Bidder in writing,</p> <p>the occurrence of any of the following:</p> <p>6 <b>acquisitions and disposals:</b> without limiting item 22 below, a Beyond Group Member acquiring (including by merger, contribution or consolidation), leasing, licensing or disposing (or agreeing, proposing or offering to acquire, lease, licence or dispose) of any business, assets (including the sale of any assets as a going concern), property, equity interest, entity or undertaking (whether by way of a single transaction or series of related transactions), the value of which exceeds \$1,500,000 (individually or in aggregate);</p>



Term	Meaning
	<p>7 <b>new business or terminating existing business:</b> a Beyond Group Member:</p> <ul style="list-style-type: none"> <li>– enters into any line of business not already carried out as at the date of this deed, whether by way of acquisition or otherwise; or</li> <li>– terminates an existing line of business that is carried out as at the date of this deed, whether by way of sale or otherwise,</li> </ul> <p>other than the winding up of special purpose vehicles incorporated in Australia and New Zealand which no longer hold any assets or liabilities at the end of productions in the ordinary course of business or otherwise at the end of productions in the ordinary course of business consistent with past practice, provided that such winding up has no adverse impact for any Beyond Group Member (resulting, in particular, in the loss of rights, incentive, or claims);</p> <p>8 <b>material contracts:</b> a Beyond Group Member entering into any new contract (including a lease) or new commitment (or series of related contracts or commitments), terminating, or materially varying any contract (including a lease) or commitment (or series of related contracts or commitments) in existence at the date of this deed (excluding any contract or commitment in respect of Financial Indebtedness):</p> <ul style="list-style-type: none"> <li>– requiring annual payments by the Beyond Group in excess of \$1,500,000 other than in ordinary course of business consistent with past practice (provided that payments in excess of \$3,000,000 are also reflected in the FY2023 budget);</li> <li>– that generates, or is expected to generate, in each case, \$1,500,000 or more in gross annual revenue for the Beyond Group other than in ordinary course of business consistent with past practice; or</li> <li>– relating to rights management, distribution systems or content/channel delivery;</li> </ul> <p>9 <b>disputes:</b> a Beyond Group Member commencing, compromising, settling or offering to settle any Material Proceedings where the claimed or settlement amount is in excess of \$750,000, other than as claimant in respect of the collection of trade debts arising in the ordinary course of the Beyond Group's business;</p> <p>10 <b>financing:</b> a Beyond Group Member entering into any new contract or commitment (or series of related contacts or commitments), or materially varying any contract or commitment (or series of related contacts or commitments) in existence at the date of this deed, in respect of Financial Indebtedness of an amount in excess of \$2,000,000 (individually or in aggregate) other than in respect of any payment required by law. For the avoidance of doubt this clause does not apply to any Beyond Group Member drawing down financing from any existing facility Fairly Disclosed in the Disclosure Material;</p>





Term	Meaning
	<p>11 <b>financial accommodation:</b> a Beyond Group Member provides financial accommodation to or guarantees or indemnifies the obligations of any person other than a Beyond Group Member (irrespective of what form that financial accommodation, guarantee or indemnity takes) other than in the ordinary course of business and consistent with past practice;</p> <p>12 <b>accounting:</b> a Beyond Group Member changing any accounting method, base, policy, procedure, practice or principle used by it, other than as a result of changes in generally accepted accounting standards or generally accepted accounting principles or the interpretation of any of them;</p> <p>13 <b>employees:</b> a Beyond Group Member entering into any new employment or service agreement, or materially varying any employment or service agreement in existence at the date of this deed, with an individual (including for the avoidance of doubt a director of a Beyond Group Member) in respect of which the total fixed remuneration is greater than \$200,000;</p> <p>14 <b>remuneration, compensation and benefits:</b> any Beyond Group Member:</p> <ul style="list-style-type: none"> <li>– materially increases the remuneration, compensation or benefits of, or pays any bonus or issues any securities to, or otherwise materially varies the employment arrangements with, any of its directors, officers or other members of the executive leadership team, including for the avoidance of doubt varying employment arrangements to include, or amend, change of control or key man provisions;</li> <li>– accelerates the rights of any of its directors, officers or other members of the executive leadership team to benefits of any kind; or</li> <li>– pays or agrees to pay a director, officer, employee or other members of the executive leadership team a termination, severance or retention payment (including a 'golden parachute'),</li> </ul> <p>other than:</p> <ul style="list-style-type: none"> <li>– annual remuneration reviews in the ordinary course ;</li> <li>– the payment of bonuses or increases to directors, officers or other members of the executive leadership team provided that the aggregate of the bonuses or increases paid to such individuals are no greater than \$100,000;</li> <li>– as provided for in:           <ul style="list-style-type: none"> <li>• Beyond's redundancy policy as at the date of this deed and that is Fairly Disclosed in the Disclosure Materials; or</li> <li>• an employment or services agreement in existence as at the date of this deed that is Fairly Disclosed in the Disclosure Materials; or</li> <li>• in connection with additional remuneration for additional services provided to Beyond before the</li> </ul> </li> </ul>



Term	Meaning
	implementation of the Scheme that is Fairly Disclosed in the Disclosure Materials;
15	<b>capex:</b> any Beyond Group Member incurring or entering into any new commitment(s) for capital expenditure of more than \$1,000,000 (individually or in aggregate);
16	<b>Financial Advisers:</b> any Beyond Group Member materially amends any agreement or arrangement with a Financial Adviser or enters into an agreement or arrangement with a new Financial Adviser or enters into a new agreement or arrangement with an existing Financial Adviser;
17	<p><b>Restraints and broadcasters:</b> a Beyond Group Member:</p> <ul style="list-style-type: none"> <li>– entering into a contract or commitment materially restraining a Beyond Group Member from competing with any person or conducting activities in any market or territory, other in the ordinary course of the Beyond Group's Business; or</li> <li>– agreeing to any change of control or provision requiring the services of a particular natural individual with any broadcaster, other than provisions in the ordinary course of business or in standards terms and conditions of broadcasters and in the ordinary course of business and consistent with past practice;</li> </ul>
18	<p><b>Material Proceedings:</b> either:</p> <ul style="list-style-type: none"> <li>– a Beyond Group Member receiving notice of any new material investigation, prosecution, penalty, arbitration, litigation, claim or dispute against, or in respect of, a Beyond Group Member which would reasonably be expected to:               <ul style="list-style-type: none"> <li>• give rise to a liability for the Beyond Group in excess of \$1,000,000; or</li> <li>• cause material reputational damage to the Beyond Group as a whole or the Beyond IP,</li> </ul> </li> </ul> <p><b>(Material Proceedings);</b> or</p> <ul style="list-style-type: none"> <li>– facts, matters or circumstances arising which could reasonably be expected to give rise to any Material Proceedings,</li> </ul> <p>provided that Material Proceedings will not include any liability relating to an investigation, prosecution, arbitration, litigation or dispute to the extent that an insurer has agreed to cover the liability under an insurance policy maintained by a Beyond Group Member, unless those Material Proceedings would reasonably be expected to cause material reputational damage to the Beyond Group as a whole or the Beyond IP;</p>
19	<p><b>Tax elections, returns, rulings and audits:</b> a Beyond Group Member:</p> <ul style="list-style-type: none"> <li>– makes any material Tax elections or changes any material Tax methodologies applied by it in the 12 months prior to the date of this deed;</li> <li>– files a material amendment to a Tax return filed with a Government Agency;</li> </ul>



Term	Meaning
	<ul style="list-style-type: none"> <li>– changes an applicable Tax ruling;</li> <li>– settles a material Tax audit; or</li> </ul>
20	<p><b>related party transactions:</b> any Beyond Group Member entering into, or resolving to enter into, a transaction with a related party of Beyond, including giving or agreeing to give a financial benefit to a related party (other than a related party that is a Beyond Group Member) as defined in section 228 of the Corporations Act;</p>
21	<p><b>Third Party defaults:</b> a Beyond Group Member waives any Third Party default where the financial impact of the waiver on the Beyond Group as a whole will, or is reasonably likely to be, in excess of \$200,000 (individually or in aggregate);</p>
22	<p><b>Beyond IP:</b> a Beyond Group Member (A) sells, leases, transfers, creates an Encumbrance over or otherwise disposes or grants any rights over (i) any Beyond IP existing or already commissioned at the date hereof including formats and programs or (ii) new formats, the first adaptation of which occurring after the date hereof, except to the extent the relevant Beyond Group Member has notified the Bidder of the intended operation and its proposed terms, and has had prior good faith discussions with the Bidder for a period of at least 10 Business Days and reasonably taken into account any proposal or comments by the Bidder, or (B) grants any revenue share in programs, except in either case being:</p> <ul style="list-style-type: none"> <li>– participation for production and creative personnel or other customary contingent compensation; or</li> <li>– licensing and distribution activity in the ordinary course of business consistent with past practice for:           <ul style="list-style-type: none"> <li>– terms of 3 years or less; and</li> <li>– terms of between 3 years and 5 years but only where the relevant Beyond Group Member has notified the Bidder of the proposed terms, and has had prior good faith discussions with the Bidder for a period of at least 10 Business Days and reasonably taken into account any proposal or comments by the Bidder prior to grant such licenses,</li> </ul> </li> </ul> <p>save for, in any event and regardless their respective terms: (i) all-rights licensing deals; (ii) life-of-series licensing deals; and (iii) any distribution activity relating to a new format where the Bidder has not had a first opportunity to obtain the rights for distribution in accordance with process for notification and good faith discussions of new formats as outlined above.</p>
23	<p><b>Programs:</b> a Beyond Group Member:</p> <ul style="list-style-type: none"> <li>– makes any distribution advance in connection with the rights to a program or the production of a program, other than:           <ul style="list-style-type: none"> <li>– any distribution advances representing in aggregate less than GBP 1.0 million (or equivalent in A\$ as at the date of this deed) which, as at the date of this deed, are not</li> </ul> </li> </ul>



Term	Meaning
	<p>already committed in FY22 to be paid in FY23, as reflected in the FY2023 budget; and</p> <ul style="list-style-type: none"> <li>– any distribution advances which are already committed to on or before FY22 to be paid in FY23, as Fairly Disclosed in the Disclosure Materials, up to a maximum of \$7,000,000 in aggregate; or</li> <li>– engages in any production to the extent the budget (including margin) for such production is not fully secured;</li> </ul> <p>24 <b>auditors:</b> a Beyond Group Member removing or changing its existing auditor as at the date of this deed;</p> <p>25 <b>unions:</b> a Beyond Group Member entering into or terminating any enterprise bargaining agreement, collective bargaining agreement or any similar agreement with a trade union or work council;</p> <p>26 <b>dividend:</b> Beyond announcing, making, declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its members (whether in cash or in specie), provided that, for the avoidance of doubt, this clause does not include the announcement of a general policy regarding future dividends that does not specify the amount of those dividends; or</p> <p>27 <b>authorisation:</b> a Beyond Group Member authorises, agrees, commits or resolves to do any of the matters set out above, whether conditionally or otherwise.</p>
<b>Beyond Representations and Warranties</b>	the representations and warranties of Beyond set out in Schedule 4, as each is qualified by clause 6.5.
<b>Beyond Securities</b>	<ol style="list-style-type: none"> <li>1 Beyond Shares:</li> <li>2 any other shares, options, performance rights, convertible notes, warrants or other securities which may be or convert into Beyond Shares or other equity interests in Beyond;</li> <li>3 any offers or agreements by a Beyond Group entity to issue or grant, or any rights by a person to call for the issue or grant by an Beyond Group entity, of: <ul style="list-style-type: none"> <li>– any Beyond Shares; or</li> <li>– any other shares, options, performance rights, convertible notes, warrants or other securities which may be or convert into Beyond Shares or other equity interests in Beyond; and</li> </ul> </li> <li>4 any rights by a person to call for the issue or grant by an Beyond Group entity of rights which are economically equivalent to: <ul style="list-style-type: none"> <li>– any Beyond Shares; or</li> </ul> </li> </ol>



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Term	Meaning
	<ul style="list-style-type: none"> <li>– any other shares, options, performance rights, convertible notes, warrants or other securities which may be or convert into Beyond Shares or other equity interests in Beyond.</li> </ul>
<b>Beyond Share</b>	a fully paid ordinary share in the capital of Beyond.
<b>Beyond Share Register</b>	the register of members of Beyond maintained by the Beyond Registry in accordance with the Corporations Act.
<b>Beyond Shareholder</b>	each person who is registered as the holder of a Beyond Share in the Beyond Share Register.
<b>Bidder Counterproposal</b>	has the meaning given in clause 10.4(a)(5).
<b>Bidder Group</b>	Bidder and its Subsidiaries and a reference to a <b>Bidder Group Member</b> is to any one of them.
<b>Bidder Indemnified Parties</b>	each Bidder Group Member and their respective directors, officers and employees.
<b>Bidder Information</b>	<p>information regarding the Bidder Group provided by Bidder to Beyond in writing for inclusion in the Scheme Booklet including:</p> <ol style="list-style-type: none"> <li>1 information about Bidder, other Bidder Group Members, the businesses of the Bidder Group, Bidder's interests and dealings in Beyond Shares, Bidder's intentions for Beyond and Beyond's employees, and funding for the Scheme; and</li> <li>2 any other information required under the Corporations Act, Corporations Regulations or RG 60 to enable the Scheme Booklet to be prepared that the parties agree is 'Bidder Information' and that is identified in the Scheme Booklet as such.</li> </ol> <p>For the avoidance of doubt, the Bidder Information excludes the Beyond Information, the Independent Expert's Report (or references to the Independent Expert's analysis or conclusions), any investigating accountant's report, any description of the taxation effect of the Transaction on Scheme Shareholders or any other report or opinion prepared by an external adviser to Beyond.</p>
<b>Bidder</b>	Banijay Entertainment SAS



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Term	Meaning
<b>Bidder Representations and Warranties</b>	the representations and warranties of Bidder set out in Part A of Schedule 3.
<b>Break Fee</b>	\$475,000.
<b>Business Day</b>	a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, Australia.
<b>Claim</b>	<p>any claim, demand, legal proceedings or cause of action (including any claim, demand, legal proceedings or cause of action:</p> <ol style="list-style-type: none"> <li>1 based in contract, including breach of warranty;</li> <li>2 based in tort, including misrepresentation or negligence;</li> <li>3 under common law or equity; or</li> <li>4 under statute, including the Australian Consumer Law (being Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth) (CCA)) or Part VI of the CCA, or like provision in any state or territory legislation),</li> </ol> <p>in any way relating to this deed or the Transaction, and includes a claim, demand, legal proceedings or cause of action arising under an indemnity in this deed.</p>
<b>Competing Bidder</b>	a person other than Bidder, any other Bidder Group Member and their respective Associates.
<b>Competing Proposal</b>	<p>any proposal, offer, expression of interest, agreement, arrangement or transaction, which, if entered into or completed substantially in accordance with its terms, would result in a Competing Bidder (either alone or together with any Associate(s)):</p> <ol style="list-style-type: none"> <li>1 directly or indirectly acquiring or having the right to acquire (a) a Relevant Interest in; (b) a legal, beneficial or economic interest (including by way of an equity swap, contract for difference or similar transaction or arrangement) in; or (c) control of, 20% or more of the Beyond Shares (other than through item 9 of section 611 of the Corporations Act);</li> <li>2 acquiring Control (as determined in accordance with section 50AA of the Corporations Act, but disregarding sub-section 50AA(4)) of Beyond;</li> <li>3 directly or indirectly acquiring or becoming the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or control of, all or a material part of Beyond's business or assets or the business or assets of the Beyond Group;</li> </ol>



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Term	Meaning
	<p>4 otherwise directly or indirectly acquiring, being stapled to, or merging with Beyond; or</p> <p>5 requiring Beyond to abandon or otherwise fail to proceed with the Transaction,</p> <p>whether by way of takeover bid, members' or creditors' scheme of arrangement, reverse takeover, shareholder approved acquisition, capital reduction, buy back, sale or purchase of shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement, recapitalisation, refinancing or other transaction or arrangement.</p> <p>For the avoidance of doubt, each successive material modification or variation of any proposal, agreement, arrangement or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.</p>
<b>Condition Precedent</b>	each of the conditions set out in clause 3.1.
<b>Confidentiality Agreement</b>	the confidentiality agreement between Bidder and Beyond dated 14 March 2022.
<b>Consultation Notice</b>	has the meaning given in clause 3.4(a).
<b>Control</b>	has the meaning given in section 50AA of the Corporations Act.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth), as modified or varied by ASIC.
<b>Corporations Regulations</b>	the <i>Corporations Regulations 2001</i> (Cth).
<b>Court</b>	the Supreme Court of New South Wales or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Bidder and Beyond.
<b>D&amp;O Run-off Policy</b>	has the meaning given to that term in clause 7.3(b)
<b>Data Room</b>	the data room hosted by Intralinks and made available by Beyond or its Related Persons to the Bidder Group or its Related Persons prior to execution of this deed which is accessed at <a href="https://services.intralinks.com/web/?clientID=1&amp;br=1#workspace/13207495/documents">https://services.intralinks.com/web/?clientID=1&amp;br=1#workspace/13207495/documents</a> , the index of which has been electronically





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Term	Meaning
	initialled by the parties' lawyers for the purposes of identification before the execution of this deed.
<b>Deed Poll</b>	a deed poll in the form of Attachment 3 or such other form as agreed in writing between the parties under which Bidder and Nominee (if any) covenants in favour of the Scheme Shareholders to perform the obligations attributed to Bidder and Nominee (if any) under the Scheme.
<b>Disclosure Letter</b>	a letter identified as such provided by Beyond to Bidder and countersigned by Bidder prior to entry into this deed.
<b>Disclosure Materials</b>	<ol style="list-style-type: none"> <li>1 the documents and information contained in the Data Room;</li> <li>2 written responses from Beyond and its Related Persons to requests for further information made by the Bidder Group and its Related Persons contained in the Data Room, the index of which has been electronically initialled by the parties' lawyers for the purposes of identification before the execution of this deed; and</li> <li>3 the Disclosure Letter.</li> </ol>
<b>Duty</b>	any stamp, transaction or registration duty or similar charge imposed by any Government Agency and includes any interest, fine, penalty, charge or other amount imposed in respect of any of them, but excludes any Tax.
<b>EBIT</b>	operating earnings before interest and tax.
<b>Effective</b>	when used in relation to the Scheme, the coming into effect, under subsection 411(10) of the Corporations Act, of the order of the Court made under paragraph 411(4)(b) of the Corporations Act in relation to the Scheme.
<b>Effective Date</b>	the date on which the Scheme becomes Effective.
<b>Encumbrance</b>	a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person, whether registered or unregistered, including any Security Interest.



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Term	Meaning
<b>End Date</b>	<ol style="list-style-type: none"> <li>1 31 March 2023; or</li> <li>2 such other date as agreed in writing by the parties.</li> </ol>
<b>Exclusivity Period</b>	<p>the period from and including the date of this deed to the earlier of:</p> <ol style="list-style-type: none"> <li>1 the date of termination of this deed;</li> <li>2 the End Date; and</li> <li>3 the Implementation Date.</li> </ol>
<b>Fairly Disclosed</b>	disclosed in sufficient detail to enable a reasonable and sophisticated recipient of the relevant information who is experienced in transactions similar to the Scheme to identify the nature and potential impact of the relevant fact, matter, circumstance or event.
<b>Financial Adviser</b>	any financial adviser retained by a Beyond Group Member in relation to the Transaction from time to time.
<b>Financial Indebtedness</b>	<p>any debt or other monetary liability (whether actual or contingent), together with all interest, fees and penalties accrued thereon, in respect of monies borrowed or raised or any financial accommodation including under or in respect of any:</p> <ol style="list-style-type: none"> <li>1 interest or non-interest bearing loan or other financing liability or obligation, including an overdraft or any other liability in the nature of borrowed money (whether secured or unsecured);</li> <li>2 bill, bond, debenture, note or similar instrument;</li> <li>3 acceptance, endorsement or discounting arrangement;</li> <li>4 guarantee or letter of credit;</li> <li>5 finance or capital lease;</li> <li>6 redeemable share or security;</li> <li>7 agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or service;</li> <li>8 obligation to deliver goods or provide services paid for in advance by any financier; or</li> <li>9 recourse or non-recourse liability (whether conditional or unconditional, present or future) arising from any transaction(s) related to the assignment or securitisation of receivables for financing purposes to any third party, including a factoring agreement or a similar agreement executed for the purpose of obtaining financing and including any amount raised pursuant to such agreement but which, in accordance with Accounting</li> </ol>



Term	Meaning
	Standards, has not otherwise been recognised on the balance sheet as a liability.
<b>First Court Date</b>	the first day on which an application made to the Court for an order under subsection 411(1) of the Corporations Act convening the Scheme Meeting is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard, with such hearing being the <b>First Court Hearing</b> .
<b>Government Agency</b>	any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including any stock or other securities exchange), or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian (including ASIC and the Takeovers Panel).
<b>Implementation Date</b>	the fifth Business Day after the Scheme Record Date, or such other date after the Scheme Record Date as the parties agree in writing or is ordered by the Court or required by ASX.
<b>Independent Expert</b>	the independent expert in respect of the Scheme appointed by Beyond to prepare the Independent Expert's Report.
<b>Independent Expert's Report</b>	the report to be issued by the Independent Expert in connection with the Scheme, setting out the Independent Expert's opinion whether or not the Scheme is in the best interests of Beyond Shareholders and the reasons for holding that opinion.
<b>Insolvency Event</b>	in relation to an entity: <ol style="list-style-type: none"> <li>1 the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity;</li> <li>2 a Controller (as defined in the Corporations Act), liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official being appointed to the entity or in relation to the whole, or a substantial part, of its assets;</li> <li>3 an application is made to a court, a meeting is convened or a resolution is passed for the entity to be wound up or dissolved or for the appointment of a Controller (as defined in the Corporations Act), liquidator, provisional liquidator or administrator to the entity of any of its assets;</li> <li>4 the entity seeks or obtains protection from its creditors under any statute or any other law;</li> </ol>



Term	Meaning
	<p>5 the entity executing a deed of company arrangement;</p> <p>6 the entity ceases, or threatens to cease to, carry on substantially all the business conducted by it as at the date of this deed;</p> <p>7 the entity is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation) or is otherwise presumed to be insolvent under the Corporations Act or any analogous circumstances arises under any other statute or law ; or</p> <p>8 the entity being deregistered as a company or otherwise dissolved (whether pursuant to Chapter 5A of the Corporations Act or otherwise),</p> <p>or any other like event, matter or circumstance occurring in relation to an entity in another jurisdiction.</p>
<b>Intellectual Property Rights</b>	<p>means any and all intellectual property rights whether or not filed, perfected, registered or recorded and whether now or later existing, filed, registered, issued or acquired, including all renewals, in any country of the world, and whether conferred by statute, common law or equity, including rights in respect of:</p> <p>1 patents, inventions, designs, trade marks (including trade names) and service marks and any applications for, or rights to apply for, registration of any patent, design, trade mark or service mark;</p> <p>2 personality rights (if applicable), copyright, copyright registrations and copyright applications, copyright in copyrightable works and related rights (including copyright in software, websites, databases, documents, artistic works, musical works, dramatic works and advertising and other promotional materials, and audio-visual works or productions, including films, broadcasts, sound recordings and formats (and in particular all those produced or in development intended for television, radio, cinema or the web and for other broadcasting platforms as well as commercials and any other programs));</p> <p>3 all rights to have information (including trade secrets, manufacturing and production processes and techniques, research and development information, financial, marketing and business data, pricing and cost information, business and marketing plans, know-how, operating procedures and technical information, data base and data collections) kept confidential.</p>
<b>Listing Rules</b>	the official listing rules of ASX.
<b>Notifiable Proposal</b>	has the meaning given to that term in clause 10.3(a).



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Term	Meaning
<b>Matching or Superior Proposal</b>	has the meaning given in clause 10.4(b).
<b>Material Contract</b>	has the meaning given in the Disclosure Letter.
<b>Negotiation Period</b>	has the meaning given in clause 10.4(c)(2).
<b>Nominee</b>	has the meaning given in clause 4.3.
<b>Non-public Beyond Information</b>	has the meaning given to that term in clause 10.1(a)(3)(A).
<b>PPSA</b>	the <i>Personal Property Securities Act 2009</i> (Cth).
<b>PPS Register</b>	the register established under the PPSA.
<b>Public Register Information</b>	<p>means the following information:</p> <ol style="list-style-type: none"> <li>1 any announcements made to ASX in the two year period up to the Relevant Search Date;</li> <li>2 current and historical ASIC organisation extracts which are revealed on electronic searches under an ACN or ABN as at the Relevant Search Date;</li> <li>3 current public records maintained by IP Australia on the Relevant Search Date;</li> <li>4 the records made available for public inspection on a register maintained by the Relevant Courts as at the Relevant Search Date; and</li> <li>5 current public records maintained by the PPS Register as at the Relevant Search Date.</li> </ol>
<b>Recommendation</b>	has the meaning given to that term in clause 5.7(a).
<b>Registered Address</b>	in relation to a Scheme Shareholder, the address shown in the Beyond Share Register as at the Scheme Record Date.
<b>Regulator's Draft</b>	the draft of the Scheme Booklet in a form which is provided to ASIC for review pursuant to subsection 411(2) of the Corporations Act.



Term	Meaning
<b>Related Bodies Corporate</b>	has the meaning set out in section 50 of the Corporations Act.
<b>Related Entity</b>	<p>means, in relation to an entity (the <b>first entity</b>):</p> <p>1 any of:</p> <ul style="list-style-type: none"> <li>– a subsidiary of the first entity;</li> <li>– an entity of which the first entity is a subsidiary; or</li> <li>– a subsidiary of another entity of which the first entity is also a subsidiary,</li> </ul> <p>where, for the purposes of this definition, ‘subsidiary’ has the meaning given in the Corporations Act, amended as necessary such that:</p> <ul style="list-style-type: none"> <li>– a body corporate or a trust will also be taken to be a subsidiary of an entity if it is controlled by that entity (as defined in section 50AA of the Corporations Act);</li> <li>– a trust, partnership or fund may be a subsidiary, for the purpose of which a unit, partnership interest or other beneficial interest in the trust, partnership or fund will be regarded as a share (ignoring the operation of section 48(2) of the Corporations Act); and</li> <li>– an entity may be a subsidiary of a trust, partnership or fund if it would have been a subsidiary if that trust, partnership or fund were a body corporate; or</li> </ul> <p>2 an Affiliate of the first entity.</p>
<b>Related Person</b>	in respect of a party or each of their respective Related Bodies Corporate, each director, officer, employee, adviser, agent or representative of that party or Related Body Corporate.
<b>Relevant Courts</b>	<p>1 the High Court;</p> <p>2 the Federal Court of Australia and the Federal Circuit Court of Australia;</p> <p>3 the Supreme Court of New South Wales;</p> <p>4 the Supreme Court of Victoria;</p> <p>5 the Supreme Court of South Australia;</p> <p>6 the Supreme Court of Western Australia;</p> <p>7 the Supreme Court of Queensland;</p> <p>8 the Supreme Court of the Northern Territory;</p> <p>9 the Supreme Court of Tasmania; and</p> <p>10 the Supreme Court of the Australian Capital Territory.</p>



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Term	Meaning
<b>Relevant Interest</b>	has the meaning given in sections 608 and 609 of the Corporations Act.
<b>Relevant Search Date</b>	<p>means for each of the below:</p> <ol style="list-style-type: none"> <li>1 in respect of the ASX, one Business Day prior to the date of this deed;</li> <li>2 in respect of the PPS Register, 30 September 2022;</li> <li>3 in respect of IP Australia, 30 September 2022;</li> <li>4 in respect of ASIC, 30 September 2022; and</li> <li>5 in respect of the Relevant Courts: <ul style="list-style-type: none"> <li>– the Federal Court of Australia and the Federal Circuit Court of Australia: 30 September 2022;</li> <li>– Supreme Court of Queensland: 29 September 2022;</li> <li>– Supreme Court of the Australia Capital Territory – Civil: 1 August 2022;</li> <li>– Supreme Court of New South Wales: 26 July 2022;</li> <li>– Supreme Court of South Australia: 22 July 2022; and</li> <li>– High Court of Australia, Supreme Court of Victoria, Supreme Court of Tasmania, Supreme Court of Western Australia, Supreme Court of the Northern Territory: each as at 20 July 2022.</li> </ul> </li> </ol>
<b>Requisite Majorities</b>	<p>in relation to the Scheme Resolution to be put to Beyond Shareholders at the Scheme Meeting, the resolution being passed by:</p> <ol style="list-style-type: none"> <li>1 a majority in number (more than 50%) of Beyond Shareholders who are present and voting at the Scheme Meeting, either in person or by proxy, attorney or in the case of a corporation its duly appointed corporate representative, except to the extent the Court orders otherwise under subsection 411(4)(a)(ii)(A) of the Corporations Act and, in that case, in accordance with that Court order; and</li> <li>1 at least 75% of the votes cast on the resolution by Beyond Shareholders who are present and voting at the Scheme Meeting, either in person or by proxy, attorney or in the case of a corporation its duly appointed corporate representative.</li> </ol>
<b>Reverse Break Fee</b>	\$475,000.
<b>RG 60</b>	Regulatory Guide 60 issued by ASIC in September 2020.





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Term	Meaning
<b>Scheme</b>	the members' scheme of arrangement under Part 5.1 of the Corporations Act between Beyond and the Scheme Shareholders under which all of the Scheme Shares will be transferred to Bidder and the Scheme Shareholders will be entitled to receive the Scheme Consideration, the form of which is attached as Attachment 2 (or such other form as agreed in writing by Bidder and Beyond), together with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and consented to by the Bidder in accordance with clause 4.2.
<b>Scheme Booklet</b>	<p>the scheme booklet to be prepared by Beyond in respect of the Scheme pursuant to section 412 of the Corporations Act and in accordance with the terms of this deed (including clause 5.2(a)) to be despatched to the Beyond Shareholders and which must include or be accompanied by:</p> <ol style="list-style-type: none"> <li>1 a copy of the Scheme;</li> <li>2 an explanatory statement complying with the requirements of the Corporations Act, the Corporations Regulations and RG 60;</li> <li>3 the Independent Expert's Report;</li> <li>4 a copy or summary of this deed;</li> <li>5 a copy of the executed Deed Poll;</li> <li>6 notice(s) of meeting; and</li> <li>7 proxy form(s).</li> </ol>
<b>Scheme Consideration</b>	the consideration to be provided by Bidder to each Scheme Shareholder for the transfer to Bidder of each Scheme Share, being for each Beyond Share held by a Scheme Shareholder as at the Scheme Record Date an amount of \$0.7744.
<b>Scheme Meeting</b>	the meeting of Beyond Shareholders ordered by the Court to be convened under subsection 411(1) of the Corporations Act to consider and vote on the Scheme Resolution and includes any meeting convened following any adjournment or postponement of that meeting.
<b>Scheme Record Date</b>	the time and date for determining entitlements to receive the Scheme Consideration, being 7.00pm on the fifth Business Day after the Effective Date or such other time and date as the parties agree in writing.
<b>Scheme Resolution</b>	the resolution to approve the Scheme to be considered by Beyond Shareholders at the Scheme Meeting.



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Term	Meaning
<b>Scheme Shareholder</b>	a Beyond Shareholder as at the Scheme Record Date.
<b>Scheme Shares</b>	all Beyond Shares held by the Scheme Shareholders as at the Scheme Record Date.
<b>Second Court Date</b>	the first day on which an application made to the Court for an order under paragraph 411(4)(b) of the Corporations Act approving the Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application or appeal is heard, with such hearing being the <b>Second Court Hearing</b> .
<b>Security Interest</b>	has the meaning given in section 12 of the PPSA.
<b>Subsidiary</b>	has the meaning given in Division 6 of Part 1.2 of the Corporations Act.
<b>Superior Proposal</b>	<p>a bona fide, written Competing Proposal:</p> <ol style="list-style-type: none"> <li>1 of the kind referred to in any of paragraphs 2, 3, 4 or 5 of the definition of 'Competing Proposal'; and</li> <li>2 not resulting from a breach by Beyond of any of its obligations under clause 10),</li> </ol> <p>that the Beyond Board, acting in the best interests of Beyond Shareholders and in good faith and in order to satisfy what the Beyond Board considers to be the Beyond Directors' statutory or fiduciary duties (after having obtained advice from Beyond's reputable external Australian legal advisers specialising in the area of corporate law) determines:</p> <ol style="list-style-type: none"> <li>3 is reasonably capable of being valued and completed within a reasonable timeframe in accordance with its terms, taking into account all terms, conditions and other aspects of the Competing Proposal, including, but not limited to: <ol style="list-style-type: none"> <li>(A) the identity, reputation and financial condition of the party making the Competing Proposal;</li> <li>(B) the ability of the party making the Competing Proposal to consummate the transactions contemplated by the Competing Proposal; and</li> <li>(C) all relevant legal, financial, regulatory and other matters; and</li> </ol> </li> <li>4 would, if completed substantially in accordance with its terms, be reasonably likely to result in a transaction that is more favourable to Beyond Shareholders (as a whole) than the Transaction (as completed), taking into account all terms and conditions and other aspects of:</li> </ol>



Term	Meaning
	<p>(A) the Competing Proposal (including the value and type of consideration, funding, any timing considerations, any conditions precedent, the identity, reputation and financial condition of the proponent, the views of Beyond Shareholders in relation to the Competing Proposal compared to the Transaction, the ability of the proponent to complete the transactions contemplated by the Competing Proposal and the probability of the Competing Proposal being completed compared to the Transaction and relevant legal, financial, regulatory and other matters); and</p> <p>(B) the Transaction (including the matters described in paragraph (A) above in respect of the Transaction).</p>
<b>Tax</b>	any tax, levy, charge, impost, fee, deduction, goods and services tax (including GST), compulsory loan or withholding, that is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above, but excludes Duty.
<b>Third Party</b>	a person other than Bidder, any other Bidder Group Member and each of their respective Associates.
<b>Timetable</b>	the indicative timetable for the implementation of the Transaction set out in Attachment 1.
<b>Trading Day</b>	has the meaning given to that term in the Listing Rules.
<b>Transaction</b>	the acquisition of the Scheme Shares by Bidder through implementation of the Scheme in accordance with the terms of this deed.

## 2 Interpretation

### 2.1 Interpretation

In this deed:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;



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- (d) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency, as well as an individual;
- (f) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to this deed;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them (whether passed by the same or another Government Agency with legal power to do so);
- (h) a reference to a document (including this deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to '\$', 'A\$' or 'dollar' is to the lawful currency of Australia;
- (j) a reference to any time is, unless otherwise indicated, a reference to that time in Sydney, Australia;
- (k) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1.1 of this Schedule 2, has the same meaning when used in this deed;
- (l) a reference to a party to a document includes that party's successors and permitted assignees;
- (m) no provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision;
- (n) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (o) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (p) a reference to a body (including an institute, association or authority), other than a party to this deed, whether statutory or not:
  - (1) which ceases to exist; or
  - (2) whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (q) a reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (r) a reference to liquidation or insolvency includes appointment of an administrator, a reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, bankruptcy, or a scheme, compromise or arrangement with creditors (other than solely with holders of securities or derivatives), or any similar procedure or, where applicable, changes in the constitution of any partnership or Third Party, or death;
- (s) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;



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- (t) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (u) if an act prescribed under this deed to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day; and
- (v) a reference to something being “reasonably likely” (or to a similar expression) is a reference to that thing being more likely than not to occur when assessed objectively.

## **2.2 Interpretation of inclusive expressions**

Specifying anything in this deed after the words ‘include’ or ‘for example’ or similar expressions does not limit what else is included.

## **2.3 Business Day**

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



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## Schedule 3

### Bidder Representations and Warranties

---

Bidder represents and warrants to Beyond (in its own right and separately as trustee or nominee for each of the other Beyond Indemnified Parties) that:

- (a) **Bidder Information:** the Bidder Information provided for inclusion in the Scheme Booklet, as at the date the Scheme Booklet is despatched to Beyond Shareholders, will not be misleading or deceptive in any material respect (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission;
- (b) **basis of Bidder Information:** the Bidder Information:
  - (1) will be provided to Beyond in good faith and on the understanding that Beyond and each other Beyond Indemnified Party will rely on that information for the purposes of preparing the Scheme Booklet and determining to proceed with the Transaction; and
  - (2) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules,
 and all information provided by Bidder to the Independent Expert will, as at the date that information is provided, be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;
- (c) **new information:** it will, as a continuing obligation, provide to Beyond all further or new information which arises after the Scheme Booklet has been despatched to Beyond Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Bidder Information is not misleading or deceptive in any material respect (including by way of omission);
- (d) **validly existing:** it is a validly existing corporation registered under the laws of its place of incorporation;
- (e) **authority:** the execution and delivery of this deed by Bidder has been properly authorised by all necessary corporate action of Bidder, and Bidder has taken or will take all necessary corporate action to authorise the performance of this deed and to carry out the transactions contemplated by this deed;
- (f) **power:** it has full capacity, corporate power and lawful authority to execute, deliver and perform this deed and to carry out the transactions contemplated by this deed;
- (g) **no default:** the execution and performance of this deed does not conflict with or result in the breach of or a default under:
  - (1) any provision of Bidder's constitution or other constituent documents; or
  - (2) any writ, order or injunction, judgment, law, rule, ruling or regulation to which it is party or subject or by which it or any other Bidder Group Member is bound,

and Bidder is not otherwise bound by any agreement or deed that would prevent or restrict Bidder from entering into and/or performing this deed;



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- (h) **deed binding:** this deed is a valid and binding obligation of Bidder, enforceable in accordance with its terms;
- (i) **Insolvency Event or regulatory action:** no Insolvency Event has occurred in relation to it or any other Bidder Group Member, nor has any regulatory action of any nature been taken of which Bidder is aware that would reasonably be likely to prevent or restrict its ability to fulfil its obligations under this deed or under the Deed Poll;
- (j) **no regulatory approvals:** it does not require any approval, consent, clearance, waiver, ruling, relief, confirmation, exemption, declaration or notice from any Government Agency in order to execute and perform this deed, other than, for the avoidance of doubt, from ASIC and the Court, as contemplated by this deed;
- (k) **reasonable basis:** Bidder has a reasonable basis to expect that Bidder will, on the Implementation Date, have available to it sufficient cash amounts (whether from internal cash reserves or external funding arrangements, including equity or debt financing (or a combination of both), or a combination of both)) to ensure Bidder can satisfy its obligations to provide the Scheme Consideration in accordance with Bidder's obligations under this deed and the Deed Poll;
- (l) **unconditional cash reserves:** by 8.00am on the Second Court Date, will have available to it on an unconditional basis (other than conditions relating to the approval of the Court, the Scheme becoming Effective, and other procedural conditions disclosed to Beyond and within the control of Bidder) sufficient cash amounts (whether from internal cash reserves or external funding arrangements, including equity or debt financing (or a combination of both)), or a combination of both) to satisfy Bidder's obligations to provide the Scheme Consideration in accordance with its obligations under this deed and the Deed Poll;
- (m) **no other financing arrangements:** no Bidder Group Member nor any Associate of a Bidder Group Member is or will be a party to any agreement, arrangement or understanding (whether written or oral) with a debt financier or equity financier in connection with the Transaction, and Bidder has fully disclosed to Beyond all agreements, arrangements or understandings (whether written or oral) with any debt financier or equity financier in connection with the Transaction;
- (n) **other dealings:** other than:
  - (1) as disclosed to Beyond in writing by or on behalf of Bidder on or before the date of this deed; or
  - (2) as contemplated by this deed or the Scheme,
 no Bidder Group Member (or any of their respective Related Bodies Corporate) has any written agreement, arrangement or understanding with any person in relation to the securities, business, operations or assets of a Beyond Group Member or the performance or conduct of the business of the Beyond Group (in whole or in part);
- (o) **dealing in Beyond securities:** as at the date of this deed:
  - (1) no Bidder Group Member (or any of their respective Related Bodies Corporate):
    - (A) has a Relevant Interest in any Beyond Shares; or
    - (B) has a right to acquire any Beyond Shares (whether issued or not or held by Bidder or not)





other than as disclosed to Beyond in writing by or on behalf of Bidder on or before the date of this deed; and

- (2) no Bidder Group Member (or any of their respective Related Bodies Corporate) has entered into any agreement, arrangement or understanding that confers rights the economic effect of which is equivalent or substantially equivalent to holding, acquiring, or disposing of:
  - (A) securities in Beyond or any other Beyond Group Member; or
  - (B) any assets of Beyond or any other Beyond Group member, (including cash settled derivative contracts, contracts for difference or other derivative contracts);

(p) **Nominee:** if a Nominee is appointed by the Bidder in accordance with clause 4.3, Nominee:

- (1) is a wholly-owned Subsidiary of Bidder;
- (2) all of the shares or other securities in Nominee are legally and beneficially owned by Bidder or another wholly-owned Subsidiary of Bidder and no other person will have any right to be issued or transferred any share or other security in Nominee; and
- (3) Bidder also gives the Bidder Representations and Warranties in clauses (d), (e), (f), (g) and (j) of this Schedule 3 in relation to Nominee, and clause (h)) in this Schedule 3 in respect of the valid, binding and enforceable nature of the obligations of Nominee under this deed and the Deed Poll.



## Schedule 4

### Beyond Representations and Warranties

---

Beyond represents and warrants to Bidder that:

- (a) **Beyond Information:** the Beyond Information contained in the Scheme Booklet, as at the date the Scheme Booklet is despatched to Beyond Shareholders, will not be misleading or deceptive in any material respect (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission;
- (b) **basis of Beyond Information:** the Beyond Information:
  - (1) will be prepared and included in the Scheme Booklet in good faith and on the understanding that Bidder and each other Bidder Indemnified Party will rely on that information for the purpose of determining to proceed with the Transaction; and
  - (2) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules,
 and all information provided by Beyond to the Independent Expert will, as at the date that information is provided, be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;
- (c) **new information:** it will, as a continuing obligation (but in respect of the Bidder Information, only to the extent that Bidder provides Beyond with updates to the Bidder Information), ensure that the Scheme Booklet is updated or supplemented to include all further or new information which arises after the Scheme Booklet has been despatched to Beyond Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Scheme Booklet is not misleading or deceptive in any material respect (including by way of omission);
- (d) **validly existing:** it is a validly existing corporation registered under the laws of its place of incorporation;
- (e) **authority:** the execution and delivery of this deed by Beyond has been properly authorised by all necessary corporate action of Beyond, and Beyond has taken or will take all necessary corporate action to authorise the performance by Beyond of this deed and the transactions contemplated by this deed
- (f) **power:** it has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
- (g) **no default:** the execution and performance of this deed does not conflict with or result in the breach of or a default under:
  - (1) any provision of Beyond's constitution; or
  - (2) any writ, order or injunction, judgment, law, ruling or regulation to which it is party or subject or by which it or any other Beyond Group Member is bound,



- and Beyond is not otherwise bound by any agreement or deed that would prevent or restrict Beyond from entering into and/or performing this deed;
- (h) **deed binding:** this deed is a valid and binding obligation of Beyond, enforceable in accordance with its terms;
  - (i) **capital structure:** its capital structure, comprising all issued equity securities as at the date of this deed, is as set out in Schedule 5 and it has not issued or granted (or agreed to issue or grant) any other securities (including Beyond Shares), options, warrants, performance rights or other instruments which are still outstanding and may convert into (or give the holder the right to be issued) Beyond Shares other than as set out in Schedule 5 and it is not under any obligation to issue or grant, and no person has any right to require, or call for, the issue or grant of, any Beyond Shares, options, warrants, performance rights or other instruments which are still outstanding and may convert (or give the holder the right to be issued) into Beyond Shares;
  - (j) **interest:** the Disclosure Materials set out full details of any company, partnership, trust, joint venture, body corporate or other enterprise in which Beyond or any other Beyond Group Member owns or otherwise holds any interest;
  - (k) **Insolvency Event or regulatory action:** no Insolvency Event has occurred in relation to it or any other Beyond Group Member, nor has any regulatory action of any nature of which it is aware been taken that would reasonably be likely to prevent or restrict its ability to fulfil its obligations under this deed or under the Scheme;
  - (l) **continuous disclosure:** as at the date of this deed Beyond has complied, and is in compliance, in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and, except as Fairly Disclosed in the Disclosure Materials and as relates to Bidder's proposal to acquire Beyond, Beyond is not relying on the carve-out in Listing Rule 3.1A to withhold any material information from public disclosure;
  - (m) **Disclosure Materials:** it has collated and made available to Bidder and its Related Persons all of the Disclosure Materials to Bidder and its Related Persons in good faith for the purposes of Bidder and its Related Persons undertaking due diligence in Beyond Group and:
    - (1) as far as Beyond is aware, the Disclosure Materials are accurate in all material respects and not materially misleading (including by omission);
    - (2) as far as Beyond is aware, Beyond has not withheld from the Disclosure Materials or failed to disclose in an announcement to ASX any information in its possession of which Beyond is aware which, if disclosed, would reasonably be expected to be material to a reasonable and sophisticated buyer's evaluation of the Beyond Group, its financial position, the performance of its business taken as a whole and the merits of the Transaction; and
    - (3) Beyond has disclosed in the Disclosure Materials all amounts payable by a Beyond Group Member to its Financial Advisers and employees in respect of the transactions contemplated by this deed,
    - (4) Beyond has disclosed in the Disclosure Materials all Material Contracts that contain change of control provisions that would be triggered by the implementation of the Transaction,

provided however that:



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- (5) for the purpose of subparagraph (1) above, Beyond does not make any representation or warranty as to the accuracy or adequacy of a forecast, prediction or projection, budget, business plan or other forward looking statement in respect of the future financial position, performance or prospects of the Beyond Group (**Beyond Group Forecast**) or that any Beyond Group Forecast will be achieved;
- (n) **compliance:** so far as Beyond is aware, as at the date of this deed, the Beyond Group has complied in all material respects with all Australian laws and regulations applicable to them and orders of Government Agencies having jurisdiction over it and has all material licenses, material permits and material authorisations necessary for it to conduct the business of the Beyond Group as it has been conducted in the 12 months prior to the date of this deed; and
- (o) **regulatory approvals:** so far as Beyond is aware, it does not require any approval, consent, clearance, waiver, ruling, relief, confirmation, exemption, declaration or notice from any Government Agency in order to execute and perform this deed, other than, for the avoidance of doubt, from ASIC and the Court, as contemplated by this deed.



Schedule 5

Capital structure

Security	Total number on issue
Beyond Shares	61,336,968




Signing page

Executed as a deed


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Beyond

Signed sealed and delivered by  
**Beyond International Limited**  
by

sign here ► DocuSigned by:  
  
C5202DE1B2A945A  
Company Secretary/Director

print name Peter Fedele

sign here ► DocuSigned by:  
  
5AE9B63346AA435...  
Director

print name Mikael Borglund



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Signing page

Signed sealed and delivered for  
**Banijay Entertainment SAS**  
under power of attorney dated 5  
October 2022  
by its attorney

DocuSigned by:  
*sign here* ▶ Marco Bassetti  
963377300485430...  
Attorney

*print name* Marco Bassetti

in the presence of

DocuSigned by:  
*sign here* ▶ Nicolas Chazarain  
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Witness

*print name* Nicolas Chazarain

I confirm that this document was signed in counterpart and witnessed over audio visual  
link in accordance with section 14G of the Electronic Transactions Act 2000 (NSW).





HERBERT  
SMITH  
FREEHILLS

## Attachment 1

### Indicative Timetable

Event	Date
Announcement and signing of scheme implementation deed	October 2022
Scheme Booklet provided to ASIC in draft	October / November 2022
First Court Hearing	November 2022
Scheme Meeting	December 2022
Second Court Hearing	December 2022 / January 2023
Effective Date	December 2022 / January 2023
Scheme Record Date	December 2022 / January 2023
Implementation Date	December 2022 / January 2023



HERBERT  
SMITH  
FREEHILLS

## Attachment 2

### Scheme of arrangement

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Attached



HERBERT  
SMITH  
FREEHILLS

Project Paris

## Scheme of arrangement – share scheme

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Beyond International Limited

Scheme Shareholders



HERBERT  
SMITH  
FREEHILLS

## Scheme of arrangement – share scheme

This scheme of arrangement is made under section 411 of the *Corporations Act 2001* (Cth)

Between the parties

Beyond	Beyond International Limited ACN 003 174 409 of 109 Reserve Road, Artarmon NSW 2064
Scheme Shareholders	Each holder of Beyond Shares recorded in the Beyond Share Register as at the Scheme Record Date

## 1 Definitions, interpretation and scheme components

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### 1.1 Definitions

Schedule 1 contains definitions used in this Scheme.

### 1.2 Interpretation

Schedule 1 contains interpretation rules for this Scheme.

### 1.3 Scheme components

This Scheme includes any schedule to it.

## 2 Preliminary matters

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- (a) Beyond is a public company limited by shares, registered in New South Wales, Australia, and has been admitted to the official list of the ASX. Beyond Shares are quoted for trading on the ASX.
- (b) As at the date of the Implementation Deed, 61,336,968 Beyond Shares were on issue.
- (c) Bidder is a private company registered in Paris, France.
- (d) Pursuant to clause 4.3 of the Implementation Deed, Bidder may nominate a directly or indirectly wholly-owned Subsidiary of Bidder (**Nominee**) to pay the Scheme Consideration and to which the Scheme Shares are to be transferred in accordance with this Scheme.
- (e) If this Scheme becomes Effective:



- (1) Bidder and Nominee must provide or procure the provision of the Scheme Consideration to the Scheme Shareholders in accordance with the terms of this Scheme and the Deed Poll; and
- (2) all the Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, must be transferred to Bidder (or Nominee) and Beyond will enter the name of Bidder (or Nominee) in the Beyond Share Register in respect of the Scheme Shares.
- (f) Beyond and Bidder have agreed, by executing the Implementation Deed, to implement this Scheme (among other things).
- (g) This Scheme attributes actions to Bidder and Nominee (as applicable) but does not itself impose an obligation on them to perform those actions. Bidder and Nominee have agreed, by executing the Deed Poll, to perform the actions attributed to them under this Scheme, including the provision or procuring the provision of the Scheme Consideration to the Scheme Shareholders.

## 3 Conditions

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### 3.1 Conditions precedent

This Scheme is conditional on and will have no force or effect (and will not become Effective) until, the satisfaction of each of the following conditions precedent:

- (a) all the conditions in clause 3.1 of the Implementation Deed (other than the condition in clause 3.1(c) of the Implementation Deed relating to Court approval of this Scheme) having been satisfied or waived in accordance with the terms of the Implementation Deed by 8.00am on the Second Court Date;
- (b) neither the Implementation Deed nor the Deed Poll having been terminated in accordance with their terms before 8.00am on the Second Court Date;
- (c) approval of this Scheme by the Court under paragraph 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under subsection 411(6) of the Corporations Act and agreed to by Bidder and Beyond;
- (d) subject to clause 8.1, such other conditions made or required by the Court under subsection 411(6) of the Corporations Act in relation to this Scheme and agreed to by Bidder and Beyond having been satisfied or waived; and
- (e) the orders of the Court made under paragraph 411(4)(b) (and, if applicable, subsection 411(6)) of the Corporations Act approving this Scheme coming into effect, pursuant to subsection 411(10) of the Corporations Act, on or before the End Date (or any later date Beyond and Bidder agree in writing).

### 3.2 Certificate

- (a) Beyond and Bidder will provide to the Court on the Second Court Date a certificate, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent in clauses 3.1(a) and 3.1(b) have been satisfied or waived.
- (b) The certificate referred to in clause 3.2(a) constitutes conclusive evidence that such conditions precedent were satisfied, waived or taken to be waived.



### 3.3 Termination

Without limiting any rights under the Implementation Deed, if the Implementation Deed is terminated in accordance with its terms before 8.00am on the Second Court Date, each of Bidder and Nominee (if applicable) are released from:

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

### 3.4 End Date

Without limiting any rights under the Implementation Deed, this Scheme will lapse and be of no further force or effect if:

- (a) the Effective Date does not occur on or before the End Date; or
- (b) the Implementation Deed or the Deed Poll is terminated in accordance with its terms,

unless Beyond and Bidder otherwise agree in writing.

## 4 Implementation of this Scheme

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### 4.1 Lodgement of Court orders with ASIC

Beyond must lodge with ASIC, in accordance with subsection 411(10) of the Corporations Act, an office copy of the Court order approving this Scheme as soon as possible after the Court approves this Scheme and in any event by 5.00pm on the first Business Day after the day on which the Court approves this Scheme.

### 4.2 Transfer of Scheme Shares

On the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clause 5.1(b) and 5.1(c), the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, must be transferred to Bidder (or Nominee), without the need for any further act by any Scheme Shareholder (other than acts performed by Beyond as attorney and agent for Scheme Shareholders under clause 8.5), by:
  - (1) Beyond delivering to Bidder (or Nominee) a duly completed Scheme Transfer, executed on behalf of the Scheme Shareholders by Beyond as attorney and agent, for registration; and
  - (2) Bidder (or Nominee) duly executing the Scheme Transfer, attending to the stamping of the Scheme Transfer (if required) and delivering it to Beyond for registration; and
- (b) immediately following receipt of the Scheme Transfer in accordance with clause 4.2(a)(2), but subject to the stamping of the Scheme Transfer (if required), Beyond must enter, or procure the entry of, the name of Bidder (or Nominee) in the Beyond Share Register in respect of all the Scheme Shares transferred to Bidder (or Nominee) in accordance with this Scheme.



## 5 Scheme Consideration

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### 5.1 Provision of Scheme Consideration

- (a) Bidder (or Nominee) must, and Beyond must use its best endeavours to procure that Bidder (or Nominee) does, by no later than the Business Day before the Implementation Date, deposit, or procure the deposit, in cleared funds an amount equal to the aggregate cash amount of the Scheme Consideration payable to all Scheme Shareholders, into an Australian dollar denominated trust account with an Authorised Deposit-taking Institution (as defined by the *Banking Act 1959* (Cth)) operated by Beyond as trustee for the Scheme Shareholders, (provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to Nominee's account).
- (b) On the Implementation Date, subject to funds having been deposited in accordance with clause 5.1(a), Beyond must pay or procure the payment of the Scheme Consideration to each Scheme Shareholder from the trust account referred to in clause 5.1(a).
- (c) Subject to clause 5.1(d), the obligations of Beyond under clause 5.1(b) will be satisfied by Beyond (in its absolute discretion, and despite any election referred to in clause 5.1(c)(1) or authority referred to in clause 5.1(c)(2) made or given by the Scheme Shareholder):
  - (1) if a Scheme Shareholder has, before the Scheme Record Date, made a valid election in accordance with the requirements of the Beyond Registry to receive dividend payments from Beyond by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election;
  - (2) paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Scheme Shareholder by an appropriate authority from the Scheme Shareholder to Beyond;
  - (3) dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Scheme Shareholder by prepaid post to their Registered Address (as at the Scheme Record Date), such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 5.2).
- (d) In respect of any Scheme Shareholder to which Beyond has provided an employee loan for the purpose of their acquisition of Scheme Shares, the obligation referred to in clause 5.1(b) will be satisfied by paying:
  - (1) to Beyond the portion of the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder equal to the amount of the loan which Beyond is entitled to recover from that Scheme Shareholder in relation to that Scheme Share; and
  - (2) as to the balance (if any) of the Scheme Consideration due to that Scheme Shareholder, to that Scheme Shareholder in accordance with the Scheme.



- (e) To the extent that, following satisfaction of Beyond's obligations under clause 5.1(b), there is a surplus in the amount held by Beyond as trustee for the Scheme Shareholders in the trust account referred to in that clause, that surplus may be paid by Beyond to Bidder (or Nominee).

## 5.2 Joint holders

In the case of Scheme Shares held in joint names:

- (a) subject to clause 5.1(c), the Scheme Consideration is payable to the joint holders and any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to either, at the sole discretion of Beyond, the holder whose name appears first in the Beyond Share Register as at the Scheme Record Date or to the joint holders (unless the joint holders have nominated a bank account under clauses 5.1(c)(1) or 5.1(c)(2), in which case the amount must be deposited directly to the nominated bank account of the joint holders); and
- (b) any other document required to be sent under this Scheme, will be forwarded to either, at the sole discretion of Beyond, the holder whose name appears first in the Beyond Share Register as at the Scheme Record Date or to the joint holders.

## 5.3 Unclaimed monies

- (a) Beyond may cancel a cheque issued under this clause 5 if the cheque:
  - (1) is returned to Beyond; or
  - (2) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Beyond (or the Beyond Registry) (which request may not be made until the date which is 30 Business Days after the Implementation Date), Beyond must reissue a cheque that was previously cancelled under this clause 5.3.
- (c) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 7 of the *Unclaimed Money Act 1995* (NSW)).

## 5.4 Fractional entitlements

Where the calculation of the Scheme Consideration to be provided to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a cent, that fractional entitlement will be rounded down to the nearest whole cent.

## 5.5 Orders of a court or Government Agency

If written notice is given to Beyond (or the Beyond Registry), or Bidder (or Nominee), of an order or direction made by a court of competent jurisdiction or by another Government Agency that:

- (a) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable or required to be issued to that Scheme Shareholder by Beyond in accordance with this





clause 5, then Beyond shall be entitled to procure that provision of that consideration is made in accordance with that order or direction; or

- (b) prevents Beyond from providing consideration to any particular Scheme Shareholder in accordance with this clause 5, or the payment or issuance of such consideration is otherwise prohibited by applicable law, Beyond shall be entitled to (as applicable) retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Scheme Consideration until such time as provision of the Scheme Consideration in accordance with this clause 5 is permitted by that (or another) order or direction or otherwise by law.

## 6 Dealings in Beyond Shares

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### 6.1 Determination of Scheme Shareholders

To establish the identity of the Scheme Shareholders, dealings in Beyond Shares or other alterations to the Beyond Share Register will only be recognised if:

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Beyond Share Register as the holder of the relevant Beyond Shares before the Scheme Record Date; and
- (b) in all other cases, registrable transfer or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received before the Scheme Record Date at the place where the Beyond Share Register is kept,

and Beyond must not accept for registration, nor recognise for any purpose (except a transfer to Bidder (or Nominee) pursuant to this Scheme and any subsequent transfer by Bidder (or Nominee) or its successors in title), any transfer or transmission application or other request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate.

### 6.2 Register

- (a) Beyond must register registrable transmission applications or transfers of the Scheme Shares that are received in accordance with clause 6.1(b) before the Scheme Record Date provided that, for the avoidance of doubt, nothing in this clause 6.2(a) requires Beyond to register a transfer that would result in a Beyond Shareholder holding a parcel of Beyond Shares that is less than a 'marketable parcel' (for the purposes of this clause 6.2(a) 'marketable parcel' has the meaning given in the Operating Rules).
- (b) If this Scheme becomes Effective, a Scheme Shareholder (and any person claiming through that holder) must not dispose of or otherwise deal with, or purport or agree to dispose of or otherwise deal with, any Scheme Shares or any interest in them on or after the Scheme Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and Beyond shall be entitled to disregard any such disposal, purported disposal, agreement or other dealing.
- (c) For the purpose of determining entitlements to the Scheme Consideration, Beyond must maintain the Beyond Share Register in accordance with the provisions of this clause 6.2 until the Scheme Consideration has been paid to



the Scheme Shareholders. The Beyond Share Register in this form will solely determine entitlements to the Scheme Consideration.

- (d) All statements of holding for Beyond Shares (other than statements of holding in favour of Bidder (or Nominee)) will cease to have effect after the Scheme Record Date as documents of title in respect of those shares and, as from that date, each entry current at that date on the Beyond Share Register (other than entries on the Beyond Share Register in respect of Bidder (or Nominee)) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Beyond Shares relating to that entry.
- (e) As soon as possible on or after the Scheme Record Date, and in any event by 5.00pm on the first Business Day after the Scheme Record Date, Beyond will ensure that details of the names, Registered Addresses and holdings of Beyond Shares for each Scheme Shareholder as shown in the Beyond Share Register are available to Bidder (or Nominee) in the form Bidder (or Nominee) reasonably requires.

## 7 Quotation of Beyond Shares

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- (a) Beyond must apply to ASX to suspend trading on the ASX in Beyond Shares with effect from the close of trading on the Effective Date.
- (b) On a date after the Implementation Date to be determined by Bidder, Beyond must apply:
  - (1) for termination of the official quotation of Beyond Shares on the ASX; and
  - (2) to have itself removed from the official list of the ASX.

## 8 General Scheme provisions

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### 8.1 Consent to amendments to this Scheme

If the Court proposes to approve this Scheme subject to any alterations or conditions:

- (a) Beyond may, by its counsel, consent on behalf of all persons concerned to those alterations or conditions to which Bidder has consented; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions which Beyond has consented to in accordance with clause 8.1(a).

### 8.2 Scheme Shareholders' agreements and warranties

- (a) Each Scheme Shareholder:
  - (1) agrees to the transfer of their Scheme Shares together with all rights and entitlements attaching to those Scheme Shares in accordance with this Scheme;
  - (2) agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;

- (3) agrees to, on the direction of Bidder (or Nominee), destroy any holding statements or share certificates relating to their Scheme Shares;
  - (4) who holds their Beyond Shares in a CHESS Holding agrees to the conversion of those Scheme Shares to an Issuer Sponsored Holding and irrevocably authorises Beyond to do anything necessary or expedient (whether required by the Settlement Rules or otherwise) to effect or facilitate such conversion; and
  - (5) acknowledges and agrees that this Scheme binds Beyond and all Scheme Shareholders (including those who do not attend the Scheme Meeting and those who do not vote, or vote against this Scheme, at the Scheme Meeting).
- (b) Each Scheme Shareholder is taken to have warranted to Beyond, Bidder and Nominee on the Implementation Date, and appointed and authorised Beyond as its attorney and agent to warrant to Bidder and Nominee on the Implementation Date, that:
- (1) all their Beyond Shares (including any rights and entitlements attaching to those shares) which are transferred under this Scheme will, at the date of transfer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to transfer their Beyond Shares to Bidder (or Nominee) together with any rights and entitlements attaching to those shares. Beyond undertakes that it will provide such warranty to Bidder (or Nominee) as agent and attorney of each Scheme Shareholder; and
  - (2) they have no existing right to be issued any Beyond Shares, or any other Beyond equity securities. Beyond undertakes that it will provide such warranty to Bidder and Nominee as agent and attorney of each Scheme Shareholder.

### 8.3 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to Bidder (or Nominee) will, at the time of transfer of them to Bidder (or Nominee), vest in Bidder (or Nominee) free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise and free from any restrictions on transfer of any kind.
- (b) Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clause 5.1, Bidder (or Nominee) will be beneficially entitled to the Scheme Shares to be transferred to it under this Scheme pending registration by Beyond of Bidder (or Nominee) in the Beyond Share Register as the holder of the Scheme Shares.

### 8.4 Appointment of sole proxy

Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clause 5.1(b) and clause 5.1(c), and until



Beyond registers Bidder (or Nominee) as the holder of all Scheme Shares in the Beyond Share Register, each Scheme Shareholder:

- (a) is deemed to have appointed Bidder (or Nominee) as attorney and agent (and directed Bidder (or Nominee) in each such capacity) to appoint any director, officer, secretary or agent nominated by Bidder (or Nominee) as its sole proxy and, where applicable or appropriate, corporate representative to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any shareholders' resolution or document;
- (b) must not, and undertakes to Bidder and Nominee not to, attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 8.4(a));
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder (or Nominee) reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in clause 8.4(a), Bidder (or Nominee) and any director, officer, secretary or agent nominated by Bidder (or Nominee) under clause 8.4(a) may act in the best interests of Bidder (or Nominee) as the intended registered holder of the Scheme Shares.

## 8.5 Authority given to Beyond

Each Scheme Shareholder, without the need for any further act:

- (a) on the Effective Date, irrevocably appoints Beyond and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of enforcing the Deed Poll against Bidder and Nominee, and Beyond undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against Bidder and Nominee on behalf of and as agent and attorney for each Scheme Shareholder; and
- (b) on the Implementation Date, irrevocably appoints Beyond and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of executing any document or doing or taking any other act necessary, desirable or expedient to give effect to this Scheme and the transactions contemplated by it, including (without limitation) executing the Scheme Transfer,

and Beyond accepts each such appointment. Beyond as attorney and agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.5 to all or any of its directors, officers, secretaries or employees (jointly, severally or jointly and severally).

## 8.6 Binding effect of Scheme

This Scheme binds Beyond and all of the Scheme Shareholders (including those who did not attend the Scheme Meeting to vote on this Scheme, did not vote at the Scheme Meeting, or voted against this Scheme at the Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of Beyond.



## 9 General

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### 9.1 Stamp duty

Bidder and Nominee:

- (a) must pay all stamp duty and any related fines and penalties payable in respect of this Scheme and the Deed Poll, the performance of the Deed Poll and each transaction effected by, made under or payable on or in connection with this Scheme or the Deed Poll; and
- (b) indemnifies each Scheme Shareholder against any liability arising from failure to comply with clause 9.1(a),

### 9.2 Consent

Each of the Scheme Shareholders consents to Beyond doing all things necessary or incidental to, or to give effect to, the implementation of this Scheme, whether on behalf of the Scheme Shareholders, Beyond or otherwise.

### 9.3 Notices

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Beyond, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at Beyond's registered office or at the office of the Beyond Registry.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by a Beyond Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

### 9.4 Governing law

- (a) This Scheme is governed by the laws in force in New South Wales, Australia.
- (b) The parties irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this Scheme. The parties irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

### 9.5 Further action

Beyond must do all things and execute all documents necessary to give full effect to this Scheme and the transactions contemplated by it.

### 9.6 No liability when acting in good faith

Each Scheme Shareholder agrees that none of Beyond, Bidder or Nominee nor any director, officer, secretary or employee of any of Beyond, Bidder or Nominee, shall be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.



# Schedule 1

## Definitions and interpretation

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### 1 Definitions

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

Term	Meaning
<b>ASIC</b>	the Australian Securities and Investments Commission.
<b>ASX</b>	ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.
<b>Beyond Group</b>	Beyond and each of its Subsidiaries, and a reference to a Beyond Group Member is to Beyond or any of its Subsidiaries.
<b>Beyond Registry</b>	Computershare Limited.
<b>Beyond Share</b>	a fully paid ordinary share in the capital of Beyond.
<b>Beyond Shareholder</b>	each person who is registered as the holder of a Beyond Share in the Beyond Share Register.
<b>Beyond Share Register</b>	the register of members of Beyond maintained in accordance with the Corporations Act.
<b>Bidder</b>	Banijay Entertainment SAS.
<b>Bidder Group</b>	Bidder and its Subsidiaries and a reference to a <b>Bidder Group Member</b> is to any one of them.
<b>Business Day</b>	a day that is not a Saturday, Sunday or a public holiday or bank holiday in Sydney, Australia.



Term	Meaning
<b>CHESS</b>	the Clearing House Electronic Subregister System operated by ASX Settlement Pty Ltd and ASX Clear Pty Limited.
<b>CHESS Holding</b>	has the meaning given in the Settlement Rules.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth), as modified or varied by ASIC.
<b>Court</b>	the Supreme Court of New South Wales, or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Bidder and Beyond.
<b>Deed Poll</b>	the deed poll in the form of Attachment 1 or such other form as agreed in writing between the parties under which Bidder and Nominee (if any) covenant in favour of the Scheme Shareholders to perform the obligations attributed to Bidder and Nominee (if any) under this Scheme.
<b>Effective</b>	when used in relation to this Scheme, the coming into effect, under subsection 411(10) of the Corporations Act, of the Court order made under paragraph 411(4)(b) of the Corporations Act in relation to this Scheme.
<b>Effective Date</b>	the date on which this Scheme becomes Effective.
<b>End Date</b>	<ol style="list-style-type: none"> <li>1 31 March 2023; or</li> <li>2 such other date as agreed in writing by the parties.</li> </ol>
<b>Government Agency</b>	any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including any stock or other securities exchange), or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian (including ASIC and the Takeovers Panel).
<b>Implementation Date</b>	the fifth Business Day after the Scheme Record Date, or such other date after the Scheme Record Date as the parties agree in writing or is ordered by the Court or required by ASX.



Term	Meaning
<b>Implementation Deed</b>	the scheme implementation deed dated 5 October 2022 between Beyond and Bidder relating to the implementation of this Scheme.
<b>Issuer Sponsored Holding</b>	has the meaning given in the Settlement Rules.
<b>Listing Rules</b>	the official listing rules of ASX.
<b>Nominee</b>	has the meaning given to it in clause 4.3 of the Implementation Deed.
<b>Operating Rules</b>	the official operating rules of ASX.
<b>Registered Address</b>	in relation to a Beyond Shareholder, the address shown in the Beyond Share Register as at the Scheme Record Date.
<b>Scheme</b>	this scheme of arrangement under Part 5.1 of the Corporations Act between Beyond and the Scheme Shareholders under which all of the Scheme Shares will be transferred to Bidder (or Nominee) and the Scheme Shareholders will be entitled to receive the Scheme Consideration, together with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and consented to by Bidder in accordance with clause 4.2 of the Implementation Deed.
<b>Scheme Consideration</b>	the consideration to be provided by Bidder (or Nominee) to each Scheme Shareholder for the transfer to Bidder (or Nominee) of each Scheme Share, being for each Beyond Share held by a Scheme Shareholder as at the Scheme Record Date, an amount of \$0.7744.
<b>Scheme Meeting</b>	the meeting of the Beyond Shareholders ordered by the Court to be convened under subsection 411(1) of the Corporations Act to consider and vote on the Scheme Resolution and includes any meeting convened following any adjournment or postponement of that meeting.
<b>Scheme Record Date</b>	the time and date for determining entitlements to receive the Scheme Consideration, being 7.00pm on the fifth Business Day after the Effective Date or such other time and date as the parties agree in writing.
<b>Scheme Resolution</b>	the resolution to approve this Scheme to be considered by Beyond Shareholders at the Scheme Meeting.





Term	Meaning
<b>Scheme Shareholder</b>	a Beyond Shareholder as at the Scheme Record Date.
<b>Scheme Shares</b>	all Beyond Shares held by the Scheme Shareholders as at the Scheme Record Date.
<b>Scheme Transfer</b>	a duly completed and executed proper instrument of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, in favour of Bidder (or Nominee) as transferee, which may be a master transfer of all or part of the Scheme Shares.
<b>Second Court Date</b>	the first day on which an application made to the Court for an order under paragraph 411(4)(b) of the Corporations Act approving this Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application or appeal is heard.
<b>Settlement Rules</b>	the ASX Settlement Operating Rules, being the official operating rules of the settlement facility provided by ASX Settlement Pty Ltd.
<b>Subsidiary</b>	has the meaning given in Division 6 of Part 1.2 of the Corporations Act.

## 2 Interpretation

In this Scheme:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this Scheme;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Scheme have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual;
- (f) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this Scheme;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or reenactments of any of them (whether passed by the same or another Government Agency with legal power to do so);



- (h) a reference to a document (including this Scheme) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to '\$', 'A\$' or 'dollar' is to Australian currency;
- (j) a reference to any time is, unless otherwise indicated, a reference to that time in Sydney, Australia;
- (k) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1 of this Schedule 1, has the same meaning when used in this Scheme;
- (l) a reference to a party to a document includes that party's successors and permitted assignees;
- (m) no provision of this Scheme will be construed adversely to a party because that party was responsible for the preparation of this Scheme or that provision;
- (n) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (o) a reference to a body, other than a party to this Scheme (including an institute, association or authority), whether statutory or not:
  - (1) which ceases to exist; or
  - (2) whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (p) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (q) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (r) if an act prescribed under this Scheme to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day; and
- (s) a reference to the Listing Rules, Settlement Rules, and the Operating Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

### 3 Interpretation of inclusive expressions

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Specifying anything in this Scheme after the words 'include' or 'for example' or similar expressions does not limit what else is included.

### 4 Business Day

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



HERBERT  
SMITH  
FREEHILLS

## Attachment 1

### Deed Poll

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Attached



HERBERT  
SMITH  
FREEHILLS

## Attachment 3

### Deed poll

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Attached



HERBERT  
SMITH  
FREEHILLS

Deed

Project Paris

## Share scheme deed poll

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Bidder

Nominee



HERBERT  
SMITH  
FREEHILLS

## Share scheme deed poll

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Date ►

This deed poll is made

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By

**Banijay Entertainment SAS**

Paris commercial registry number 503 069 965 of 5 rue François 1er,  
75008 Paris, France

(Bidder)

and

[insert] ([insert]) of [insert]

(Nominee)

**Drafting note:** Amendments to be made as necessary if a nominee is not appointed so that all obligations are a primary obligation of Bidder.

in favour of

each person registered as a holder of fully paid ordinary shares in Beyond International Limited (**Beyond**) in the Beyond Share Register as at the Scheme Record Date.

Recitals

- 1 Beyond and Bidder have entered into the Implementation Deed.
  - 2 In the Implementation Deed, Bidder agreed to make this deed poll and to procure that Nominee make this deed poll.
  - 3 Bidder and Nominee are each making this deed poll for the purpose of covenanting in favour of the Scheme Shareholders to perform the actions and obligations attributed to each of them under the Implementation Deed and the Scheme.
- 

This deed poll provides as follows:

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# 1 Definitions and interpretation

## 1.1 Definitions

- (a) The meanings of the terms used in this deed poll are set out below.

Term	Meaning
<b>Beyond</b>	Beyond International Limited ACN 003 174 409.
<b>First Court Date</b>	the first day on which an application made to the Court for an order under subsection 411(1) of the Corporations Act convening the Scheme Meeting is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.
<b>Implementation Deed</b>	the scheme implementation deed entered into Beyond and Bidder dated 5 October 2022.
<b>Scheme</b>	the members' scheme of arrangement under Part 5.1 of the Corporations Act between Beyond and the Scheme Shareholders under which all of the Scheme Shares will be transferred to Bidder (or Nominee) and the Scheme Shareholders will be entitled to receive the Scheme Consideration, the form of which is set out in Attachment 1 (or such other form as agreed in writing by Bidder and Beyond), together with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and consented to by Beyond and the Bidder in accordance with clause 4.2 of the Implementation Deed.

- (b) Unless the context otherwise requires, terms defined in the Scheme have the same meaning when used in this deed poll.

## 1.2 Interpretation

Sections 2, 3 and 4 of Schedule 1 of the Scheme apply to the interpretation of this deed poll, except that references to 'this Scheme' are to be read as references to 'this deed poll'.

## 1.3 Nature of deed poll

Bidder and Nominee each acknowledge that:

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



## 2 Conditions to obligations

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### 2.1 Conditions

This deed poll and the obligations of Bidder and Nominee under this deed poll are subject to the Scheme becoming Effective.

### 2.2 Termination

The obligations of Bidder and Nominee under this deed poll to the Scheme Shareholders will automatically terminate and the terms of this deed poll will be of no force or effect if:

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

unless Bidder, Nominee and Beyond otherwise agree in writing (and, if required, approved by the Court).

### 2.3 Consequences of termination

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

- (a) Bidder and Nominee are released from each of their obligations to further perform this deed poll; and
- (b) each Scheme Shareholder retains the rights they have against Bidder and Nominee in respect of any breach of this deed poll which occurred before it was terminated.

## 3 Scheme obligations

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### 3.1 Undertaking to pay Scheme Consideration

Subject to clause 2:

- (a) Nominee undertakes, and Bidder undertakes to procure Nominee, in favour of each Scheme Shareholder to deposit, or procure the deposit of, in cleared funds, by no later than the Business Day before the Implementation Date, an amount equal to the aggregate amount of the Scheme Consideration payable to all Scheme Shareholders under the Scheme into an Australian dollar denominated trust account operated by Beyond as trustee for the Scheme Shareholders, except that any interest on the amounts deposited (less bank fees and other charges) will be credited to Nominee's account;
- (b) Bidder undertakes in favour of each Scheme Shareholder that, in the event Nominee will not or does not fulfil its obligations under clause 3.1(a) (or if a Nominee is not appointed), Bidder will perform those obligations as if the references to Nominee in clause 3.1(a) were reference to Bidder; and
- (c) each of Bidder and Nominee undertakes in favour of each Scheme Shareholder to undertake all other actions, and give each acknowledgement, representation and warranty (if any), attributed to each of them under the Scheme,

in each case, subject to and in accordance with the terms of the Scheme.





## 4 Warranties

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Bidder and Nominee represents and warrants in favour of each Scheme Shareholder, in respect of itself, that:

- (a) it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) it has full capacity, corporate power and lawful authority to execute, deliver and enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) this deed poll is valid and binding on it and enforceable against it in accordance with its terms; and
- (e) this deed poll does not conflict with, or result in the breach of or default under, any provision of its constitution or articles of association, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

## 5 Continuing obligations

---

This deed poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) Bidder and Nominee have fully performed their obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.

## 6 Notices

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### 6.1 Form of Notice

A notice or other communication in respect of this deed poll (**Notice**) must be:

- (a) in writing and in English and signed by or on behalf of the sending party; and
- (b) addressed to Bidder and Nominee in accordance with the details set out below (or any alternative details nominated by Bidder or Nominee by Notice).

**Attention**

Marco Bassetti

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**Address**

5 rue François 1er, 75008 Paris, France

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**Email address**

[m.bassetti@banijay.com](mailto:m.bassetti@banijay.com)

with a copy to

Nicolas Chazarain

[n.chazarain@banijay.com](mailto:n.chazarain@banijay.com)

Jonathan Farrer, Partner

[jonathan.farrer@corrs.com.au](mailto:jonathan.farrer@corrs.com.au)

Adam Foreman, Partner

[adam.foreman@corrs.com.au](mailto:adam.foreman@corrs.com.au)

## 6.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below.

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (**business hours period**), in the place nominated by the addressee as its address in clause 6.1(b), then the Notice will instead be regarded as given and received at the start of the following business hours period in that place.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address
By express post to the nominated address	At 9.00am (addressee's time) on the fourth Business Day after the date of posting
By email to the nominated email address	<p>The earlier of:</p> <ol style="list-style-type: none"> <li>1 when the recipient's email server generates a message to the sender confirming that the email has been delivered to that server ("<b>delivery receipt</b>"), or at the time that the recipient "read" the email as stated in an automated message received by the sender ("<b>read receipt</b>");</li> <li>2 the time that the recipient confirms receipt of the email by reply email to the sender; and</li> <li>3 four hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that four</li> </ol>



hour period, an automated message that the email has not been delivered.

### 6.3 Notice must not be given by electronic communication

A Notice must not be given by electronic means of communication (other than email as permitted in clause 6.2).

## 7 General

### 7.1 Stamp duty

- (a) Nominee:
  - (1) must pay all stamp duty and any related fines and penalties payable on or in connection with the Scheme and this deed poll and the transfer by the Scheme Shareholders of the Scheme Shares to Nominee pursuant to the Scheme; and
  - (2) indemnifies each Scheme Shareholder against any liability arising from failure to comply with clause 7.1(a)(1).
- (b) In the event that Nominee will not or does not fulfil its obligations under clause 7.1(a), Bidder:
  - (1) must perform those obligations; and
  - (2) indemnifies each Scheme Shareholder against liability arising from failure to comply with clause 7.1(b)(1).

### 7.2 Governing law and jurisdiction

- (a) This deed poll is governed by the law in force in New South Wales, Australia.
- (b) Bidder and Nominee irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed poll. Bidder and Nominee irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

### 7.3 Service of process

- (a) Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of Notices under clause 6.
- (b) Bidder and Nominee each irrevocably appoints Corrs Chambers Westgarth as its agent for the service of process in Australia in relation to any matter arising out of this deed. If Corrs Chambers Westgarth ceases to be able to act as such or have an address in Australia, Bidder and Nominee each agree to appoint a new process agent in Australia and deliver to the other party within 10 Business



Days a copy of a written acceptance of appointment by the process agent, upon receipt of which the new appointment becomes effective for the purpose of this deed. Bidder and Nominee must inform Beyond in writing of any change in the address of its process agent within 10 Business Days of the change.

## 7.4 Waiver

- (a) Bidder and Nominee may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (b) No Scheme Shareholder may rely on words or conduct of Bidder or Nominee as a waiver of any right unless the waiver is in writing and signed by Bidder or Nominee, as appropriate. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (c) The meanings of the terms used in this clause 7.4 are set out below.

Term	Meaning
<b>conduct</b>	includes delay in the exercise of a right.
<b>right</b>	any right arising under or in connection with this deed poll and includes the right to rely on this clause.
<b>waiver</b>	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

## 7.5 Variation

A provision of this deed poll may not be varied unless the variation is agreed to by Bidder and Nominee and:

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

in which event Bidder and Nominee must enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation.

## 7.6 Cumulative rights

The rights, powers and remedies of Bidder, Nominee and the Scheme Shareholders under this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this deed poll.



## **7.7 Assignment**

- (a) The rights created by this deed poll are personal to Bidder, Nominee and each Scheme Shareholder and must not be dealt with at law or in equity without the prior written consent of Bidder or Nominee.
- (b) Any purported dealing in contravention of clause 7.7(a) is invalid.

## **7.8 Joint and several obligations**

Bidder and Nominee are jointly and severally liable for each obligation imposed on both of them by the terms of this deed poll.

## **7.9 Further action**

Bidder and Nominee must, at their own expense, do all things and execute all documents necessary to give full effect to this deed poll and the transactions contemplated by it.



HERBERT  
SMITH  
FREEHILLS

## Attachment 1

### Scheme

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Attached



Signing page

Executed as a deed poll

Signed sealed and delivered for  
**Banijay Entertainment SAS**  
under power of attorney dated 5  
October 2022  
by its attorney

in the presence of

sign here ► \_\_\_\_\_  
Attorney

sign here ► \_\_\_\_\_  
Witness

print name \_\_\_\_\_

print name \_\_\_\_\_

I confirm that this document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000 (NSW).

Signed sealed and delivered by  
**[Nominee]**  
by

sign here ► \_\_\_\_\_  
Company Secretary/Director

sign here ► \_\_\_\_\_  
Director

print name \_\_\_\_\_

print name \_\_\_\_\_



HERBERT  
SMITH  
FREEHILLS

## Attachment 4

### Conditions Precedent certificate

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Attached





HERBERT  
SMITH  
FREEHILLS

# Certificate

## Conditions precedent certificate

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Beyond International Limited (**Beyond**) and Banijay Entertainment SAS (**Bidder**) certify and confirm, in respect of matters within each respective party's knowledge, and agree, that each of the conditions precedent:

- 1 in clause 3.1 (other than the condition in clause 3.1(c) relating to Court approval) of the scheme implementation deed dated 5 October 2022 between Beyond and Bidder (**SID**) has been satisfied, waived, or is hereby waived by the relevant party (or parties) to the SID in accordance with the terms of the SID; and
- 2 in clauses 3.1(a) and (b) of the scheme of arrangement between Beyond and the relevant Beyond shareholders which appears in Annexure [●] of Beyond's scheme booklet dated [insert] has been satisfied.

This deed is governed by the laws of New South Wales.

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

Dated:

### Executed as a deed

Signed sealed and delivered by  
**Beyond International Limited**  
by

sign here ► \_\_\_\_\_  
Company Secretary/Director

sign here ► \_\_\_\_\_  
Director

print name \_\_\_\_\_

print name \_\_\_\_\_



HERBERT  
SMITH  
FREEHILLS

Signed sealed and delivered for  
**Banijay Entertainment SAS**  
under power of attorney dated 5  
October 2022  
by its attorney

in the presence of

sign here ► \_\_\_\_\_  
Attorney

sign here ► \_\_\_\_\_  
Witness

print name \_\_\_\_\_

print name \_\_\_\_\_

I confirm that this document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).