

ASX ANNOUNCEMENT

14 March 2022

VIRTUS HEALTH LIMITED (ASX: VRT)

Virtus enters into binding implementation deed with CapVest at improved price following receipt of updated non-binding, conditional indication of interest from BGH

Key Points

- Virtus has signed a Transaction Implementation Deed with an entity controlled by CapVest Partners LLP ("CapVest"), under which CapVest undertakes to:
 - acquire 100% of Virtus by a scheme of arrangement ("Scheme") offering total value to Virtus Shareholders of \$8.25 cash per share less the value of any dividends or distributions declared or paid after today (including the \$0.12 per share dividend declared by Virtus on 22 February 2022) ("Permitted Distributions"), and
 - make a simultaneous off-market takeover offer ("Takeover Offer"), conditional on (among other things) the Scheme failing and a 50.1% minimum acceptance condition, offering total value of \$8.10 per share less the Permitted Distributions.
- The Scheme consideration of \$8.25 cash represents a premium of c. 58.3% to the undisturbed Virtus share price of \$5.21 as at 13 December 2021 ("Undisturbed Virtus Share Price"), being the last close price before the first announcement that Virtus had received an unsolicited proposal from BGH Capital Pty Ltd ("BGH") to acquire Virtus by scheme of arrangement.
- The value of the Takeover Offer of \$8.10 cash represents a premium of c. 55.5% to the Undisturbed Virtus Share Price.
- The transaction outlined in the Transaction Implementation Deed ("Binding CapVest Transaction") is fully funded and binding. It is subject to limited conditions, and is not subject to any conditions within the control or discretion of CapVest.
- The Virtus Board may determine and pay a fully franked special dividend, based on the H1 FY22 Results at 31 December 2021, less the \$0.12 per share dividend declared by Virtus on 22 February 2022, providing for up to 44 cents per share in cash on or shortly before implementation of the Binding CapVest Transaction, which could release up to approximately 19 cents per share in franking credits attached. Eligible shareholders may receive the benefit from these franking credits, subject to their marginal tax rate. The amount payable by CapVest under the Scheme or Takeover Offer will be reduced respectively by the amount of any such special dividend.
- The Board unanimously recommends the Binding CapVest Transaction in the absence of a Superior Proposal and subject to an independent expert concluding that the Scheme is in the best interests of Virtus shareholders and that the Takeover Offer is fair and reasonable.

- CapVest improved the value of its proposal following, and in response to, a revised unsolicited non-binding conditional indication of interest from BGH to acquire all of Virtus' shares by scheme of arrangement at \$8.10 per share less the Permitted Distributions, which Virtus received from BGH after the market closed on 10 March 2022 ("Latest BGH Indicative Proposal").
- Consistent with its fiduciary and statutory obligations, late on 10 March 2022, the Virtus Board resolved to engage with BGH to determine whether the latest BGH indicative proposal could become a binding proposal capable of acceptance by Virtus. However, following the subsequent receipt of CapVest's improved proposal and taking into account all of the relevant information and considerations in the best interests of Virtus and its shareholders, the Virtus Board unanimously determined that it would sign the Transaction Implementation Deed and would not engage further with, or provide due diligence access to, BGH in respect of the Latest BGH Indicative Proposal.
- The Transaction Implementation Deed contains a customary fiduciary out provision, which allows the Board to fully consider any further improved competing proposals from BGH or any other party that are or may reasonably be expected to lead to a Superior Proposal.

* * * *

Virtus Health Limited ("Virtus", ASX: VRT) announces that it has entered into a Transaction Implementation Deed ("TID") with an entity controlled by CapVest Partners LLP ("CapVest"), under which CapVest undertakes to acquire 100% of Virtus by way of scheme of arrangement ("Scheme") offering total value of \$8.25 cash per share less the value of any dividends or distributions declared or paid after today (including the \$0.12 per share dividend declared by Virtus on 22 February 2022) ("Permitted Distributions"), and a simultaneous off-market takeover offer ("Takeover Offer") offering total value of \$8.10 less the Permitted Distributions (the Takeover Offer and the Scheme, together, being the "Binding CapVest Transaction").

The Virtus Board is permitted to declare and pay a fully franked special dividend of up to 44 cents per share on or before the implementation date of the Scheme or the Takeover Offer consideration being paid, if either transaction proceeds ("Special Dividend"). The Special Dividend could have up to approximately 19 cents per share in franking credits attached. There may be an opportunity for eligible shareholders, subject to their marginal tax rate, to receive the benefit from franking credits attached to any such Special Dividend. The amount payable under the Binding CapVest Transaction will be reduced by the amount per share of any such Special Dividend (but not the value of any franking credits). The payment and the amount of a Special Dividend remain at the discretion of the Virtus Board and will be subject to tax advice¹.

The improved consideration reflected in the Binding CapVest Transaction followed, and was in response to, a further revised unsolicited non-binding conditional indication of interest from BGH Capital Pty Limited ("BGH") to acquire all of Virtus' shares by scheme of arrangement at

¹ The Virtus Board reserves the right to declare and pay a Special Dividend that is less than 44 cents per share. Virtus intends to apply to the ATO for a class ruling on the treatment of the cash consideration and the Special Dividend in the hands of Australian resident shareholders.

\$8.10 per share less the Permitted Distributions ("Latest BGH Indicative Proposal"). Virtus received the Latest BGH Indicative Proposal after the market closed on 10 March 2022.

The Binding CapVest Transaction

Consistent with its fiduciary and statutory obligations, the Virtus Board has resolved that it is in the best interests of Virtus shareholders for Virtus to enter into the TID with CapVest. In so doing, the Virtus Board has secured the fully funded Binding CapVest Transaction for Virtus shareholders.

In reaching this decision, the Virtus Board had regard to the following factors:

- the certain value of the Binding CapVest Transaction at a significant premium to the Undisturbed Virtus Share Price;
- the certainty provided by the Binding CapVest Transaction, which values Virtus at 15 cents more² than the indicative value conditionally proposed by BGH under the Latest BGH Indicative Proposal;
- the fact that the Binding CapVest Transaction is fully funded and binding, and subject to only limited conditions, none of which are within the control or discretion of CapVest (the Latest BGH Indicative Proposal is non-binding, conditional and indicative in nature and subject to conditions including satisfactory completion of due diligence by BGH, finalisation of debt commitments for a binding proposal, final approval from BGH's Investment Committee and entry into an agreed scheme implementation agreement with Virtus);
- the support of Virtus' fertility specialists for the Binding CapVest Transaction, and the value of those fertility specialists to Virtus;
- the value of a binding and certain fully funded transaction in light of increased uncertainty and volatility in the global economy and global equity and debt markets, in part related to the outbreak of the Russia-Ukraine war; and
- the fact that the TID has a customary fiduciary out provision, which allows the Board to fully consider any competing proposals, including from BGH, that are or may reasonably be expected to lead to a Superior Proposal.

Virtus Chair, Sonia Petering, said "The Virtus Board is unanimous in our view that the Binding CapVest Transaction is in the best interests of Virtus shareholders. In making this assessment, the Board has carefully considered a range of matters including its view of the intrinsic value of Virtus, the superior value proposed by CapVest, the certainty for shareholders of the Binding CapVest Proposal including in light of a more volatile global economy and capital markets, the support for the transaction indicated by our doctors, the general positive feedback from shareholders in recent weeks and the terms of the Transaction Implementation Deed which allow a contest for control to continue. The Board has been impressed with CapVest's future

² If the Scheme is approved. If the Scheme is not approved, then Virtus shareholders will have an opportunity to receive the same value under the Takeover Offer as the indicative value conditionally proposed by BGH under the Latest BGH Indicative Proposal.

plans for Virtus, its focus on quality and excellence in services to our patients and its intentions to support Virtus' doctors and employees to grow Virtus in Australia and internationally."

Virtus' Managing Director & CEO, Kate Munnings, said "The strong contest for control of Virtus and the certain and superior value placed on Virtus by CapVest is a testament to Virtus' market leading position and the benefits of the Precision Fertility™ strategy which will harness technology and data to improve pregnancy outcomes as well as improve clinician and patients' experience. It is also a strong endorsement of all Virtus staff and fertility specialists who continue to work extremely hard to help more people become parents. Support from CapVest will provide a strong foundation for Virtus and its fertility specialists to further develop their practices and accelerate the national and international growth of Virtus."

Virtus Executive Director and immediate past Medical Director of Virtus' Melbourne IVF, Dr Lyndon Hale, said "CapVest has received overwhelming support from our fertility specialists, who recognise the compelling prospects for Virtus presented by the Binding CapVest Proposal. CapVest is well positioned to support our fertility specialists as they continue to grow their market leading practices and deliver the best possible outcomes for our patients."

CapVest Senior Partner, Kate Briant, said: "Throughout the process we've been thoroughly impressed, not only by the strength of the business but also by the passion and dedication of Virtus's leadership, including its outstanding team of expert and caring clinicians. We're delighted to have reached an agreement with the Board of Virtus Health and look forward to working closely with the team to support the continued growth of this industry-leading fertility business. CapVest has a 20-year track record of partnering with industry leading companies and management teams in the healthcare sector to enhance services provided to health care professionals and their patients. With our access to capital, technical expertise and knowledge of the global fertility market, combined with the strength of the Virtus Health business and its team of experienced practitioners, we have exciting plans to continue to grow its position in Australia and support its continued international expansion. In realising this ambition, we will leverage our considerable investing experience across the world and access to significant new investment."

Background on the bidding contest to date

The TID has been entered into by Virtus against a background of proposals which have been tabled by BGH and CapVest over recent months. This background is briefly summarised below.

On 13 December 2021, BGH tabled a non-binding indication of interest to acquire Virtus by scheme of arrangement for \$7.10 per share less the Permitted Distributions following BGH acquiring a relevant interest in 19.9% of Virtus ("First BGH Proposal").

On 20 January 2022, CapVest tabled a non-binding indicative offer to acquire Virtus by way of scheme of arrangement at \$7.60 per share less the Permitted Distributions. CapVest also indicated that if the scheme was not successfully implemented, it would be willing to proceed with an alternative transaction structure, such as an off-market takeover bid, at \$7.50 per share less the Permitted Distributions. In order to receive this proposal ("First CapVest Proposal"), Virtus signed a process deed with CapVest and granted it exclusive due diligence access.

On 28 February 2022, BGH tabled a revised non-binding indicative proposal to acquire Virtus by scheme of arrangement for \$7.65 per share less the Permitted Distributions, conditional on Virtus entering into an engagement deed with BGH and agreeing to certain conditions set out in Virtus' announcement of 28 February 2022 ("Second BGH Proposal").

On 1 March 2022, CapVest tabled a revised non-binding indicative proposal to acquire Virtus by way of scheme of arrangement at \$7.80 per share less the Permitted Distributions. CapVest also indicated that if the scheme was not successfully implemented, it would be willing to consider an alternative transaction structure, such as an off-market takeover bid, at \$7.70 per share less the Permitted Distributions. In announcing this revised CapVest proposal ("Second CapVest Proposal"), Virtus noted that CapVest expected to be in a position to enter into an implementation deed by 11 March 2022.

After market on 10 March 2022, BGH tabled a revised non-binding indicative proposal to acquire Virtus by scheme of arrangement for \$8.10 per share less the Permitted Distributions, conditional on Virtus not signing an implementation deed with CapVest and other matters outlined below ("Latest BGH Indicative Proposal").

Following Virtus' receipt of the Latest BGH Indicative Proposal and as part of its final negotiations of the TID, which the parties signed on 13 March 2022, CapVest improved the Second CapVest Proposal to the terms now reflected in the fully funded Binding CapVest Transaction. As noted above, under the Binding CapVest Transaction, CapVest has undertaken to:

- acquire 100% of Virtus by scheme of arrangement offering total value to Virtus Shareholders of \$8.25 cash per share less the Permitted Distributions, and
- make a simultaneous off-market takeover offer, conditional on (among other things) the Scheme failing and a 50.1% minimum acceptance condition, offering total value of \$8.10 per share less the Permitted Distributions.

Board rationale for entering into TID with CapVest

The Board was not considering a sale of the company before receiving the unsolicited indicative, non-binding and conditional proposals from BGH and then CapVest. The Board has sought to maximise the value created for shareholders at all times in responding to the unsolicited proposals that it has received.

After receipt of the First CapVest Proposal, which included in it as a fundamental and necessary condition of CapVest's willingness to proceed an exclusive due diligence period, the Board granted CapVest access to a limited period of exclusive due diligence. This decision was made after careful consideration of the proposals it had received from CapVest and BGH at that time, including advice from its financial and legal advisers, and the Board's determination that the First CapVest Proposal was attractive for shareholders in the context of a change of control transaction and superior to the First BGH Proposal (with BGH also having already secured a relevant interest of 20% in Virtus).

Although BGH tabled the Second BGH Proposal with a higher price on 28 February 2022, CapVest responded with its own improved and revised Second CapVest Proposal before Virtus

had had an opportunity to engage with BGH in relation to the Second BGH Proposal and the basis on which the Board would be prepared to facilitate due diligence access for BGH. As a result of the superior Second CapVest Proposal, the Board decided not to facilitate due diligence access for BGH at that time.

BGH then tabled the Latest BGH Indicative Proposal on 10 March 2022. While Virtus was engaging with BGH in relation to the basis on which it would facilitate due diligence access for BGH in respect of the Latest BGH Indicative Proposal, CapVest tabled an improved, certain and fully funded binding proposal (reflected in the Binding CapVest Transaction), which valued Virtus at 15 cents per share more than the indicative value conditionally proposed under the Latest BGH Indicative Proposal³.

The increase in the headline price in proposals received by Virtus (initially \$7.10 per share, now \$8.25 per share under the Binding CapVest Transaction⁴, in each case less the Permitted Distributions) clearly demonstrates that the Board has facilitated, and continues to facilitate, a competitive process which seeks to maximise value for shareholders.

As a result of the superior value and certainty of the Binding CapVest Transaction and taking into account all of the relevant information and considerations in the interests of Virtus and its shareholders, the Virtus Board unanimously determined that it was in the best interests of Virtus and its shareholders to enter into a binding agreement with CapVest and to not engage further with, or provide due diligence access to, BGH in respect of the Latest BGH Indicative Proposal. Signing the TID has secured for shareholders the fully funded Binding CapVest Transaction and will deliver Virtus shareholders an opportunity to receive 15 cents per share more of value than the indicative value conditionally proposed under the Latest BGH Indicative Proposal⁵ as well as the certainty of knowing that CapVest is contractually bound by the TID (as compared to the conditional and non-binding nature of the Latest BGH Indicative Proposal).

The Binding CapVest Transaction is the most superior proposal that has been received by Virtus to date, in relation to value, certainty, terms and timetable to completion.

The Board remains able to consider and progress superior proposals that any parties subsequently table. Accordingly, if BGH wishes to make a further proposal, they remain free to do so, as is any other party. The TID contains a fiduciary out which allows the Board to consider any such proposal and, if that proposal is or may be reasonably likely to lead to a superior proposal, the Board can engage with the party making it.

Overview of the Scheme under the Binding CapVest Transaction

Under the terms of the Scheme, Virtus shareholders will be entitled to receive total value of \$8.25 per share less the Permitted Distributions, subject to all applicable conditions being satisfied or waived, and the Scheme being implemented. As noted above, the Virtus Board is permitted to declare and pay a Special Dividend of up to 44 cents per share in cash on or shortly before implementation of the Scheme, which could have up to approximately 19 cents per share in franking credits attached. Eligible shareholders may receive the benefit from

³ See footnote 2 above.

⁴ See footnote 2 above.

⁵ See footnote 2 above.

these franking credits, subject to their marginal tax rate. The Scheme Consideration would be reduced by the amount of the Special Dividend, but not by the value of any franking credits.

The Scheme Consideration represents:

- a premium of c. 58.3% to the Undisturbed Virtus Share Price of \$5.21;
- an implied fully diluted equity value of \$719.2 million and enterprise value of \$794.4 million⁶; and
- an implied acquisition multiple of c. 12.7x EV / forecast FY22 pre-AASB16 EBITDA⁷.

The Scheme is subject to customary limited conditions and is not subject to any conditions within the control or discretion of CapVest (such as satisfactory completion of due diligence, finalisation of debt commitments and final approval from CapVest's Investment Committee). The conditions to the Scheme include:

- Virtus shareholder approval;
- Court approval;
- FIRB approval;
- No Material Adverse Change to Virtus;
- No Prescribed Occurrences; and
- The Independent Expert's Report concluding that the Scheme is in the best interests of Virtus shareholders.

Full details of the conditions to the Scheme are set out in the TID, a copy of which is attached to this announcement.

Overview of the Takeover Offer under the Binding CapVest Transaction

Under the terms of the Takeover Offer, accepting Virtus shareholders will be entitled to receive total value of \$8.10 per share less the Permitted Dividends ("Takeover Consideration").

It is intended that the Takeover Consideration that will be paid to shareholders will be reduced by the amount of a return of capital and potentially the Special Dividend (as noted above) paid to Virtus shareholders. Eligible shareholders may receive the benefit from any franking credits attached to the Special Dividend, subject to their marginal tax rate. The Takeover Consideration would be reduced by the amount of the Special Dividend, but not by the value

⁶ Assuming net debt of \$76.5m as at 31 December 2021.

⁷ This implied acquisition multiple is based off broker consensus pre-AASB16 EBITDA for the financial year ending 30 June 2022 of \$62.8 million based on the mean of the following brokers, released post 1HFY22 results; Morgans (22-Feb-22), Macquarie (22-Feb-22) and MST Marquee (22-Feb-22).

of any franking credits. Once the final amounts are determined, the components of the Takeover Consideration will be communicated to Virtus shareholders⁸.

Pursuant to the TID, Virtus has agreed that subject to Virtus Shareholder approval, the reconstruction of the Virtus Board following CapVest receiving acceptances under the Takeover Offer of not less than 50.1% and having declared the Takeover Offer unconditional, and the drawdown of funds under a new refinancing facility, it will pay a return of capital of \$2.67 per Virtus Share (increased to the extent the Special Dividend is not paid in full). This return of capital would be paid to all Virtus Shareholders before payment is made under the Takeover Offer and result in a reduction of the Takeover Consideration. The return of capital would be funded by a fully committed Virtus refinancing facility that has been arranged by CapVest which will also be available to refinance all of Virtus' existing bank debt

The Takeover Consideration represents:

- a premium of c. 55.5% to the Undisturbed Virtus Share Price of \$5.21;
- an implied fully diluted equity value of \$706.1 million and enterprise value of \$781.3 million⁹; and
- an implied acquisition multiple of c. 12.4x EV / forecast FY22 pre-AASB16 EBITDA¹⁰.

The Takeover Offer is subject to a number of conditions, which are set out in full in the TID, including:

- a minimum acceptance of at least 50.1% of the Virtus shares on issue (on a fully diluted basis);
- the Scheme is not approved by Virtus shareholders or the Court;
- Virtus shareholders approve the return of capital noted above;
- FIRB approval;
- no Material Adverse Change to Virtus in line with standard market benchmarks;
- no Prescribed Occurrences; and
- the TID not being terminated by CapVest due to breach of the TID by Virtus.

The Takeover Offer will remain open for a period of at least 20 business days after the date of the Scheme meeting. As such, Virtus shareholders will have the opportunity to consider the

⁸ Virtus intends to apply to the ATO for a class ruling on specific Australian tax implications for shareholders in relation to certain aspects of the Takeover Offer, including the Special Dividend and the capital return.

⁹ Assuming net debt of \$76.5m as at 31 December 2021.

¹⁰ This implied acquisition multiple is based off broker consensus pre-AASB16 EBITDA for the financial year ending 30 June 2022 of \$62.8 million based on the mean of the following brokers, released post 1HFY22 results; Morgans (22-Feb-22), Macquarie (22-Feb-22) and MST Marquee (22-Feb-22).

Takeover Offer after they have voted on the proposed Scheme and the outcome of that vote is known.

Other key details of the Transaction Implementation Deed

Under the TID, Virtus is subject to customary exclusivity obligations, including “no shop”, “no talk” (subject to customary fiduciary out exceptions) and notification obligations, and a matching right regime in respect of any Superior Proposal received by Virtus.

The TID also details circumstances under which a Virtus Break Fee of \$7,192,147 may be payable by Virtus to CapVest, or a reverse break fee of the same amount may be payable by CapVest to Virtus.

Unanimous recommendation of Binding CapVest Transaction

The Board has agreed to unanimously recommend that Virtus shareholders vote in favour of the Scheme, in the absence of a Superior Proposal and subject to an Independent Expert concluding that the Scheme is in the best interests of Virtus shareholders. Subject to the same qualifications, each Board member intends to vote, or procure the voting of, the shares held or controlled by them in their personal capacity in favour of the Scheme.

The Board has also agreed that if the Scheme is not successful, it will unanimously recommend that Virtus shareholders accept the Takeover Offer, in the absence of a Superior Proposal and subject to an Independent Expert concluding that the Takeover Offer is fair and reasonable. Subject to the same qualifications, each Board member intends to accept, or procure the acceptance of, the shares held or controlled by them in their personal capacity into the Takeover Offer.

The Board has also agreed to unanimously recommend that Virtus shareholders vote in favour of the return of capital, in the absence of a Superior Proposal and subject to the Takeover Offer continuing to be recommended. Each Board member intends to vote, or procure the voting of, the shares held or controlled by them in their personal capacity in favour of the return of capital.

Next Steps

Virtus intends to prepare a Transaction Booklet in respect of the Binding CapVest Proposal, which is expected to be sent to Virtus shareholders in May 2022. The Transaction Booklet will contain information relating to the Scheme and the Takeover Offer. It will also contain an Independent Expert's Report on whether the Scheme is in the best interests of shareholders and whether the Takeover Offer is fair and reasonable. A Scheme meeting is expected to be held in June 2022 and, if approved, the Scheme would be implemented shortly thereafter.

Virtus shareholders do not need to take any action at this stage and the Board will keep the market informed of any material developments in accordance with its continuous disclosure requirements.

Summary of the Latest BGH Indicative Proposal

The Latest BGH Indicative Proposal was received by Virtus after the market closed on 10 March 2022. Even though CapVest improved the value of its proposal following, and in response to, the Latest BGH Indicative Proposal, which culminated in the signing of the TID, Virtus provides the following information in respect of the Latest BGH Indicative Proposal for information purposes.

The Latest BGH Indicative Proposal was a non-binding conditional indication of interest from BGH to acquire all of Virtus' shares by way of scheme of arrangement at \$8.10 cash per share less the value of the Permitted Distributions. BGH indicated it was willing to offer a cash and scrip alternative to doctor shareholders.

The Latest BGH Indicative Proposal was conditional on: (a) the non-disclosure of the Latest BGH Indicative Proposal and its terms unless and until required under clause 4.11 of the Amended Process Deed between Virtus and CapVest or as required under Virtus' continuous disclosure obligations; (b) BGH and its representatives being granted full access to due diligence and Virtus management as reasonably required by BGH (including equal access to the information made available to CapVest and its representatives) for a period of four consecutive weeks from the time of full access; and (c) Virtus not entering into any implementation agreement/deed with CapVest prior to completion of BGH's due diligence process as contemplated in condition (b).

In response to communications from Virtus, BGH subsequently confirmed that it was willing to proceed without Virtus meeting the conditions outlined in (a) and (c) above on the basis that Virtus confirmed that (1) the Virtus Board has agreed, on the basis of the Latest BGH Indicative Proposal, to give BGH and its representatives full access to due diligence and Virtus management as reasonably required by BGH (including equal access to the information made available to CapVest and its representatives) for a period of four consecutive weeks from the time of full access, and (2) the due diligence access as per point (1) is subject only to BGH and Virtus agreeing the terms of a confidentiality agreement, and will not be withdrawn in the event that Virtus enters into an implementation deed with CapVest or otherwise. Virtus informed BGH that it was not prepared to agree to these terms to the extent the Virtus Board determines that the then latest BGH proposal is not, or may not reasonably be expected to lead to, a superior proposal to the then latest CapVest (or any other) proposal. These interactions with BGH were not resolved before CapVest tabled the Binding CapVest Transaction proposal, at which time the Virtus Board determined not to engage further with, or provide due diligence access to, BGH in respect of the Latest BGH Indicative Proposal.

Implementation of the Latest BGH Indicative Proposal was conditional upon entry into an agreed scheme implementation agreement with Virtus ("SIA"), which would include customary terms and conditions. BGH advised that its entry into the SIA would be subject to the following:

- the satisfactory completion of due diligence;
- after 10 March 2022, Virtus does not sell or agree to sell any material assets or enter into or agree to enter into any joint venture or similar arrangements with respect to any of Virtus' domestic or international operations;
- finalisation of debt commitments for a binding proposal;
- final approval to submit a binding proposal from the BGH Investment Committee; and

- unanimous recommendation by the Board of Directors of Virtus to vote in favour of the scheme proposed by BGH and vote the Virtus shares they own or control in favour of that scheme, in the absence of a superior proposal and subject to an independent expert concluding that that scheme is in the best interests of Virtus shareholders.

Miscellaneous

Virtus is being advised by Jefferies Australia as financial adviser, and by Gilbert + Tobin as legal adviser.

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

-ENDS-

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About Virtus Health Limited

Virtus Health Limited (ASX:VRT) brings together leading clinicians, scientists, researchers and support staff to provide exceptional fertility care and related specialised diagnostic and day hospital services. We have a successful medical collaboration, with 128 leading fertility specialists, supported by over 1,300 professional staff.

Transaction implementation deed

Evergreen BidCo Pty Ltd
Virtus Health Limited

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Date: 13 March 2022

Parties

- 1 **Virtus Health Limited (ACN 129 643 492)** of Level 3, 176 Pacific Highway, Greenwich, NSW 2065 (**Virtus**)
- 2 **Evergreen BidCo Pty Ltd (ACN 657 613 860)** of Level 16, 80 Collins Street South Tower, Melbourne, VIC 3000 (**Bidder**)

The parties agree:

Background

- A Bidder proposes to acquire all of the Virtus Shares by way of:
- a scheme of arrangement under Part 5.1 of the Corporations Act; or
 - if the Scheme does not become Effective, a takeover bid under Chapter 6 of the Corporations Act.
- B Virtus and Bidder have agreed to propose the Scheme and the Takeover Bid to Virtus Shareholders on the terms and conditions set out in this deed.
-

1 Defined terms and interpretation

1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary;
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act; and
- (c) which is defined in the GST Law, but is not defined in the Dictionary or the Corporations Act, has the meaning given to it in the GST Law.

1.2 Interpretation

The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this deed.

2 Agreement to propose the Transactions

2.1 Overview

On and subject to the terms of this deed:

- (a) Bidder proposes to acquire all of the Virtus Shares under the Scheme pursuant to which Virtus Shareholders will be able to receive the Scheme Consideration per Virtus Share; and

- (b) simultaneously, Bidder will make the Takeover Bid for all of the Virtus Shares at the Takeover Bid Consideration per Virtus Share, which will be conditional, amongst other matters, on the Scheme not becoming Effective.

2.2 Proposal of Scheme

- (a) Virtus will propose and implement the Scheme on and subject to the terms and conditions of this deed.
- (b) Bidder will assist Virtus in proposing and implementing the Scheme on and subject to the terms and conditions of this deed.

2.3 Takeover Bid

Bidder must:

- (a) make offers pursuant to an off-market takeover bid under Chapter 6 of the Corporations Act to acquire all the Virtus Shares on terms and conditions no less favourable to Virtus Shareholders than the Takeover Bid Terms (together, the **Offers** and each, an **Offer**); and
- (b) without limiting this clause 2.3, publicly announce on the date of this deed a proposal to make the Takeover Bid constituted by the despatch of the Offers, in accordance with clause 15.2.

2.4 Despatch of Transaction Booklet

- (a) Each party agrees to use reasonable endeavours to mail as one single combined document the Scheme Booklet, General Meeting Materials, Bidder's Statement and Target's Statement (**Transaction Booklet**) to Virtus Shareholders together in accordance with the Timetable; and
- (b) Virtus agrees that the Offers and accompanying documents to be sent by Bidder under the Takeover Bid under item 6 of section 633(1) of the Corporations Act may be sent to the Virtus Shareholders when the documents are mailed as a single combined document as contemplated by this clause 2.4.

2.5 Timetable

The parties agree to take all reasonable actions within their control to implement the Transaction in accordance with the Timetable. To the extent a modification is required for the time to perform a step set out in the Timetable, any extension of the time to perform that step (and any other step that is dependent on that step) will be kept to the minimum period that is reasonably possible and so that the overall time period for an extension for implementation of the Timetable is minimised.

2.6 Bidder may nominate Related Body Corporate

- (a) Bidder may nominate, under this clause 2.6, a Related Body Corporate of the Bidder (**Bidder Related Party**) (which may be separate entities for the Scheme and the Takeover Bid) to perform its obligations under clauses 2.1, 2.2(b) or 2.3 by giving written notice to Virtus of that relevant Bidder Related Party no later than 5 Business Days prior to the date on which Virtus intends to provide an advanced draft of the Transaction Booklet to ASIC for its review (as notified in writing to Bidder).

- (b) If, pursuant to clause 2.6(a), Bidder nominates a Bidder Related Party to perform its obligations, on and from the date of nomination, this deed is taken to be varied by replacing "Bidder" each time it appears in clauses 2.1, 2.2(b) or 2.3 (as applicable) with the name of that Bidder Related Party.
- (c) Bidder warrants that if, pursuant to clause 2.6(a), it nominates a Bidder Related Party to perform its obligations:
 - (i) Bidder and the Bidder Related Party will both enter into the Deed Poll;
 - (ii) Bidder will continue to be bound by this deed as if it was still the acquiring entity;
 - (iii) in the case of the:
 - (A) Scheme, Bidder will ensure that the Bidder Related Party completes the acquisition in accordance with this deed and the Deed Poll; and
 - (B) Takeover Bid, Bidder will ensure that the Bidder Related Party completes the acquisition in accordance with this deed and the Takeover Bid Terms.
- (d) Bidder unconditionally and irrevocably:
 - (i) guarantees to Virtus the due and punctual performance by any Bidder Related Party nominated under clause 2.6(a) of the Bidder Related Party's obligations under this deed, the Deed Poll and the Corporations Act; and
 - (ii) indemnifies Virtus, on demand, against all losses incurred by Virtus arising from any default or delay in the performance of such obligations.
- (e) The obligation of Bidder under clause 2.6(d) is a principal and continuing obligation and remains in full force and effect until all obligations of the relevant Bidder Related Party have been fully discharged.
- (f) The liability of Bidder under clause 2.6(d) is not affected by anything which, but for this clause 2.6(f), might operate to release or exonerate Bidder in whole or in part from its obligations.

3 Conditions precedent and pre-implementation steps

3.1 Conditions to Scheme

Subject to this clause 3, the Scheme will not become Effective, and the obligations of Bidder under clause 5.2 will not be 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) **(FIRB)** before 8.00am on the Second Court Date, one of the following has occurred:
 - (i) Bidder has received a written notice under FATA from the Treasurer (or his or her delegate) stating that, or to the effect that, the Commonwealth Government does not object to the acquisition of all the Scheme Shares by Bidder under the Scheme Transaction, either without condition or on terms that are acceptable to Bidder (acting reasonably), and the notice of no

objection has not been withdrawn, suspended or revoked before 8.00am on the Second Court Date; or

- (ii) following notice of the proposed acquisition of all the Scheme Shares by Bidder under the Scheme Transaction having been given by Bidder to the Treasurer under FATA, the Treasurer ceases to be empowered to make any order under Part 3 of FATA; or
 - (iii) where an interim order is made under the FATA in respect of the Scheme, the subsequent period for making a final order prohibiting the Scheme elapses without a final order being made;
- (b) (**Restraints**) no law, statute, ordinance, regulation, rule, temporary restraining order, preliminary or permanent injunction or other judgment, order or decree issued by any Court of competent jurisdiction or Government Agency or other legal restraint or prohibition preventing or materially restricting the Scheme is in effect at 8.00am on the Second Court Date;
 - (c) (**Shareholder approval**) the Scheme is approved by Virtus Shareholders at the Scheme Meeting by the majorities required under section 411(4)(a)(ii) of the Corporations Act;
 - (d) (**Court approval**) the Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act;
 - (e) (**No Prescribed Occurrence**) no Prescribed Occurrence occurs between the date of this deed and 8.00am on the Second Court Date;
 - (f) (**No Material Adverse Change**) there is no Material Adverse Change between the date of this deed and 8.00am on the Second Court Date;
 - (g) (**Independent Expert's Report**) the Independent Expert provides an Independent Expert's Report to Virtus, stating that in its opinion the Scheme is in the best interests of Virtus Shareholders, on or before the date on which the Scheme Booklet is registered with ASIC under the Corporations Act, and the Independent Expert does not change or publicly withdraw this conclusion prior to 8.00am on the Second Court Date;
 - (h) (**Bidder funding**) the Bidder Warranties contained in clauses (p) to (t) of Schedule 4 are true and correct as if given at all times between the date of this deed and 8.00am on the Second Court Date; and
 - (i) (**Performance Rights and Options**) before 8.00 am on the Second Court Date, arrangements have been put in place to deal with any options and performance rights on terms acceptable to Bidder, such that no options or performance rights (or any other securities in Virtus other than Virtus Shares) are in existence on the Scheme Record Date.

3.2 FIRB condition

Each of Bidder and Virtus acknowledges and agrees that the Standard Tax Conditions issued by FIRB from time to time are reasonable and acceptable to it if they are included in any "no objections" notification contemplated by clause 3.1(a)(i) or by the Takeover Bid Conditions in clause 1.7(a) of Schedule 3 that is received in connection with the Transactions.

3.3 Benefit and waiver of conditions precedent

- (a) The Scheme Conditions in clauses 3.1(a), 3.1(c) and 3.1(d) cannot be waived.
- (b) The Scheme Condition in clause 3.1(b) is for the benefit of both parties and any breach or non-satisfaction of any of it may only be waived in accordance with applicable law and with the written agreement of both parties.
- (c) The Scheme Conditions in clauses 3.1(e), 3.1(f) and 3.1(i) are for the sole benefit of Bidder and any breach or non-satisfaction of any of them may only be waived by Bidder (in its absolute discretion) in writing.
- (d) The Scheme Conditions in clauses 3.1(g) and 3.1(h) are for the sole benefit of Virtus and any breach or non-satisfaction may only be waived by Virtus (in its absolute discretion) in writing.
- (e) A party entitled to waive the breach or non-satisfaction of a Scheme Condition pursuant to this clause 3.3 (either individually or jointly) may do so in its absolute discretion.
- (f) Any waiver of the breach or non-satisfaction of a Scheme Condition by a party who is entitled to do so pursuant to this clause 3.3 is only effective if such waiver is given on or prior to 8.00am on the Second Court Date.
- (g) If a party waives the breach or non-satisfaction of any Scheme Condition, that waiver will not preclude it from suing the other party for any breach of this deed including a breach that resulted in the non-satisfaction of the Scheme Condition that was waived.
- (h) Waiver of a breach or non-fulfilment in respect of one Scheme Condition does not constitute:
 - (i) a waiver of breach or non-fulfilment of any other Scheme Condition resulting from the same event; or
 - (ii) a waiver of breach or non-fulfilment of that Scheme Condition arising from any other event.
- (i) The Takeover Bid Condition in clause 1.7(d) of Schedule 3 may only be waived by Bidder with the prior written consent of Virtus (in its absolute discretion).

3.4 Best endeavours

- (a) Bidder must use its best endeavours to satisfy, or procure the satisfaction of, the Scheme Condition in clause 3.1(a) and Takeover Bid Condition in clause 1.7(a) of Schedule 3 as soon as reasonably practicable after the date of this deed.
- (b) Each party must use their respective best endeavours to ensure or procure that:
 - (i) the Scheme Conditions in clauses 3.1(b), 3.1(c), 3.1(d) and 3.1(g) are satisfied as soon as reasonably practicable after the date of this deed and remain satisfied; and
 - (ii) there is no occurrence within their control that prevents, or would be reasonably likely to prevent, the satisfaction of any Condition (except to the extent such action is required to be taken or procured pursuant to, or is

otherwise permitted by, this deed, the Scheme or the Takeover Bid, or is required by law).

- (c) No party will take any action that will or is likely to hinder or prevent the satisfaction of a Condition, except to the extent that such action is required to be done or procured pursuant to, or is otherwise permitted by, this deed or the Scheme or the Takeover Bid, or is required by law.
- (d) Without limiting clause 3.4(c), Bidder must use its best endeavours to ensure that no person will be introduced as an equity investor or limited partner in, and no existing equity investor or limited partner's existing percentage interest will be increased, in:
 - (i) Bidder; or
 - (ii) any entity, fund, limited partnership or other collective investment vehicle which, directly or indirectly, has any shareholding or other interest in Bidder,

where the introduction of, or increase of interest of, that equity investor or limited partner and the size of that interest would be reasonably likely to result in FIRB approval contemplated by the Regulatory Approval Condition not being obtained or being obtained on conditions which would not be acceptable to Bidder.

3.5 Regulatory Approvals

- (a) Without limiting clauses 3.6 and 3.7:
 - (i) Bidder must, to the extent it has not already done so prior to the date of this deed, apply for approvals necessary to satisfy the Regulatory Approval Condition as soon as practicable (and in event within 10 Business Days after the date of this deed) and Virtus must provide such assistance in respect of any such application as Bidder may reasonably request, and each party must take all reasonable steps required as part of the approval process in respect of any such application, including responding to reasonable requests for information at the earliest practicable time;
 - (ii) Bidder must keep Virtus fully informed of progress in relation to the obtaining that approval, including:
 - (A) by promptly providing Virtus with reasonable details of all dealings with Government Agencies in relation to that application for FIRB approval (including any requests for information by such Government Agencies, and any conditions or other arrangements proposed by any Government Agency in respect of that approval);
 - (B) by promptly providing Virtus with any material information or matter which is likely to result in a delay in receipt of that approval that would mean the Timetable is unlikely to be achieved, or indicate that the approval is unlikely to be given;
 - (C) by reasonably consulting with Virtus, in advance, in relation to all proposed material communications and the proposed content of those communications (whether written or oral and whether direct or via an Adviser) with any Government Agency relating to the Regulatory Approval (**Communications**), and in relation to each proposed material step in the process of obtaining each Regulatory Approval; and

- (D) so far as it is reasonably able, allowing Virtus and its Authorised Persons the opportunity to be present and make submissions at any meetings with the relevant regulatory body relating to the application necessary in order to satisfy the Regulatory Approval Condition;
- (iii) without limiting clause 3.5(a)(ii), Bidder must (unless the disclosure would be materially prejudicial to Bidder's interests other than as it relates to the Transaction):
 - (A) provide Virtus with drafts of any material Communications to be sent to a Government Agency, and give Virtus a reasonable opportunity to review and comment on them, and consider those comments in good faith, prior to them being sent;
 - (B) take all the steps for which it is responsible as part of the process to obtain those approvals;
 - (C) promptly respond, at the earliest practicable time, to all requests for information in respect of the application for that approval;
 - (D) promptly provide Virtus with copies of any material written Communications received from a Government Agency,

only to the extent such matters are in connection with the Regulatory Approval Condition.

- (b) Before providing any document or other information to the other party (in this clause 3.5, the **Recipient**) pursuant to clause 3.5(a)(iii)(A) or 3.5(a)(iii)(D), a party (in this clause 3.5(b), the **Discloser**) may redact any part of that document, or not disclose any part of that information, which contains or is confidential, non-public information if the Discloser reasonably believes that:
 - (i) the information is of a commercially sensitive nature; or
 - (ii) the disclosure of the information to the Recipient would be damaging to the commercial or legal interest of the Discloser or any of its Related Bodies Corporate,

(**Sensitive Confidential Information**), and may provide the document or disclose the information to the Recipient with any Sensitive Confidential Information redacted or excluded, provided that, where Sensitive Confidential Information is so redacted or excluded, the Discloser must provide the Recipient with as much details about the relevant communication, submission or correspondence (and any other relevant circumstances) as is reasonably possible without disclosing Sensitive Confidential Information.

3.6 Notifications

Each of Bidder and Virtus must:

- (a) keep the other promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) promptly notify the other in writing if it becomes aware that any Condition has been satisfied;

- (c) promptly notify the other in writing if it becomes aware that any Condition is or has become incapable of being satisfied (having regard to the respective obligations of each party under clause 3.4); and
- (d) promptly notify the other in writing if it becomes aware that the Bidder Warranties (in the case of Bidder) and the Virtus Warranties (in the case of Virtus) are not true and correct.

3.7 Certificate

- (a) At the hearing on the Second Court Date, each party will provide a certificate (or such other evidence as the Court may request) to the Court confirming (in respect of matters within its knowledge) whether or not, as at 8.00am on the Second Court Date the Scheme Conditions (other than the Scheme Condition set out in clause 3.1(d)), have been satisfied or waived in accordance with the terms of this deed and the Bidder Warranties (in the case of Bidder) and the Virtus Warranties (in the case of Virtus) are true and correct.
- (b) Each party must provide to the other party a draft of the certificate to be provided by it pursuant to clause 3.7(a) by 5.00pm on the day that is two Business Days prior to the Second Court Date, and must provide to the other party on the Second Court Date a copy of the final certificate or other evidence provided to the Court.

3.8 Scheme voted down because of Headcount Test

If the Scheme is not approved by Virtus Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and Virtus or Bidder considers, acting reasonably, that Share Splitting or some abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied, then Virtus must:

- (a) apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
- (b) make such submissions to the Court and file such evidence as counsel engaged by Virtus 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 section 411(4)(a)(ii)(A) of the Corporations Act by making an order to disregard the Headcount Test.

3.9 Conditions not capable of being satisfied

- (a) If a Condition is not satisfied, or becomes incapable of being satisfied, before the End Date, then unless the relevant Condition (where capable of waiver) is waived:
 - (i) subject to clause 3.9(b), either party may give the other party written notice (**Consultation Notice**) within 5 Business Days after the relevant notice of that fact being given under clause 3.6(c);
 - (ii) upon delivery of the Consultation Notice, the parties must consult in good faith with a view to determining whether they can reach agreement with respect to:
 - (A) the terms (if any) on which the party with the benefit of the relevant Condition will waive that Condition;

- (B) an extension of the time for satisfaction of the relevant Condition or an extension of the End Date (as the case may be);
 - (C) to change the date of the application to be made to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed by the parties; or
 - (D) one or both of the Transactions proceeding by way of alternative means or methods; and
- (iii) if the parties are unable to reach such agreement within 5 Business Days after a Consultation Notice is given, or if a Consultation Notice is not given within the timeframe specified in clause 3.9(a)(i) then, subject to clause 3.9(b) and clause 13.4, either party may terminate this deed by notice to the other without any liability to any party by reason of that termination alone.
- (b) A party will not be entitled to give a Consultation Notice or terminate this deed pursuant to clause 3.9(a)(iii) if the relevant Condition has not been satisfied as a result of:
- (i) a breach of this deed by that party; or
 - (ii) a deliberate act or omission of that party which directly and materially contributed to that Condition not being satisfied.

3.10 Interpretation

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

4 Disclosure documents

4.1 Definitions

In this clause 4, the following definitions apply:

Primary Party means:

- (a) in the case of the Scheme Booklet, General Meeting Materials and the Target's Statement, Virtus; and
- (b) in the case of the Bidder's Statement, Bidder.

Relevant Document means each of the Scheme Booklet, General Meeting Materials, the Target's Statement and the Bidder's Statement.

Secondary Party means:

- (a) in the case of the Scheme Booklet, General Meeting Materials, and the Target's Statement, Bidder; and
- (b) in the case of the Bidder's Statement, Virtus.

Secondary Party Information means, in relation to a Relevant Document, information regarding the Secondary Party provided by the Secondary Party or its Representatives to the Primary Party for inclusion in the Relevant Document, being:

- (a) information about the Secondary Party, its Associates (including any affiliated investment vehicles and underlying limited partners and equity investors) (in the case of Bidder) or its Related Bodies Corporate (in the case of Virtus), assets, businesses and interests, and dealings in Virtus Shares, its intentions for Virtus' employees and the implications of each of those matters for the Virtus Group (in the case of Bidder); and
- (b) any other information required under the Corporations Act, RG 60 or the Listing Rules (as applicable) to enable the Relevant Document to be prepared, which the parties agree is "Secondary Party Information" in relation to the Relevant Document and is identified in the Relevant Document as such.

4.2 Primary Party's obligations

The Primary Party in respect of each Relevant Document must:

- (a) **(preparation)** prepare the Relevant Document in compliance with all applicable laws (in particular with the Corporations Act, RG 60 and the Listing Rules);
- (b) **(drafts of Relevant Document)** make available to the Secondary Party drafts of the Relevant Document, consult with the Secondary Party in relation to the content of those drafts, and consider in good faith and acting reasonably, for the purpose of amending those drafts, comments from the Secondary Party on those drafts (noting that any review of the Independent Expert's Report by Bidder is limited to review for factual accuracy of those parts that include information relating to Bidder);
- (c) **(verification)** take reasonable verification processes in relation to the information contained in the Relevant Document (other than the Secondary Party Information and the Independent Expert's Report) so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (d) **(approval of the Secondary Party Information)** seek approval from the Secondary Party on the form and context in which the Secondary Party Information appears in the Relevant Document, which approval the Secondary Party must not unreasonably withhold or delay, and the Primary Party must not lodge the Relevant Document with ASIC until such approval is obtained from (or unreasonably withheld by) the Secondary Party;
- (e) **(updating information)** as a continuing obligation:
 - (i) provide to the Secondary Party any information that arises after the Relevant Document has been despatched and until, in the case of the Scheme Booklet, the date of the Scheme Meeting and, in the case of the Target's Statement or the Bidder's Statement, the end of the Offer Period, that may be necessary to ensure that the Relevant Document, in relation to the information for which the Primary Party is responsible in accordance with clause 4.5, continues to comply with the Corporations Act, RG 60 and the Listing Rules; and
 - (ii) ensure that the Relevant Document (but in respect of the information for which the Secondary Party will be described as responsible in that Relevant

Document in accordance with clause 4.6, subject to the Secondary Party complying with its obligations to update such information) will be updated by all such further or new information which may arise after the Relevant Document has been despatched until the Scheme Meeting or end of the Offer Period (as applicable) which is necessary to ensure that Relevant Document continues to comply with the Corporations Act, RG 60 and the Listing Rules.

4.3 Secondary Party's obligations

The Secondary Party in respect of each Relevant Document must:

- (a) **(Secondary Party Information)** provide to the Primary Party all Secondary Party Information for inclusion in the Relevant Document and consult with the Primary Party as to the content and presentation of the Secondary Party Information in the Relevant Document and (in good faith) take into account any comments on drafts of the Secondary Party Information provided by or on behalf of the Primary Party;
- (b) **(verification)** take reasonable verification processes in relation to the Secondary Party Information contained in the Relevant Document so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (c) **(confirmation of Secondary Party Information)** promptly after the Primary Party requests that it does so, confirm in writing to the Primary Party that:
 - (i) it consents to the inclusion of the Secondary Party Information in the Relevant Document, in the form and context in which the Secondary Party Information appears; and
 - (ii) the Secondary Party Information in the Relevant Document is not misleading or deceptive in any material respect (whether by omission or otherwise), and the inclusion of such Secondary Party Information, in that form and context, has been approved by the board of the Secondary Party; and
- (d) **(update Secondary Party Information)** promptly advise the Primary Party in writing if it becomes aware:
 - (i) of information which should have been but was not included in the Secondary Party Information in the Relevant Document (including if known at the time), and promptly provide the Primary Party with the omitted information; or
 - (ii) that the Secondary Party Information in the Relevant Document is misleading or deceptive in any material respect (whether by omission or otherwise), and promptly provide the Primary Party with any information required to correct the misleading or deceptive statements.

4.4 Independent Expert's Report

Bidder must promptly provide any assistance or information reasonably requested by the Independent Expert in connection with the Independent Expert's Report.

4.5 Transaction Booklet

Virtus and Bidder acknowledge and agree that the Relevant Documents and the Independent Expert's Report, in each case as at the date on which the Relevant

Documents are registered with ASIC, will be given to Virtus Shareholders as the Transaction Booklet in a single combined document.

4.6 Responsibility statements

The Transaction Booklet and each Relevant Document will include a responsibility statement to the effect that:

- (a) the Primary Party is responsible for the content of the Relevant Document (other than, to the maximum extent permitted by law, the Secondary Party Information, the Independent Expert's Report or any other report or letter issued to the Primary Party by a third party) and that neither the Secondary Party nor its Authorised Persons assumes any responsibility for the accuracy or completeness of the Relevant Document other than Secondary Party Information; and
- (b) the Secondary Party is responsible for the Secondary Party Information (and no other part of the Relevant Document) and that neither the Primary Party nor its Authorised Persons assumes any responsibility for the accuracy or completeness of the Secondary Party Information.

4.7 Disagreement on content

If Bidder and Virtus disagree on the form or content of the Relevant Document, they must consult in good faith to try to settle an agreed form of the Relevant Document. If complete agreement is not reached after reasonable consultation, then:

- (a) if the disagreement relates to the form or content of any information appearing in the Relevant Document other than the Secondary Party Information, the Primary Party will, acting in good faith, decide the final form or content of the disputed part of the Relevant Document; and
- (b) if the disagreement relates to the form or content of the Secondary Party Information, Primary Party will make such amendments to the form or content of the disputed part of the Secondary Party Information as the Secondary Party reasonably requires.

5 Steps relevant to the Scheme

5.1 Scheme

The parties acknowledge and agree that, subject to the Scheme becoming Effective, on the Implementation Date the general effect of the Scheme will be that:

- (a) all of the Scheme Shares will be transferred to Bidder; and
- (b) the Scheme Shareholders will be entitled to receive, for each Scheme Share held at the Scheme Record Date, the Scheme Consideration.

5.2 Scheme Consideration

- (a) The **Scheme Consideration**, in respect of a Scheme Shareholder, means, subject to clause 7.2(d), \$8.13 per Scheme Share held by that Scheme Shareholder.
- (b) Bidder undertakes and warrants to Virtus (in its own right and separately as trustee for each Scheme Shareholder) that, in consideration for the transfer to Bidder of

the Scheme Shares held by each Scheme Shareholder under the terms of the Scheme, on the Implementation Date Bidder will:

- (i) accept that transfer; and
- (ii) pay, or procure the payment of the Scheme Consideration for each Scheme Share in accordance with the Scheme and the Deed Poll.

5.3 Virtus' obligations

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

- (a) **(Timetable)** take all reasonable actions within its control to ensure that each step in the Timetable is met by the relevant date set out beside that step;
- (b) **(commission Independent Expert's Report)** promptly appoint an Independent Expert to provide the Independent Expert's Report, and provide any assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report, for the Scheme;
- (c) **(liaison with ASIC):**
 - (i) provide an advanced draft of the Scheme Booklet to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act; and
 - (ii) liaise with ASIC during the period of its consideration of that draft of the Scheme Booklet and keep Bidder reasonably informed of any matters raised by ASIC in relation to the Scheme Booklet and use reasonable endeavours, in consultation with Bidder, to resolve any such matters;
- (d) **(approval of Scheme Booklet)** as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the Virtus Board, or of a committee of the Virtus Board appointed for the purpose, is held to consider approving the Scheme Booklet for despatch to the Virtus Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act;
- (e) **(seek ASIC intent)** apply to ASIC for a letter indicating whether ASIC proposes to make submissions to the Court, or intervene to oppose the Scheme, on the First Court Date;
- (f) **(first Court hearing)** lodge all documents with the Court and take all other reasonable steps to ensure that promptly after, and provided that the approval in clause 5.3(d) has been received, an application is heard by the Court for an order under section 411(1) of the Corporations Act directing Virtus to convene the Scheme Meeting;
- (g) **(registration of Scheme Booklet)** if the Court directs Virtus to convene the Scheme Meeting, as soon as possible after such orders are made, request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (h) **(convening Scheme Meeting)** take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Scheme Booklet to the Virtus Shareholders and convening and holding the Scheme Meeting, provided

that if this deed is terminated under clause 13 Virtus will take all steps reasonably required to ensure the Scheme Meeting is not held;

- (i) **(section 411(17)(b) statements)** apply to ASIC for the production of statements in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (j) **(supplementary disclosure)** if, after despatch of the Relevant Document, Virtus becomes aware:
 - (i) that information included in the Relevant Document is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
 - (ii) of information that is required to be disclosed to Virtus Shareholders under any applicable law but was not included in the Relevant Document,

Virtus must promptly consult with Bidder in good faith as to the need for, and the form of, any supplementary disclosure to Virtus Shareholders, and make any disclosure that Virtus considers reasonably necessary in the circumstances, having regard to applicable laws and to ensure that there would be no breach of clause (g) of Schedule 5 if it applied as at the date that information arose;

- (k) **(Court approval application)** if the resolution submitted to the Scheme Meeting is passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act (or, where clause 3.8 applies, the majority required under section 411(4)(a)(ii)(B) of the Corporations Act), subject to all other Conditions being satisfied or waived in accordance with this deed (other than the Condition in clause 3.1(d)), apply (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme;
- (l) **(implementation of Scheme)** if the Scheme is approved by the Court:
 - (i) subject to the Listing Rules, promptly lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act;
 - (ii) determine entitlements to the Scheme Consideration as at the Scheme Record Date in accordance with the Scheme;
 - (iii) execute proper instruments of transfer and effect and register the transfer of the Scheme Shares to Bidder on the Implementation Date; and
 - (iv) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme;
- (m) **(documents)** consult with Bidder in relation to the content of the documents required for the purpose of the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders);
- (n) **(promote Scheme)** participate in efforts reasonably requested by Bidder to promote the merits of the Scheme and the Scheme Consideration, including, where requested by Bidder, meeting with key Virtus Shareholders and soliciting proxy votes in favour of the Scheme and acceptances under the Takeover Bid;
- (o) **(proxy reports)** keep Bidder reasonably informed on the status of proxy forms received for the Scheme Meeting and General Meeting, including over the period

commencing 10 Business Days before the Scheme Meeting and General Meeting and ending on the deadline for the receipt of proxy forms; and

- (p) (**compliance with laws**) do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations.

5.4 Bidder's obligations

Bidder must take all steps reasonably necessary to assist Virtus to implement the Scheme as soon as reasonably practicable after the date of this deed, including taking each of the following steps:

- (a) (**Timetable**) take all reasonable actions within its control to ensure that each step in the Timetable is met by the relevant date set out beside that step;
- (b) (**Regulatory notifications**) in relation to the Regulatory Approval required to be applied for by Bidder, lodge with any Regulatory Authority within the relevant time periods all documentation and filings required by law to be so lodged by Bidder in relation to the Transactions;
- (c) (**Independent Expert**) promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report for inclusion in the Scheme Booklet;
- (d) (**assistance with Scheme Booklet and Court documents**) promptly provide any assistance or information reasonably requested by Virtus or its Advisers in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to Virtus Shareholders) and any documents required to be filed with the Court in respect of the Scheme;
- (e) (**Deed Poll**) before 5.00pm on the Business Day before the First Court Date, enter into the Deed Poll and deliver it to Virtus;
- (f) (**Court representation**) procure that Bidder is represented by counsel at the Court hearings convened in relation to the Scheme, at which, through its counsel or solicitors, Bidder will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this deed and the Scheme;
- (g) (**promote Scheme**) participate in efforts reasonably requested by Virtus to promote the merits of the Scheme and the Scheme Consideration, including, where requested by Virtus, meeting with key Virtus Shareholders and the doctors engaged by Virtus; and
- (h) (**compliance with laws**) do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations.

5.5 Conduct of Court proceedings

- (a) Bidder is entitled to separate representation at all Court proceedings affecting the Transactions.
- (b) Nothing in this deed gives Virtus or Bidder any right or power to give undertakings to the Court for or on behalf of the other party without that other party's written consent.

5.6 Appeal process

If the Court refuses to make any orders directing Virtus to convene the Scheme Meeting or approving the Scheme:

- (a) Virtus and Bidder must consult with each other in good faith as to whether to appeal the Court's decision; and
- (b) Virtus must appeal the Court's decision unless the parties agree otherwise or an independent senior counsel opines that, in their view, an appeal would have no reasonable prospect of success before the End Date.

5.7 Good faith co-operation

Each party must procure that its Authorised Persons work (including by attending meetings and by providing information) in good faith and in a timely and co-operative fashion with the other parties to implement the Scheme, to prepare all documents required relating to the Scheme, and to agree and execute the strategy described in clause 7.11.

6 Facilitating the Takeover Bid

6.1 Takeover Bid Consideration

The **Takeover Bid Consideration** means, subject to clause 7.2(d) and clause 7.3(b), \$7.98 per Virtus Share.

6.2 Promoting the Takeover Bid

During the Offer Period:

- (a) in the absence of a Superior Proposal, the Virtus Board will support the Takeover Bid and participate in efforts reasonably required by Bidder to promote the terms of the Takeover Bid; and
- (b) Bidder will participate in efforts reasonably requested by Virtus to promote the merits of the Takeover Bid and the Takeover Bid Consideration, including, where requested by Virtus, meeting with key Virtus Shareholders and the doctors engaged by Virtus.

6.3 Independent Expert

Virtus will 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 Target's Statement.

6.4 Share register

From the date of this deed until the end of the Offer Period, Virtus must comply with any reasonable request of Bidder for:

- (a) an up-to-date copy of the register of Virtus Shareholders;
- (b) register of information that is required to be maintained in accordance with section 672DA of the Corporations Act; and

- (c) comply with any reasonable request of Bidder to give directions to Virtus Shareholders under Pt 6C.2 of the Corporations Act.

6.5 ASX listing

Virtus must take all reasonable steps to maintain Virtus' listing on ASX, notwithstanding any suspension of the quotation of Virtus Shares, up to and including the date Bidder compulsorily acquires any Virtus Shares it does not already own under Chapter 6A of the Corporations Act, including making appropriate applications to ASX and ASIC.

7 Provisions relevant to both Transactions

7.1 Interim Dividend

- (a) Notwithstanding any other provision of this deed, Virtus may (in its absolute discretion) pay to Virtus Shareholders the Interim Dividend.
- (b) The Interim Dividend may be franked to the maximum extent possible, subject to the franking account of Virtus not being in deficit at any time after the payment of the Interim Dividend.
- (c) The record date of the Interim Dividend is 24 March 2022.
- (d) Neither the Scheme Consideration nor the Takeover Bid Consideration will be reduced by the cash amount of the Interim Dividend.

7.2 Permitted Special Dividend

- (a) Subject to clause 7.2(b), Bidder acknowledges and agrees that at any time on or prior to:
 - (i) the Implementation Date (if the Scheme becomes Effective); or
 - (ii) the Permitted Distribution Record Date (if the Takeover Bid becomes unconditional),

Virtus may (in its discretion) announce and determine to pay, conditional on the Scheme becoming Effective or the Takeover Bid becoming unconditional, a Permitted Special Dividend.

- (b) If Virtus determines to pay the Permitted Special Dividend in accordance with clause 7.2(a):
 - (i) the Permitted Special Dividend must be paid in cash;
 - (ii) the Permitted Special Dividend must be paid:
 - (A) no later than the Implementation Date if the Scheme becomes Effective; or
 - (B) promptly following the Permitted Distribution Record Date if the Offers under the Takeover Bid become unconditional;
 - (iii) the Permitted Special Dividend must not be in breach of the 'Benchmark Franking Rule' of section 203-25 of the *Income Tax Assessment Act 1997*;

- (iv) the Permitted Special Dividend may be franked to the maximum extent possible, subject to the franking account of Virtus not being in deficit at any time after the payment of the Permitted Special Dividend; and
 - (v) the Permitted Special Dividend must comply with the Corporations Act.
- (c) In order to ensure sufficient profits or distributable reserves in Virtus to pay the Permitted Special Dividend, one or more Related Bodies Corporate of Virtus may settle intercompany balances or enter into other intercompany transactions or pay a dividend out of its profits, retained earnings or distributable reserves (or a combination of all or some of them) to another Related Body Corporate of Virtus, provided that such dividend does not result in any deficit in the franking account of any Related Body Corporate and is otherwise in accordance with the Corporations Act or equivalent foreign law.
- (d) The Scheme Consideration or the Takeover Bid Consideration (as the case may be) will be reduced by the cash amount of any Permitted Special Dividend per Virtus Share to which Virtus Shareholders become entitled on or before the Implementation Date or the date on which shares are transferred to Bidder under the Takeover Bid, but, for the avoidance of doubt, will not be reduced by the value attributed to any franking credits attached to any such dividends.

7.3 Permitted Capital Return

- (a) Subject to:
- (i) the approval of the Permitted Capital Return at the General Meeting;
 - (ii) the reconstruction of the Virtus Board contemplated by clause 7.15, the Virtus Board in existence after the Control Date determining to implement the Permitted Capital Return; and
 - (iii) the drawdown of funds under the Refinancing Agreements,
- Virtus agrees that if the Takeover Bid becomes unconditional and Bidder has a Relevant Interest in at least 50.1% of the issued share capital of Virtus, it will pay the Permitted Capital Return:
- (iv) in cash; and
 - (v) in accordance with the Timetable.
- (b) The Takeover Bid Consideration will be reduced by the cash amount of any Permitted Capital Return per Virtus Share to which Virtus Shareholders become entitled on or before the date on which shares are transferred to Bidder under the Takeover Bid.
- (c) Virtus must take all steps reasonably necessary to obtain Virtus Shareholder approval for the Permitted Capital Return at the General Meeting, including convening and holding the General Meeting concurrently with the Scheme Meeting.
- (d) Virtus will work cooperatively and in good faith with Bidder (including having regard to any reasonable requests made by Bidder) to ensure the Permitted Capital Return can be implemented in the manner contemplated by clause 7.3(a) if the requirements in that clause are satisfied.

7.4 Tax ruling

- (a) Virtus will seek:
- (i) a class ruling on behalf of Virtus Shareholders from the ATO, in a form agreed between Virtus and Bidder (acting reasonably), in relation to the Scheme or the Takeover Bid (as applicable), the Permitted Capital Return and the Permitted Special Dividend which seeks to confirm that:
 - (A) the Permitted Special Dividend is a “dividend” as defined under paragraph 6(1) of the *Income Tax Assessment Act 1936* and is a frankable distribution under section 202-40 of the *Income Tax Assessment Act 1997*;
 - (B) the Permitted Special Dividend is assessable to Virtus Shareholders and Virtus Shareholders are not precluded from entitlement to the franking credits and associated tax offset attached to the Permitted Special Dividend;
 - (C) no part of the Permitted Capital Return (if applicable) is a “dividend” as defined under paragraph 6(1) of the *Income Tax Assessment Act 1936* or assessable to Virtus Shareholders as a dividend;
 - (D) the time of CGT Events G1 and C2 for Virtus Shareholders receiving the Permitted Capital Return (if applicable) for the purpose of Part 3-1 of the *Income Tax Assessment Act 1997* will be the date of payment;
 - (E) the amount of the capital proceeds received by Virtus Shareholders in respect of the Offer excludes the Permitted Special Dividend and the Permitted Capital Return (if applicable);
 - (F) the time of CGT Event A1 for Virtus Shareholders upon the disposal of Virtus Shares for the purpose of Part 3-1 of the *Income Tax Assessment Act 1997*;
 - (G) the Commissioner of Taxation will not make a determination under subsection 45A(2) or subsection 45B(3) of the *Income Tax Assessment Act 1936* that section 45C applies to deem any of the Permitted Capital Return (if applicable) as an unfranked dividend; and
 - (H) the Commissioner of Taxation will not make a determination under paragraph 204-30(3)(c) of the *Income Tax Assessment Act 1997* or paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* to deny to Virtus Shareholders any imputation benefits on the Permitted Special Dividend;
 - (ii) a private ruling from the ATO, in a form agreed between Virtus and Bidder (acting reasonably) in relation to the Permitted Special Dividend and the Permitted Capital Return (if applicable) which seeks to confirm that the Commissioner of Taxation will not make a determination under paragraphs 204-30(3)(a) and 204-30(3)(b) of the *Income Tax Assessment Act 1997* or paragraph 177EA(5)(a) of the *Income Tax Assessment Act 1936* to impose a franking debit or an exempting debit on Virtus as a result of, or in relation to, the Permitted Special Dividend.
- (b) Bidder must promptly provide any assistance required by Virtus acting reasonably in order that Virtus can perform its obligations under clause 7.4(a).

7.5 Virtus Performance Rights

- (a) Virtus must ensure that, by no later than the Scheme Record Date, there are no outstanding Virtus Performance Rights.
- (b) Virtus must not permit the vesting of outstanding Virtus Performance Rights or any grants under any equity incentive plan before the Takeover Bid is declared unconditional unless the Scheme becomes Effective or the vesting is otherwise agreed to by Bidder.
- (c) In order to comply with its obligation under clause 7.5(a), Virtus may, without limiting any other steps which may be available to it, cause some or all of the outstanding Virtus Performance Rights to vest and, following such vesting and exercise of the Virtus Performance Rights, issue or transfer the number of Virtus Shares required by the terms of those Virtus Performance Rights on such vesting so that the relevant holders of the Virtus Performance Rights can participate in the Scheme.

7.6 Conduct of Virtus business

Subject to clause 7.8, from the date of this deed up to and including the date that is either 3 Business Days after the Control Date (where paragraph (a) of the definition of Control Date applies) or the Control Date (where paragraph (b) of the definition of Control Date applies), Virtus must conduct its business, and must ensure that each member of the Virtus Group conducts its business, in the ordinary and usual course of business (including having regard to the budget provided in the Online Data Room in respect of periods after 30 June 2022, as approved by the Virtus Board and provided to Bidder) and:

- (a) operates those businesses in a manner substantially consistent (subject to any applicable laws and regulations) with the manner in which those businesses have been conducted in the period prior to the date of this deed;
- (b) to the extent consistent with the obligation in clause 7.6(a), use reasonable endeavours to preserve their relationships with medical professionals, clinicians, customers, suppliers, landlords, licensors, licensees and others having material business dealings with them, and to retain the services of key employees and medical professionals and clinicians;
- (c) maintain (and where necessary use reasonable efforts to renew) each of its material authorisations, accreditations and licences applicable to each member of the Virtus Group held by that member as at the date of this deed and promptly notify Bidder if any renewal is not accepted by the relevant Government Agency;
- (d) provide Bidder with copies of any correspondence from a Government Agency addressed to a member of the Virtus Group which is received after the date of this deed and which is material to the Virtus Group;
- (e) take or fail to take any action that constitutes or could reasonably be expected to constitute a Prescribed Occurrence; and
- (f) use, and must procure that each Virtus Group member uses, reasonable endeavours to maintain (and, where necessary, use reasonable efforts to renew) the material policies of insurance held by the Virtus Group that are in force as at the date of this deed, to use reasonable endeavours to notify each insurer of the Transactions if required under the terms of any insurance policy held by or for the benefit of a Virtus Group member and to promptly notify Bidder if any renewal proposal is not accepted by the relevant insurer.

7.7 Virtus prohibited actions

Subject to clause 7.8, from the date of this deed up to and including the date that is either 3 Business Days after the Control Date (where paragraph (a) of the definition of Control Date applies) or the Control Date (where paragraph (b) of the definition of Control Date applies), Virtus must not, and must procure that the Virtus Group does not:

- (a) **(acquisitions or disposals)** in respect of any single transaction or series of related or similar transactions, acquire or dispose of any interest in a business, real property, entity or undertaking, the value of which exceeds \$2,500,000 in aggregate, other than:
 - (i) trading inventories and consumables in the ordinary and usual course of business; or
 - (ii) as legally committed in any contract Fairly Disclosed to Bidder in the Due Diligence Material or the Disclosure Letter;
- (b) **(new business)** enter into any new line of business that is materially different to, or discontinue any material aspect of, the business of the Virtus Group as conducted at the date of this deed;
- (c) **(CAPEX)** in respect of any single transaction or series of related or similar transactions, incur or enter into commitments involving capital expenditure in excess of \$1,000,000 in aggregate (excluding customer acquisition costs in the ordinary course of business, which will not be subject to this clause 7.7(c));
- (d) **(employees and contractors)** any of the following:
 - (i) **(new employment contracts)** enter into any new employment contracts or contracting arrangements with a potential employee or contractor (excluding any medical professionals) of the Virtus Group under which contract or arrangement the total remuneration or fees (including any incentive payments of bonuses) payable to that potential employee or contractor would exceed \$200,000 in any 12 month period, other than to replace a role that becomes vacant after the date of this deed as a result of the resignation of an existing employee or contractor or in respect of a new employee or contractor who is employed or engaged in order to fill a role that is vacant as at the date of this deed;
 - (ii) **(amendments)** amend or vary (including by increasing the remuneration, incentive payments, fees or other bonuses) any enterprise bargaining agreement or similar collective employment agreement or a material number of employment agreements or any employment contracts or contracting arrangements with any directors, officers, senior executives and medical professionals;
 - (iii) **(termination)** terminate or suspend any existing employment contracts or contracting arrangements with any directors, officers, senior executives and medical professionals (other than for cause);
 - (iv) **(new equity awards)** grant or establish any new equity-based awards or benefits or employee incentive plans or amend or modify the terms of any outstanding equity-based awards or benefits or employee incentive plans;
 - (v) **(cash bonuses)** pay or award, or agree to pay or award, any cash bonuses or cash incentive compensation or similar, termination or retention payments,

payments in connection with implementation of the transactions contemplated in this deed or any pension, retirement allowance or other retirement benefit (other than as required by law or pursuant to any agreement existing as at the date of this deed provided such payment is paid in the usual and in the ordinary course of business and provided such payment is fully accrued for in the financial records of Virtus disclosed and detailed in the Disclosure Letter);

- (vi) (**enterprise bargaining**) enter into any enterprise bargaining agreement or similar collective employment agreement;
- (vii) (**waiver**) waive any non-competition or non-solicitation (or similar restraint) obligation of any directors, officers, executives, medical professionals or clinicians;
- (e) (**fees**) paying any third party costs or expenses incurred by the Virtus Group in connection with the transactions contemplated by this deed (including the Transactions, the Permitted Capital Return, any associated refinancing (including the Refinancing Agreements and Debt Commitment Letter) and the Permitted Special Dividend), including legal, financial, tax, accounting, communications and public relations, counsel, expert and court fees and fees payable to Regulatory Authorities in excess of the amount disclosed in the Due Diligence Materials;
- (f) (**IP and licences**) either (A) sell, assign, transfer or grant any exclusive license to, or (B) abandon or permit to let lapse or expire (other than immaterial in-bound licenses to the Virtus Group that the Virtus Group would allow to expire in the ordinary course of business in accordance with their terms), any intellectual property material to the business of the Virtus Group as conducted as at the date of this deed, and as proposed by the Virtus Group as at the date of this deed to be conducted in the future;
- (g) (**debt**) incur any additional financial indebtedness (except for draw-downs on existing banking facilities consistent with Virtus' current budget), or guarantee or indemnify the obligations of any person other than a member of the Virtus Group;
- (h) (**security**) create any mortgage, security interest, lien or other encumbrance over its assets except in the ordinary course of ordinary business and consistent with past practice;
- (i) (**financing arrangements**) enter into any new financing arrangement, agreement or otherwise provide financial accommodation (other than capitalised leases or customer acquisition costs in the ordinary course of business), or amend, or refinance, any existing financing arrangement, agreement or instrument, other than any such financing arrangement, agreement or financial accommodation (irrespective of what form that takes) to or among members of the Virtus Group (provided such arrangements or agreements remain within members of the Virtus Group);
- (j) (**financial benefit**) give or agree to give a financial benefit to a related party of Virtus;
- (k) (**contracts**) except for amendments, terminations, or non-renewals in the ordinary course of business consistent with past practice that would not be material to the Virtus Group, modify, amend, waive, fail to enforce (in each case, in any material respect), assign or terminate any contract of the Virtus Group the value or cost of which exceeds \$1,000,000 in any 12 month period or has a term greater than 24 months, or enter into a contract which would be material to the conduct of the Virtus Group's business if entered into prior to the date of this deed (other than

material contracts with customers entered into in the ordinary course of business consistent with past practice);

- (l) **(property)** any of the following:
 - (i) acquire or agree to acquire any material real property or enter into, or agree to enter into, any lease or sublease of real property (whether as a lessor, sublessor, lessee or sublessee);
 - (ii) sell, assign, dispose of, surrender or exercise any right to terminate, or agree to sell, assign, dispose of, surrender or exercise any right to terminate, any material lease or sublease of real property (whether as a lessor, sublessor, lessee or sublessee) other than, in each case, expirations or surrenders of any leases or subleases in accordance with their terms or in the ordinary course of business;
 - (iii) materially modify or amend or exercise any right to renew any material lease, or waive any material term or condition thereof or grant any consents thereunder; or
 - (iv) grant or otherwise create or consent to the creation of any easement, covenant, restriction, assessment or charge affecting, in any material respect, any material real property leased by a member of the Virtus Group, or any interest therein or part thereof;
- (m) **(dividends and capital returns)** declare, pay or distribute any dividend, bonus or other share of its profits or assets or return or agree to return any capital to its members, other than the Interim Dividend, the Permitted Special Dividend or the Permitted Capital Return;
- (n) **(constitutive documents)** amend its constitution or any member of the Virtus Group's constitutive documents;
- (o) **(tax group)** do anything that would result in a de-consolidation of the Virtus Consolidated Tax Group, or result in any member of the Virtus Group exiting or joining the Virtus Consolidated Tax Group without consent from Bidder;
- (p) **(uninsured claims and proceedings)** settle or compromise any legal proceedings, uninsured claims (including any tax claims), investigations, arbitration or other similar proceedings where the settlement amount exceeds \$500,000, or accept any undertaking or conditions in respect of the same;
- (q) **(waiver)** waive any material third party default where the financial impact of the waiver on the Virtus Group as a whole will be in excess of \$500,000 (individually or in aggregate);
- (r) **(accounting)** alter in any material respect any accounting policy of any member of the Virtus Group, other than any change required by applicable accounting standards or seek to nominate a new auditor for any member of the Virtus Group; or
- (s) **(general)** agree, authorise or commit to do any of the matters set out above.

7.8 Virtus permitted activities

The obligations of Virtus under clauses 7.6 and 7.7 do not apply in respect of any matter or event to the extent:

- (a) required to be done or procured by Virtus pursuant to this deed or the Transactions (including for the avoidance of doubt the Refinancing Commitment Letter and the Refinancing Agreements);
- (b) Fairly Disclosed in the Disclosure Letter or the Due Diligence Materials;
- (c) Fairly Disclosed to the ASX in the 2 years before the date of this deed;
- (d) Bidder has provided prior written consent (such consent not to be unreasonably withheld or delayed);
- (e) required 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 as required by or in light of the COVID-19 virus (or any mutation, variation or derivative of that virus) provided that, to the extent reasonably practicable having regard to the nature of the relevant emergency or disaster, Virtus has sought to consult with Bidder in good faith in respect of the proposal to take such action or not take such action (as applicable) and, to the extent the circumstances reasonably allow, considers any reasonable comments or requests of Bidder in relation to such proposal in good faith;
- (f) required by any applicable law or regulation, or by an order, injunction or undertaking of a court or Government Agency; or
- (g) the relevant expenditure is:
 - (i) budgeted for in folder 05.04.01 (Budget presentations) in the Online Data Room, tested on an aggregate basis (and not on an item by item basis); or
 - (ii) wholly funded by customers of the Virtus Group.

7.9 Access

- (a) Subject to clauses 7.9(b) and 7.9(d), from the date of this deed to the Second Court Date or the end of the Offer Period (whichever is later), Virtus must use reasonable endeavours to procure that Bidder is provided with reasonable access (subject to the Confidentiality Deed) during normal business hours and on reasonable notice to the management, medical professionals, clinicians, offices, books, records and business operations of Virtus that Bidder reasonably requires for the purposes of:
 - (i) obtaining general updates on the performance of the Virtus Group;
 - (ii) the implementation of the Transactions;
 - (iii) integration planning prior to implementation of the Transactions;
 - (iv) entry into the Refinancing Agreements and the refinancing of any Virtus Group debt facilities which may need to be repaid in connection with the Transactions; or
 - (v) any other purpose that is agreed in writing between the parties.
- (b) Virtus must provide regular reports on the financial affairs of the Virtus Group, including the provision of the Virtus Group's monthly management accounts, in a timely manner to Bidder.

- (c) The parties acknowledge that their rights and obligations under clause 7.9(a) shall be subject to the Confidentiality Deed and all applicable laws or requirements of any Government Agency.
- (d) Nothing in clause 7.9(a) requires Virtus or any member of the Virtus Group to:
 - (i) disclose or make available any information in breach of an obligation of confidentiality to any person or applicable privacy laws, provided Virtus Group takes reasonable steps to satisfy the reasonable information requests of Bidder concerning the matter;
 - (ii) do anything which would cause or potentially cause harm to any person, including by virtue of the COVID-19 virus (or any mutation, variation or derivative);
 - (iii) require a member of the Virtus Group to take any action that would be reasonably expected to result in a Virtus Group member breaching any applicable law, order, rule or direction of any Government Agency, including in relation to the COVID-19 virus (or any mutation, variation or derivative), or the entity's constituent documents;
 - (iv) without limitation to any of Virtus' obligations and covenants in clause 10, disclose or make available any information concerning the consideration of the Transactions or any actual or potential Competing Proposal by the Virtus Board (or a sub-committee of the Virtus Board) or Virtus management;
 - (v) provide any confidential, competitively sensitive or privileged information where the provision of such information is reasonably likely to cause prejudice to the commercial or legal interests of the Virtus Group taken as a whole, or would be reasonably likely to jeopardise any attorney-client, work product or other legal privilege provided Virtus Group takes reasonable steps to satisfy the reasonable information requests of Bidder concerning that matter (which includes, for the avoidance of doubt, redacting any confidential, competitively sensitive or privileged information); or
 - (vi) do anything that would, in the reasonable opinion of Virtus (acting in good faith), result in undue disruption to the Virtus Group's business in the ordinary course or require Virtus to make further disclosure to any Government Agency.

7.10 Integration planning

- (a) On and from the date of this deed the parties agree to establish a committee (**Integration Committee**) initially comprising individuals as agreed between Virtus and Bidder.
- (b) The role of the Integration Committee will be to act as a forum for discussion and planning in respect of:
 - (i) matters related to financing or refinancing, integration (including IT integration and systems development) and operations planning, including employee and medical clinician retention and incentivisation, stakeholder engagement and communications, business operations and functions or processes; and
 - (ii) the process referred to in clause 7.11.

- (c) Each party must ensure that its representatives on the Integration Committee act in good faith in their capacity as members of the Integration Committee with a view to fulfilling the role and objectives of such committee (to the extent within their power).
- (d) The Integration Committee will meet at such times and places as agreed between the members of the Integration Committee from time to time and at a minimum at least fortnightly, taking into account the existing roles and duties of Virtus' representatives on the Integration Committee. Meetings may be held via telephone or other forms of technology that provide representatives with an opportunity to participate.
- (e) The members of the Integration Committee may agree to invite other persons to attend meetings of the Integration Committee from time to time.
- (f) From time to time, certain members of the Integration Committee or other representatives of the parties (as agreed between the parties) will meet separately to meetings of the Integration Committee to discuss and progress matters considered or plans developed by the Integration Committee.
- (g) The parties acknowledge and agree that:
 - (i) the Integration Committee is a discussion and planning forum only, and the members of the Integration Committee do not have power to bind the other party or to give any consent, approval or waiver on behalf of such other party;
 - (ii) nothing in this clause 7.10 or elsewhere in this deed requires a party to:
 - (A) act at the direction of the other party or is intended to create a relationship of partnership, joint venture or similar between the parties; or
 - (B) take any action that would reasonably be expected to conflict with or violate the entity's constituent documents or any law;
 - (iii) the respective businesses of Bidder and the Virtus Group are to continue to operate independently until, and subject to, the implementation of either Transaction; and
 - (iv) nothing in this clause 7.10 requires any of Virtus' representatives on the Integration Committee to do anything which would unduly interfere with their responsibilities to Virtus and the ongoing conduct of Virtus' business in the ordinary course.

7.11 Change of control

As soon as practicable after the date of this deed, the parties must:

- (a) seek to identify any change of control or similar provisions in any material contract (which for the avoidance of doubt excludes insurance) to which a member of the Virtus Group is party which may be triggered by the implementation of either Transaction (**Change of Control Requirements**); and
- (b) use all reasonable endeavours to agree a proposed strategy (which, among other things, will have due regard to applicable legal restrictions) to seek any consents or waivers required in accordance with the terms of any identified Change of Control

Requirements, and then use reasonable efforts to promptly seek those consents in accordance with the agreed strategy, but on the basis that:

- (i) Virtus will use reasonable endeavours to ensure that any consents or waivers required to be obtained as contemplated by a Change of Control Requirement is given in such a manner that the material contract that is subject to the Change of Control Requirement is not amended or extended in a way that is less favourable (in a significant respect when viewed as a whole) than the current terms of the relevant contract or arrangement;
 - (ii) Virtus will initiate contact, including joint discussions if required by Bidder, with the relevant counterparties and request that they provide any consents or confirmations required or appropriate;
 - (iii) Bidder must not contact any counterparties without Virtus present or without Virtus' prior written consent (which is not to be unreasonably withheld, conditioned or delayed);
 - (iv) Virtus must cooperate with, and provide reasonable assistance to, Bidder to obtain such consents or confirmations as expeditiously as reasonably practicable, including by promptly providing any information reasonably required by counterparties (but nothing in this clause requires Virtus or Bidder to incur material expense or disclose Sensitive Confidential Information);
 - (v) Bidder must take all action reasonably necessary to comply with any requirements of the counterparties that are reasonably necessary to obtain the relevant consent or confirmation and make officers and employees available, where necessary to meet with counter-parties to deal with any issues arising in relation to the matter; and
 - (vi) a failure by a member of the Virtus Group to obtain any third party consent or confirmation, or the exercise of a termination right, will not constitute a breach of this deed by Virtus and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this deed but may be had regard to in determining whether there has been a Material Adverse Change of the kind contemplated by paragraph (a) of the definition of Material Adverse Change.
- (c) Each party agrees to provide reasonable assistance to the other party to enable the other party to obtain any relief, waiver, confirmation, exemption, consent, approval from any Regulatory Authority which is necessary for the Transactions.

7.12 Debt Financing

- (a) Bidder must use commercially reasonable efforts (including enforcing its rights under the Debt Commitment Letter) to obtain the proceeds of the Debt Financing on the terms and conditions described in the Debt Commitment Letter on or prior to the Business Day immediately before the Implementation Date, including by using commercially reasonable efforts to:
 - (i) maintain in effect the Debt Commitment Letter (for so long as the Debt Commitment Letter has not been replaced by the Debt Documents or any Replacement Financing Letters);
 - (ii) negotiate the Debt Documents with respect to the Debt Financing on terms which do not:

- (A) reduce the aggregate amount of the Debt Financing in such way that will or would be reasonably likely to prejudice Bidder's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll; or
 - (B) impose new or additional conditions precedent to funding of the Debt Financing to be applied to pay the Scheme Consideration in accordance with this Deed and the Deed Poll (other than conditions precedent that have already been satisfied at the time they are so added) not set out in the Debt Commitment Letter, or adversely modify any such conditions precedent in a manner that would or would be reasonably likely to prevent, impede, delay or impair the availability of the Debt Financing to be applied to fund the Bidder's payment obligations with respect to the Scheme Consideration under this deed and the Deed Poll; and
 - (iii) satisfy on a timely basis all conditions precedent to funding of the Debt Financing.
- (b) Bidder must give Virtus prompt written notice of:
- (i) execution of the Debt Documents;
 - (ii) any termination or repudiation of the Debt Commitment Letter or Debt Documents;
 - (iii) it becoming aware of any material breach or default of the Debt Commitment Letter or Debt Documents by any party thereto in a manner which could reasonably be expected to prejudice Bidder's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll; or
 - (iv) any material variations of the Debt Commitment Letter or the Debt Documents (or the substitution of such agreements with alternative financing arrangements) together with copies of such variations or alternative financing arrangements provided that nothing in this clause will require the disclosure of any fee letter or any market flex provisions and will be subject to redaction of any fee letters or market flex provisions.
- (c) Bidder must not terminate or agree to terminate the Debt Commitment Letter or Debt Documents without the prior written consent of Virtus where to do so will or would be reasonably likely to prejudice Bidder's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll (other than when the Takeover Bid Condition in clause 1.7(d) of Schedule 3 is satisfied). For the avoidance of doubt, the termination of the Debt Commitment Letter in connection with the execution of the Debt Documents or the issuing of Replacement Financing Letters or Debt Documents for the purposes of superseding a previous Debt Commitment Letter (in whole or in part) after the date of this deed will not constitute a termination of the relevant document for the purpose of this clause provided that any Replacement Financing Letter complies with the terms of clause 7.13.
- (d) Bidder must not, without the prior written consent of Virtus:
- (i) replace, amend or agree to amend the Debt Commitment Letter or Debt Document;
 - (ii) waive or agree to waive any of its rights under the Debt Commitment Letter or Debt Document; or

- (iii) agree or consent to any novation, assignment or transfer of any counterparty's obligations under the Debt Commitment Letter or Debt Document,

where to do so will or would be reasonably likely to prejudice Bidder's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll (and no Alternative Financing has been arranged) provided, for the avoidance of doubt, this clause will not prohibit amendments or modifications to the Debt Commitment Letter to add lenders, lead arrangers, syndication agents or similar entities that were not previously party to the Debt Commitment Letter and to grant such entities customary rights and to make any related conforming or mechanical changes or compliance with any market flex provisions in relation to the Debt Commitment Letter, provided that copies of these amendments are provided to Virtus.

- (e) If Bidder becomes aware that any portion of the Debt Financing becomes unavailable for any reason, Bidder must:
 - (i) promptly notify Virtus of such unavailability and the reason; and
 - (ii) use all reasonable efforts to obtain alternative debt financing:
 - (A) in an amount sufficient, when taken together with the available portion of the Debt Financing, to perform its obligations under this deed and the Deed Poll; and
 - (B) on terms which do not include any conditions to the consummation of such alternative financing that are more onerous than the conditions contained in the Debt Commitment Letter.

7.13 Alternative Financing

Notwithstanding any other provision to the contrary in this deed, the Debt Commitment Letter may be superseded or supplemented at the option of the Bidder after the date of this deed by Alternative Financing under instruments (the **Replacement Financing Letters**) that replace the existing Debt Commitment Letter, provide for alternative or additional Debt Financing or contemplate co-investment by or financing from one or more debt financing sources or other additional parties, provided that:

- (a) the terms of any Replacement Financing Letter must not:
 - (i) reduce the aggregate amount of the Debt Financing below an amount, when taken together with the aggregate amount set out in the Equity Commitment Letters is sufficient to satisfy the Bidder's obligations to fund payment of the Scheme Consideration in accordance with this deed and the Deed Poll;
 - (ii) expand upon the conditions precedent to drawdown under the Debt Financing contained in the Debt Commitment Letter in relation to drawdowns to be applied to meet its payment obligations in relation to the Scheme Consideration in accordance with this deed and the Deed Poll; or
 - (iii) include any conditions precedent to the Alternative Financing (other than conditions precedent that have already been satisfied) in relation to drawdowns to be applied to fund the Scheme Consideration in accordance with this deed and the Deed Poll that are more onerous in any material respect than the conditions precedent in the Debt Commitment Letter;

- (b) the committed debt funding sources under such Alternative Financing are internationally or nationally reputable financial institutions which provide debt financing as part of their ordinary course of business; and
- (c) neither the arrangement nor the negotiation of any Replacement Financing Letters, nor the terms thereof, will or will be reasonably likely to cause a delay to the Implementation Date or prevent the satisfaction of any Conditions.

7.14 Cooperation in relation to Debt Financing and Refinancing

- (a) Virtus agrees to provide timely cooperation and assistance in connection with the syndication of any Debt Financing by the Bidder Group or the Refinancing as may be reasonably requested by Bidder in writing from time to time, including:
 - (i) subject to its confidentiality requirements or provisions relevant to it, furnishing Bidder and its financing sources (within a reasonable timeframe) with financial, operating or other pertinent information regarding the Virtus Group or to the extent the information is available to Virtus, any entity in which any member of the Virtus Group has an investment (including any acquisitions to be made by the Virtus Group after the date of this deed and the quantum of any security or escrow retention amounts held by the Virtus Group in respect of acquisitions made prior to the date of this deed and including providing any consent required under the Confidentiality Deed to such disclosure) and providing reasonable assistance with the preparation of any lender presentation, investor roadshows, rating presentations or similar presentations or offering document to be used in syndicating any acquisition or debt financing and including, in each case, providing any consent required under the Confidentiality Deed to the disclosure to the financing sources of the Bidder (provided that such financing sources are subject to confidentiality undertakings consistent with those under the Confidentiality Deed) provided that primary carriage and responsibility for such matters will at all times remain with Bidder;
 - (ii) providing reasonable cooperation with any marketing efforts undertaken by Bidder (or a Bidder Related Party) and its financing sources related to Debt Financing and Refinancing (including by making available such senior officers or senior executives or medical directors of Virtus as reasonably requested by Bidder at mutually convenient times for conference calls, management presentation in-person or telephone sessions, virtual roadshows and similar meetings or presentations including meeting with ratings agencies and prospective financing sources), as may be reasonably requested by the Bidder;
 - (iii) providing reasonable information required to complete a reconciliation of financial statements to applicable accounting standards;
 - (iv) providing reasonable assistance upon request to Bidder to satisfy any conditions and obligations of any financing to the extent same is within its control,

provided that, with the exception of any costs of compliance with this clause 7.14, that will be fully reimbursed by Bidder, neither Virtus nor any member of the Virtus Group will be required to incur any liability in connection with any such financing prior to the earlier of the Scheme being implemented or the Takeover Bid being declared unconditional.

- (b) Bidder must indemnify and hold harmless each Virtus Party from and against any and all losses, damages, claims, costs or expenses suffered or incurred by any of them in connection with any such financing and any information utilised in connection therewith.
- (c) Subject to any confidentiality requirements or provisions relevant to it, Virtus shall use reasonable endeavours to:
 - (i) facilitate liaison between Bidder and existing financier, transactional banking and derivative counterparties of the Virtus Group for the purposes of the Bidder notifying and discussing change of control procedures and post-acquisition finance related matters with those financiers and, at the reasonable request of the Bidder, continuation of those arrangements with those counterparties on or after the Implementation Date or the date on which the Offer completes; and
 - (ii) provide timely cooperation and assistance in connection with any repayment of existing financing arrangements or close out and termination of derivative agreements of the Virtus Group, in connection with the Transactions, including:
 - (A) undertaking steps reasonably required or requested by Bidder in connection with any such repayment of such financing or termination and close out of such derivative transactions in connection with the Transactions, provided that the timing of any such repayment is no earlier than the Implementation Date or the date on which the Offer completes (if that occurs after the Control Date);
 - (B) providing Bidder with information reasonably requested by Bidder in relation to the use of existing cash reserves of the Virtus Group for such purpose and/or contingent instruments then on issue;
 - (C) issuing prepayment notices in relation to the existing financing facilities, and closing out derivative arrangements in accordance with any timing requirements on or after the Implementation Date or the date on which the Offer completes (if that occurs after the Control Date) reasonably requested by the Bidder to give effect to any refinancing by and/or funds flow under the Debt Financing or Refinancing on and from the Implementation Date or the date on which the Offer completes (if that occurs after the Control Date); and
 - (D) using reasonable endeavours to assist in the repayment or replacement of any letters of credit, bank guarantees or similar instruments; and
 - (iii) provide to Bidder financial information which the Bidder reasonably requests in order to prepare the unwinding of existing, and the implementation of new, financing arrangements after the Implementation Date or the date on which the Offer completes (if that occurs after the Control Date), as applicable,
- (d) Nothing in this clause will require any Virtus Group member to provide cooperation to the extent that it would:
 - (i) cause any Condition to not be satisfied or otherwise cause a breach of this deed;

- (ii) without limiting clause 7.16(b), require a member of the Virtus Group to take any action that would reasonably be expected to conflict with or violate that member of the Virtus Group's constituent documents or any law or the rules of any stock exchange or would breach any obligation to any person including under a confidentiality agreement or arrangement;
 - (iii) require the approval of shareholders of Virtus under section 260B of the Corporations Act or equivalent or analogous restriction in any jurisdiction or under the rules of any stock exchange;
 - (iv) provide any confidential, competitively sensitive or privileged information where the provision of such information is reasonably likely to cause prejudice to the commercial or legal interests of the Virtus Group taken as a whole, or would be reasonably likely to jeopardise any attorney-client or other legal privilege;
 - (v) require a Virtus Party to execute prior to the implementation of the Scheme any agreements, including any credit or other agreements, pledge or security documents or other certificates, legal opinions or documents in connection with any financing; or
 - (vi) to the extent it would cause undue disruption to the operation of the Virtus Group business.
- (e) Bidder must promptly reimburse Virtus for all reasonable costs incurred by the Virtus Group in connection with any cooperation provided under this clause 7.14 (including reasonable advisors' fees and expenses).

7.15 Appointment of directors

- (a) Virtus must procure that on the Implementation Date, but subject to the Scheme Consideration having been paid by Bidder in accordance with the Scheme:
- (i) those persons nominated by Bidder are appointed to the Virtus Board and the boards of other members of the Virtus Group, provided that:
 - (A) each such person:
 - (1) is not ineligible to act as a director under any applicable laws (including under the Corporations Act); and
 - (2) signs consents to act as a director of the relevant member(s) of the Virtus Group; and
 - (B) such consents to act are provided to Virtus before the Implementation Date; and
 - (ii) those persons nominated by Bidder in writing are appointed to the Virtus Board such that directors of Virtus and directors of other members of the Virtus Group, as nominated by Bidder before the Implementation Date, resign as a director of the relevant member(s) of the Virtus Group (provided that nothing in this clause 7.15(a)(ii) requires any such director to forego any rights they may have under and subject to any deed of access and indemnity or policy of directors' and officers' insurance).
- (b) Once:

- (i) Bidder has a Relevant Interest in at least 50.1% of the Virtus Shares; and
- (ii) the Offer becomes or is declared unconditional,

Bidder must nominate to Virtus in writing such number of nominees to be appointed to the Virtus Board such that a majority of the directors of Virtus are directors nominated by Bidder, and Virtus must procure that, no later than three Business Days after such persons are nominated, those persons are appointed to the Virtus Board provided that:

- (iii) each such person:
 - (1) is not a person who the Virtus Board (acting reasonably and in good faith) determines is not of good fame or character;
 - (2) is not ineligible to act as a director under any applicable laws (including under the Corporations Act); and
 - (3) signs a consent to act as a director of the relevant member(s) of the Virtus Group and a letter of appointment as non-executive director, in a form reasonably required by Virtus and consistent with that signed by other Virtus non-executive directors (with necessary modifications); and
 - (4) provides the information needed to allow Virtus to comply with all applicable laws, orders or request of any Government Agency or the Listing Rules;
- (iv) such documents are provided to Virtus before the date of appointment of the director; and
- (v) after appointments are made under this clause 7.15(b), Bidder must procure that its nominees on the Virtus Board do not participate in any discussions or decisions of that board which relate to the Takeover Bid during the Offer Period. For the avoidance of doubt, the foregoing restriction does not extend to the Permitted Capital Return or the Refinancing Agreements.
- (c) Virtus will provide reasonable assistance to Bidder in relation to seeking any Regulatory Approvals or contractual counterparty consents required for the appointments, at the applicable times referred to in clauses 7.15(a) and 7.15(b), of any new directors (nominated by Bidder) to the boards of any member of the Virtus Group (excluding the Virtus Board).

7.16 Refinancing if Takeover Bid proceeds

- (a) From the date of this deed until the time at which the Virtus Board is reconstituted pursuant to clause 7.15, Virtus consents to its name being used as a potential borrower for syndication purposes under the Refinancing Commitment Letter, provided that, during this time;
 - (i) nothing in this clause 7.16 constitutes a commitment of the Virtus Board to enter into or become a borrower or guarantor under any Refinancing Agreement;
 - (ii) Virtus will not be required to sign the Refinancing Commitment Letter nor the Refinancing Agreements;

- (iii) Virtus will not be required to pay, and shall not be liable for, any ticking or other fees or costs and expenses under the Refinancing Commitment Letter or the Refinancing Agreements; and
 - (iv) the Bidder must indemnify and hold harmless each Virtus Party from and against any and all losses, damages, claims, costs or expenses suffered or incurred by any of them for any act or circumstance that arises from the date of this deed until the time at which the Virtus Board is reconstituted pursuant to clause 7.15 in connection with the Refinancing Commitment Letter, the Refinancing Agreements, the Refinancing and any information utilised in connection therewith.
- (b) From the date of this deed until the time at which the Virtus Board is reconstituted pursuant to clause 7.15, Virtus must use reasonable endeavours to ensure that Virtus is in a position to satisfy any conditions precedent to the drawdown of funds under the Refinancing Agreements by taking steps that are reasonably requested to be undertaken before the Virtus Board is reconstituted pursuant to clause 7.15 (including for the avoidance of doubt amending any constituent documents of any member of the Virtus Group to disapply any restriction on the transfer of shares in favour of a secured party under the Refinancing Agreements). However, prior to reconstitution of the Virtus Board under clause 7.15, the Virtus Board will not be required to sign any conditions precedent documents and will not be responsible or liable for their content.
- (c) Bidder must give Virtus prompt written notice of:
- (i) execution of the Refinancing Commitment Letter and the Refinancing Agreements;
 - (ii) any termination or repudiation of the Refinancing Commitment Letter and the Refinancing Agreements;
 - (iii) any material breach or default of the Refinancing Commitment Letter and the Refinancing Agreements by any party thereto in a manner which could reasonably be expected to prejudice Virtus' ability to pay the Permitted Capital Return as contemplated by this deed; or
 - (iv) any variations of the Refinancing Commitment Letter and the Refinancing Agreements (or the substitution of such agreements with alternative refinancing arrangements) together with copies of such variations or alternative refinancing arrangements.
-

8 Board recommendation

8.1 Recommendation

Subject to clause 8.3, Virtus represents and warrants to Bidder, as at the date of this deed, that it has been advised by each Virtus director that he or she will act in accordance with this clause 8.

8.2 Virtus' statement to contain recommendation

Subject to clause 8.3, Virtus must procure that:

- (a) following the execution of this deed Virtus announces, in the form agreed with Bidder, that each Virtus director:

- (i) intends to recommend that Virtus Shareholders vote in favour of the Scheme and the General Meeting Resolution and accept the Takeover Bid (**Transaction Recommendation**); and
 - (ii) who holds or controls Virtus Shares intends to vote his or her Virtus Shares in favour of the Scheme and the General Meeting Resolution and to accept the Takeover Bid (**Transaction Voting and Acceptance Intention**); and
- (b) the Scheme Booklet includes:
- (i) a unanimous recommendation by the Virtus Board that, in the absence of a Superior Proposal and subject to the Independent Expert opining at all times prior to the Second Court Date that the Scheme is in the best interests of Virtus Shareholders, Virtus Shareholders vote in favour of the Scheme (**Scheme Recommendation**); and
 - (ii) a statement by each Virtus director that he or she intends to vote in favour of the Scheme in respect of all Virtus Shares controlled or held by, or on behalf of, that Virtus director in the absence of a Superior Proposal and subject to the Independent Expert opining at all times prior to the Second Court Date that the Scheme is in the best interests of Virtus Shareholders (**Scheme Voting Intention**); and
- (c) the General Meeting Materials include:
- (i) a unanimous recommendation by the Virtus Board that, in the absence of a Superior Proposal and subject to the Takeover Recommendation continuing to be made, that Virtus Shareholders vote in favour of the General Meeting Resolution (**General Meeting Recommendation**); and
 - (ii) a statement by each Virtus director that he or she intends to vote in favour of the General Meeting Resolution in respect of all Virtus Shares controlled or held by, or on behalf of, that Virtus director in the absence of a Superior Proposal and subject to the Takeover Recommendation continuing to be made (**General Meeting Voting Intention**); and
- (d) the Target's Statement includes:
- (i) a unanimous recommendation by the Virtus Board that, in the absence of a Superior Proposal and subject to the Independent Expert opining at all times prior to acceptance that the Offer is fair and reasonable, Virtus Shareholders accept the Offer to be made to them under the Takeover Bid if the Takeover Bid Condition in clause 1.7(d) of Schedule 3 is satisfied (**Takeover Recommendation**); and
 - (ii) a statement by each Virtus director that he or she intends to accept the Offer to be made to them under the Takeover Bid in respect of all Virtus Shares controlled or held by, or on behalf of, that Virtus director if the Takeover Bid Condition in clause 1.7(d) of Schedule 3 is satisfied and in the absence of a Superior Proposal and subject to the Independent Expert opining at all times prior to acceptance that the Offer is fair and reasonable (**Takeover Acceptance Intention**).

8.3 Withdrawal or modification of recommendation and voting intention

Virtus must ensure that no director of Virtus:

- (a) changes, withdraws or modifies his or her Transaction Recommendation, Transaction Voting and Acceptance Intention, Scheme Recommendation, Scheme Voting Intention, General Meeting Recommendation, General Meeting Voting Intention, Takeover Recommendation or Takeover Acceptance Intention; or
- (b) makes any public statement or recommendation that is inconsistent with his or her recommendation of the Scheme or the Takeover Bid,

in each case except where:

- (c) Virtus receives a Competing Proposal and the relevant Virtus director determines, after all of Bidder's rights under clause 10.6 have been exhausted, that the Competing Proposal constitutes a Superior Proposal; or
- (d) the Independent Expert opines to the effect that:
 - (i) in the case of the Scheme, either prior to the despatch of the Scheme Booklet or prior to the Scheme Meeting, it is not in the best interests of Virtus Shareholders; or
 - (ii) in the case of the General Meeting or Takeover Bid, prior to the end of the Offer Period, it is not fair and not reasonable to Virtus Shareholders.
- (e) Bidder acknowledges and agrees that, notwithstanding any other term of this deed, one or more executive directors of Virtus may not make a recommendation under clause 8.1 or 8.2 or may withdraw his or her recommendation without being in breach of clause 8.1 or 8.2, in response to a requirement or request of the Court or a Government Agency that the relevant Virtus director abstain or withdraw from making a Transaction Recommendation, Transaction Voting and Acceptance Intention, Scheme Recommendation, General Meeting Recommendation or a Takeover Recommendation.

9 Representations and warranties

9.1 Bidder Warranties

Bidder represents and warrants to Virtus that each of the Bidder Warranties are true and correct:

- (a) as at the date of this deed, and
- (b) at 8.00am on the Second Court Date; and
- (c) at all times during the Offer Period,

except that where any statement is expressed to be made only at a particular date, it is given only at that date.

9.2 Bidder's indemnity

Bidder agrees with Virtus (on Virtus' own behalf and separately as trustee for each of the other Virtus Indemnified Parties) to indemnify and keep indemnified Virtus and Virtus Indemnified Parties against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which Virtus may suffer or incur by reason of any breach of any of the Bidder Warranties.

9.3 Virtus Warranties

Virtus represents and warrants to Bidder each of the Virtus Warranties are true and correct:

- (a) as at the date of this deed;
- (b) at 8.00am on the Second Court Date; and
- (c) at all times during the Offer Period,

except that where any statement is expressed to be made only at a particular date, it is given only at that date.

9.4 Virtus' indemnity

Subject to clause 9.5, Virtus agrees with Bidder (on Bidder's own behalf and separately as trustee for each of the other Bidder Indemnified Parties) to indemnify and keep indemnified Bidder and Bidder Indemnified Parties from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which Bidder may suffer or incur by reason of any breach of, or any of the Virtus Warranties not being true and correct.

9.5 Qualifications on Virtus Warranties and indemnities

The Virtus Warranties and the Virtus Indemnity are each subject to and are qualified by, and the liability of Virtus in respect of any breach of any Virtus Warranty or the Virtus Indemnity will be reduced or extinguished (as the case may be) to the extent that the breach arises in connection with matters that:

- (a) are expressly provided for in this deed;
- (b) have been disclosed by Virtus to ASX in the 2 years prior to the date of this deed or in a document lodged with ASIC in the 18 months prior to the date of this deed;
- (c) have been Fairly Disclosed in the Due Diligence Materials or the Disclosure Letter;
or
- (d) are within the actual knowledge of Bidder or any member of the deal team of Bidder who has been directly involved in the assessment and/or negotiation of the Transactions for Bidder as at the date of this deed.

9.6 Notifications

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or is reasonably expected to constitute a breach of any of the representations or warranties given by it under this clause 9.

9.7 Survival of representations

Each representation and warranty in clauses 9.1 and 9.3:

- (a) is severable;
- (b) will survive the termination of this deed; and

- (c) is given with the intent that liability thereunder will not be confined to breaches which are discovered prior to the date of termination of this deed.

9.8 Survival of indemnities

Each indemnity in this deed (including those in clauses 9.2 and 9.4) will:

- (a) be severable;
- (b) be a continuing obligation;
- (c) constitute a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this deed; and
- (d) survive the termination of this deed.

10 Exclusivity

10.1 No existing discussions

- (a) Virtus represents and warrants to Bidder that, as at the date of this deed, none of Virtus Group, nor any of their respective Authorised Persons:
 - (i) is a party to any agreement, arrangement or understanding with any person for the purpose of facilitating or is in connection with a Competing Proposal; and
 - (ii) is participating in any discussions or negotiations with any person that concern, or that could reasonably be expected to lead to, a Competing Proposal.
- (b) Unless otherwise agreed by Bidder, Virtus must:
 - (i) promptly enforce the terms of any confidentiality agreement, deed or undertaking (or similar document) entered into with a person other than Bidder (or its Related Bodies Corporate) in the 12 months prior to the date of this deed in relation to any Competing Proposal; and
 - (ii) not waive, and must promptly enforce, any standstill (or similar) obligations of any such person.

10.2 No-shop

During the Exclusivity Period, Virtus must not, and must ensure that its Related Bodies Corporate and their respective Authorised Persons do not, directly or indirectly:

- (a) solicit, invite, initiate or encourage any Competing Proposal;
- (b) solicit, invite, initiate or encourage any enquiries, offers, expressions of interest, proposals, discussions or negotiations with any person in relation to, or that could reasonably be expected to lead to, a Competing Proposal; or
- (c) communicate any intention to do any of these things referred to in clauses 10.2(a) to 10.2(b).

10.3 No-talk

Subject to clause 10.7, during the Exclusivity Period, Virtus must not, and must ensure that its Related Bodies Corporate and their respective Authorised Persons do not, directly or indirectly:

- (a) negotiate or enter into or participate in negotiations or discussions with any person;
or
- (b) communicate any intention to do any of these things,

in relation to (or which may reasonably be expected to lead to) a Competing Proposal.

10.4 No due diligence

Subject to clause 10.7, during the Exclusivity Period, except with the prior written consent of Bidder, Virtus must not, and must ensure that its Related Bodies Corporate and their respective Authorised Persons do not, directly or indirectly:

- (a) solicit, invite, initiate, or encourage any person (other than Bidder) to undertake due diligence investigations in respect the Virtus Group, or any of its businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal; or
- (b) make available to any person (other than Bidder) or permit any such person to receive, other than in the ordinary course of business or as required by law or the rules of any prescribed financial market, any non-public information relating to any member of the Virtus Group, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal;
- (c) make available to any other person, or permit any other person to have access to, other than Bidder and any other person nominated by Bidder (in the course of due diligence investigations or otherwise) any premises used, leased, licenced or owned by the Virtus Group in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal; or
- (d) make available to any other person, or permits any other person to have access to, other than Bidder and any other person nominated by Bidder (in the course of due diligence investigations or otherwise) any officers or employees of the Virtus Group in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.

10.5 Notification of approaches

- (a) During the Exclusivity Period, Virtus must promptly (and in any event within 1 Business Day) notify Bidder in writing of:
 - (i) any approach, inquiry or proposal made by any person to Virtus, any of its Related Bodies Corporate or any of their respective Authorised Persons, to initiate any discussions or negotiations that concern an actual, proposed or potential Competing Proposal; and
 - (ii) any request made by any person to Virtus, any of its Related Bodies Corporate, or any of their respective Authorised Persons, for any information

relating to Virtus, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, an actual, proposed or potential Competing Proposal.

- (b) A notice given under clause 10.5(a) must be accompanied by all material details of the proposal, including:
 - (i) to the extent known by Virtus, the material terms and conditions (including price, value of any non-cash component of the consideration, conditions precedent and proposed timetable) of any Competing Proposal; and
 - (ii) subject to clause 10.7, the identity of the person who made the proposal (and if different, details of the identity of the proposed bidder or acquirer).
- (c) During the Exclusivity Period, Virtus must promptly provide Bidder with:
 - (i) in the case of written materials, a copy of; or
 - (ii) in any other case, a written statement of,

any material non-public information relating to Virtus, its Related Bodies Corporate, or any of their businesses and operations made available or received by any person in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal and which has not previously been provided to Bidder. This clause 10.5(c) does not require Virtus to provide or make available to Bidder any information which Virtus reasonably considers is likely to disclose information relation to that other person which is commercially sensitive information of that person.
- (d) Nothing in this clause 10.5 limits the obligations of Virtus under clauses 10.2, 10.3 and 10.4.

10.6 Matching right

- (a) If Virtus is permitted by virtue of clause 10.7 to engage in activity that would otherwise breach any of clauses 10.3 and 10.4, Virtus must enter into a confidentiality agreement with the person who has made the applicable Competing Proposal on customary terms and must not enter into any other agreement, understanding or commitment in respect of a Competing Proposal or a potential Competing Proposal except as permitted by clause 10.6(b).
- (b) If Virtus receives a Competing Proposal and as a result, any Virtus director proposes to either:
 - (i) change, withdraw or modify his or her recommendation of or voting intention statement in respect of the Scheme or Takeover Bid; or
 - (ii) approve or recommend entry into any agreement, commitment, arrangement or understanding relating to the Competing Proposal (other than a confidentiality agreement contemplated by clause 10.6(a)),

Virtus must ensure that no Virtus director does so until each of the following has occurred:

- (iii) the relevant Virtus director has made the determination contemplated by clause 10.7(b) in respect of that Competing Proposal;

- (iv) Virtus has given Bidder written notice (**Relevant Notice**) of the Virtus director's proposal to take the action referred to in clauses 10.6(b)(i) or 10.6(b)(ii) (subject to Bidder's rights under clause 10.6(c));
 - (v) Virtus has given Bidder all information required by clause 10.5(b);
 - (vi) Bidder's rights under clause 10.6(c) have been exhausted; and
 - (vii) the Virtus directors have made the determination contemplated by clause 10.7(b) in respect of that Competing Proposal after Bidder's rights under clause 10.6(c) have been exhausted and after evaluation of any Counter Proposal.
- (c) If Virtus gives a Relevant Notice to Bidder under clause 10.6(b)(iv), Bidder will have the right, but not the obligation, at any time during the period of 5 Business Days following the receipt of the Relevant Notice, to amend the terms of the Transactions including increasing the amount of consideration offered under the Transactions or proposing any other form of transaction (each a **Counter Proposal**), and if it does so then:
- (i) the Virtus directors must review the Counter Proposal in good faith and acting reasonably. If the Virtus directors determine that the Counter Proposal would be equivalent or more favourable to Virtus Shareholders than the Competing Proposal (having regard to the matters noted in clause 10.7(b)), then Virtus and Bidder must use their reasonable endeavours to agree the amendments to this deed that are reasonably necessary to reflect the Counter Proposal and to enter into an amended agreement to give effect to those amendments and to implement the Counter Proposal, and Virtus must procure that the Virtus directors recommend the Counter Proposal to the Virtus Shareholders and not recommend the applicable Competing Proposal; and
 - (ii) if the determination is that the Counter Proposal would not provide an equivalent or more favourable outcome to Virtus Shareholders as a whole compared with the Competing Proposal for any reason other than a higher all cash consideration, then the Virtus directors must promptly provide Bidder with reasons for that determination and Bidder may take steps to amend the Counter Proposal to address the reasons given within a further period of 2 Business Days. If Bidder does so to Virtus' satisfaction, then the process in clause 10.6(c)(i) applies to that amended Counter Proposal.
- (d) For the purposes of this clause 10.6:
- (i) each successive material modification of any third party expression of interest, offer or proposal in relation to a Competing Proposal will constitute a new Competing Proposal; and
 - (ii) where clause 10.6(c)(ii) requires the process in clause 10.6(c)(i) to apply, clause 10.6(c)(ii) will have no subsequent application in relation to that amended Counter Proposal.

10.7 Fiduciary out

The restrictions in clauses 10.3 and 10.4 do not apply to restrict Virtus or any member of the Virtus Group or any Virtus Indemnified Party from taking or refusing to take any action with respect to a Competing Proposal (in relation to which there has been no contravention of this clause 10) provided that:

- (a) the Competing Proposal is bona fide and is made by or on behalf of a person that the Virtus Board considers is of sufficient commercial standing; and
- (b) the Virtus Board has determined in good faith after:
 - (i) receiving advice from Virtus' financial advisers, that the Competing Proposal is or may reasonably be expected to lead to a Superior Proposal; and
 - (ii) receiving written advice from Virtus' external Australian legal adviser practising in the area of corporate law that failing to take the action or refuse to take the action (as the case may be) with respect to the Competing Proposal would, or would be reasonably likely to, be a breach of the fiduciary or statutory duties owed by the Virtus directors under applicable law, or it would otherwise be unlawful not to take that action.

10.8 Compliance with law

- (a) This clause 10 imposes obligations on Virtus only to the extent that the performance of all or part of those obligations:
 - (i) does not constitute unacceptable circumstances as declared by the Australian Takeovers Panel; and
 - (ii) is not determined to be unlawful by a court (including by virtue of it being a breach of the Virtus Board's fiduciary or statutory duties),subject to all proper avenues of appeal and review, judicial and otherwise, having been exhausted.
- (b) The parties must not make, or cause or permit to be made, any application to the Australian Takeovers Panel or a court for or in relation to a declaration or determination of a kind referred to in clause 10.8(a).

10.9 Normal provision of information

Nothing in this clause 10 prevents Virtus from:

- (a) providing information to its Representatives;
- (b) providing information to any Government Agency;
- (c) providing information required to be provided by law, including to satisfying its obligations under the Listing Rules or to any Government Agency;
- (d) providing information to its auditors, customers, financiers, joint venturers and suppliers acting in that capacity in the ordinary course of business;
- (e) making presentations to, or responding to enquiries from, brokers, portfolio investors, analysts and institutional lenders and other third parties in the ordinary course of business or promoting the merits of the Transactions; or
- (f) engaging with Virtus Shareholders (in their capacity as shareholder) in relation to Virtus Group, provided such engagement does not breach the provisions of this clause 10 or relate to Virtus soliciting, inviting, encouraging or initiating a Competing Proposal.

11 Virtus Break Fee

11.1 Bidder declaration

Bidder represents and warrants to Virtus that it would not have entered into this deed without the benefit of this clause 11 and it would not have entered into and continued the negotiations leading up to this deed unless Bidder had a reasonable expectation that Virtus would agree to enter into a clause of this kind.

11.2 Acknowledgments in relation to Virtus Break Fee

- (a) Virtus acknowledges that Bidder has incurred and will incur significant costs, including significant opportunity costs, if they enter into this deed and neither of the Transactions are subsequently implemented. Those costs include external advisory costs, some internal costs of a similar kind, and out-of-pocket expenses.
- (b) Virtus represents and warrants that:
 - (i) it has received legal advice on this deed and the operation of this clause 11; and
 - (ii) it considers this clause 11 to be fair and reasonable and that it is appropriate to agree to the terms in this clause 11 in order to secure the significant benefits to it (and Virtus Shareholders) resulting from either of the Transactions.
- (c) The parties acknowledge that:
 - (i) the amount of the costs is inherently unascertainable and that, even after termination of this deed, the costs will not be able to be accurately ascertained; and
 - (ii) the Virtus Break Fee represents a genuine and reasonable estimate of cost and loss that Bidder will suffer if neither of the Transactions is subsequently implemented.

11.3 Virtus Break Fee

- (a) Virtus must pay to Bidder the Virtus Break Fee, within 10 Business Days after receipt of a written demand for payment from Bidder, if:
 - (i) prior to:
 - (A) in the case of the Scheme Recommendation, the Effective Date; or
 - (B) in the case of the Takeover Recommendation, the earlier of the end of the Offer Period and the End Date,

the Virtus Board fails to recommend, withdraws or adversely modifies the Transaction Recommendation, Scheme Recommendation, the Takeover Recommendation, the Transaction Voting and Acceptance Intention, the Scheme Voting Intention, the Takeover Acceptance Intention, the General Meeting Recommendation or the General Meeting Voting Intention (or otherwise makes a public statement indicating that the Virtus Board no longer supports the Scheme, Takeover Bid or the Transactions, as the case may be), other than in circumstances where:

- (C) in the case of the Scheme, the report (including any update, revision or amendment thereto) of the Independent Expert opining that the Scheme is not in the best interests of Scheme Shareholders (other than where the reason for that opinion is as a result of a Competing Proposal);
 - (D) in the case of the Takeover Bid, the report (including any update, revision or amendment thereto) of the Independent Expert opining that the Takeover Bid is not fair and not reasonable (other than where the reason for that opinion is as a result of a Competing Proposal); or
 - (E) clause 8.3(e) applies;
- (ii) a Competing Proposal is announced before the End Date and, within 9 months of the Competing Proposal being announced, the Competing Proposal results in a person or persons (other than a member of the Bidder Group):
- (A) obtaining Control of Virtus;
 - (B) merging or amalgamating with Virtus; or
 - (C) acquiring (directly or indirectly) an interest in all or a substantial part of the business or assets of the Virtus Group; or
- (iii) Bidder has terminated this deed under clause 13.1(a) and the Transactions do not complete.
- (b) The payment of the Virtus Break Fee by Virtus to Bidder provided for in this clause 11.3 must be made within 10 Business Days of receipt of a written demand for payment by Bidder unless a finding has been made by a court or Takeovers Panel as described in clause 11.4(e) in which case the amount payable shall be reduced to the amount which either the Takeovers Panel or a court determines does not constitute unacceptable circumstances or is enforceable (as applicable). The demand may only be made after the occurrence of an event referred to in clause 11.3(a).

11.4 Qualifications

- (a) No Virtus Break Fee is payable if:
- (i) the Scheme becomes Effective; or
 - (ii) Bidder becomes the holder of a Relevant Interest of not less than 50.1% of the Virtus Shares and the Offer has been declared or becomes unconditional,
- notwithstanding the occurrence of any event in clause 11.3.
- (b) To the extent that any amounts have already been paid to Bidder under this clause 11 and:
- (i) the Scheme becomes Effective; or
 - (ii) Bidder becomes the holder of a Relevant Interest of not less than 50.1% of the Virtus Shares and the Offer has been declared or becomes unconditional,

such amounts must be immediately refunded to Virtus.

- (c) Notwithstanding the occurrence of an event referred to in clause 11.3(a)(ii)(A), 11.3(a)(ii)(B) or 11.3(a)(ii)(C), no amount is payable under clause 11.3(a)(ii) if, prior to the event occurring:
 - (i) Virtus terminates this deed under clause 13.1(a); or
 - (ii) either party terminates this deed under clause 13.1(b) due to the failure of the Scheme Condition in clause 3.1(a) or the Takeover Bid Condition in clause 1.7(a) of Schedule 3.
- (d) The Virtus Break Fee is only payable once.
- (e) This clause 11 does not impose an obligation on Virtus to pay the Virtus Break Fee to the extent (and only to the extent) that the obligation to pay the Virtus Break Fee:
 - (i) constitutes unacceptable circumstances as declared by the Takeovers Panel; or
 - (ii) is held to be unenforceable by one party against another as determined by a court,after all proper avenues of appeal and review, whether judicial or otherwise, have been exhausted.
- (f) During the course of the Takeovers Panel or court proceedings (including any appeal or review thereof) referred to in clause 11.4(e), the parties must take all reasonable steps to ensure that any such declaration or determination has the minimum effect possible.
- (g) The parties 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 clause 11.4(e).
- (h) A statement that shareholders should “*take no action pending further advice*” (or words to that effect) is not regarded as an adverse modification of a recommendation for the purposes of clause 11.3(a)(i), provided that the Virtus Board publicly re-affirms its recommendation in favour of the Transactions at least 5 Business Days before the earlier of the date that the Scheme is considered by Virtus Shareholders, the end of the Offer Period and the End Date.

11.5 Virtus' limitation of liability

Notwithstanding any other provisions of this agreement but subject to clause 12.3, and except in relation to wilful misconduct or fraudulent breach of this deed by Virtus:

- (a) the maximum liability of Virtus to Bidder under or in connection with this deed including in respect of any breach of the deed (including the Virtus Warranties) will be the Virtus Break Fee;
- (b) a payment by Virtus in accordance with this clause 11 represents the sole and absolute liability of Virtus under or in connection with this deed and no further and damages, fees, expenses or reimbursements of any kind will be payable by Virtus in connection with this deed; and

- (c) the amount of the Virtus Break Fee payable to Bidder under this clause 11 shall be reduced by the amount of any loss or damage recovered by Bidder in relation to a breach of any other clause of this deed.
-

12 Bidder Break Fee

12.1 Acknowledgments in relation to Bidder Break Fee

- (a) Each party acknowledges that, if they enter into this deed and neither of the Transactions is implemented, Virtus will incur significant costs, including significant opportunity costs. Those costs include external advisory costs, some internal costs of a similar kind and out-of-pocket expenses.
- (b) In the circumstances referred to in clause 12.1(a), Virtus has requested provision be made for the costs outlined in this clause 12, in the form of the Bidder Break Fee, without which Virtus would not have entered into this deed.
- (c) Bidder represents and warrants that:
 - (i) it has received legal advice on this deed and the operation of this clause 12; and
 - (ii) it considers this clause 12 to be fair and reasonable and that it is appropriate to agree to the terms in this clause 12 in order to secure the significant benefits to Bidder (and its stakeholders) resulting from either of the Transactions.
- (d) The parties acknowledge that:
 - (i) the amount of the costs is inherently unascertainable and that, even after termination of this deed, the costs will not be able to be accurately ascertained;
 - (ii) the Bidder Break Fee is payable only once; and
 - (iii) the Bidder Break Fee represents a genuine and reasonable estimate of cost and loss that Virtus will suffer if neither of the Transactions is implemented.

12.2 Bidder Break Fee

Bidder must pay to Virtus the Bidder Break Fee, within 10 Business Days after receipt of a written demand for payment from Virtus, if Virtus has terminated this deed under clause 13.1(a).

12.3 Bidder's limitation of liability

- (a) Notwithstanding any other provisions of this agreement, and except in relation to wilful misconduct or fraudulent breach of this deed by Bidder:
 - (i) the maximum liability of Bidder to Virtus under or in connection with this deed including in respect of any breach of the deed (including the Bidder Warranties) will be the Bidder Break Fee; and
 - (ii) a payment by Bidder in accordance with this clause 12 represents the sole and absolute liability of Bidder under or in connection with this deed and no

further damages, fees, expenses or reimbursements of any kind will be payable by Bidder in connection with this deed; and

- (iii) the amount of the Bidder Break Fee payable to Virtus under this clause 12 shall be reduced by the amount of any loss or damage recovered by Virtus in relation to a breach of any other clause of this deed.
 - (b) To avoid doubt, nothing in clause 12.3(a) limits the liability of Bidder or any other person under the Deed Poll, any Equity Commitment Letter or at law.
-

13 Termination

13.1 Termination by either party

Either party may, by notice in writing to the other, terminate this deed:

- (a) at any time prior to the later of 8.00am on the Second Court Date and the end of the Offer Period if:
 - (i) either:
 - (A) the other party is in material breach of any of its obligations under this deed (other than a Bidder Warranty or a Virtus Warranty not being true and correct); or
 - (B) a representation and warranty given by the other party (being the Bidder Warranties where the "other party" is Bidder, and being the Virtus Warranties where the "other party" is Virtus) is not true and correct, where that breach of representation and warranty is material in the context of the Transactions as a whole;
 - (ii) the party wishing to terminate has given written notice to the other party in a timely manner setting out details of the relevant circumstance and stating an intention to terminate this deed; and
 - (iii) if capable of remedy, the breach or relevant circumstances are not remedied by the breaching party to the non-breaching party's satisfaction within 10 Business Days (or any shorter period ending at 5.00 pm on the day before the Second Court Date or the end of the Offer Period) from the time the notice is given; or
- (b) in the circumstances set out in, and in accordance with, clause 3.9; or
- (c) at any time if:
 - (i) the Effective Date for the Scheme has not occurred, or will not occur, on or before the End Date; and
 - (ii) Bidder withdraws the Takeover Bid or the Takeover Bid lapses for any reason, including non-satisfaction of a Takeover Bid Condition; or
- (d) the Control Date has not occurred on or before the End Date.

13.2 Termination by Virtus

Virtus may, by notice in writing to Bidder, terminate this deed at any time prior to the end of the Offer Period if, at any time before then, a majority of the Virtus Board has changed, withdrawn or modified their recommendation of the Scheme or Takeover Bid in the manner contemplated in clauses 8.3(c) or 8.3(d).

13.3 Termination by Bidder

Bidder may, by notice in writing to Virtus, terminate this deed at any time prior to the end of the Offer Period if, at any time before then, the Virtus Board:

- (a) or any member of it:
 - (i) fails to recommend to Virtus Shareholders to vote in favour of the Scheme or the General Meeting Resolution;
 - (ii) withdraws or adversely modifies their recommendation to Virtus Shareholders to vote in favour of the Scheme or the General Meeting Resolution;
 - (iii) fails to recommend to Virtus Shareholders to accept the Offer to be made to them under the Takeover Bid;
 - (iv) withdraws or adversely modifies their recommendation to Virtus Shareholders to accept the Offer to be made to them under the Takeover Bid; or
 - (v) makes a public statement indicating they no longer support the Scheme, the Takeover Bid, the Permitted Capital Return or the Transactions; or
- (b) recommends or supports a Competing Proposal.

For the avoidance of doubt, a statement that shareholders should “*take no action pending further advice*” (or words to that effect) is not regarded as an adverse change of a recommendation for the purposes of this clause 13.

13.4 Effect of termination

- (a) Subject to clause 13.4(b), in the event of termination of this deed under clauses 3.9 or 13.1 to 13.3, this deed will become void and have no effect, except that the provisions of clauses 9.7, 9.8, 11, 12, 13, 14 and 18.2 to 18.14 (inclusive) survive termination.
- (b) Termination of this deed does not affect any accrued rights of a party in respect of a breach of this deed prior to termination.

14 Releases and run-off

14.1 Release of Virtus Indemnified Parties

- (a) Subject to any restrictions imposed by law, Bidder releases any and all rights that it may have as at the date of this deed and from time to time, and agrees with Virtus that it will not make any Claim, against any Virtus Indemnified Party in connection with:

- (i) any breach of any covenant, representation or warranty given by Virtus under this deed;
- (ii) any disclosures containing any statement which is false or misleading (whether by omission or otherwise); or
- (iii) any failure to provide information,

except where a Virtus Indemnified Party has acted in fraud or has engaged in wilful misconduct. To avoid doubt, nothing in this clause 14.1(a) limits the rights of Bidder to terminate this deed under clause 13.

- (b) Virtus receives and holds the benefit of clause 14.1(a) as trustee for the Virtus Indemnified Parties.

14.2 Release of Bidder Indemnified Parties

- (a) Subject to any restrictions imposed by law, Virtus releases any and all rights that it may have as at the date of this deed and from time to time, and agrees with Bidder that it will not make any Claim, against any Bidder Indemnified Party in connection with:

- (i) any breach of any covenant, representation or warranty given by Bidder under this deed;
- (ii) any disclosure containing any statement which is false or misleading (whether by omission or otherwise); or
- (iii) any failure to provide information,

except where a Bidder Indemnified Party has acted in fraud or has engaged in wilful misconduct. To avoid doubt, nothing in this clause 14.2(a) limits the rights of Virtus to terminate this deed under clause 13, the terms of any Equity Commitment Letter or Virtus' right to claim under any Equity Commitment Letter.

- (b) Bidder receives and holds the benefit of clause 14.2(a) as trustee for the Bidder Indemnified Parties.

14.3 Insurers' agreement to continue insurance policies in full effect

- (a) Virtus must use reasonable endeavours to seek in principle agreement in writing prior to the Control Date from the relevant insurer in respect of the following insurance policies that it maintains for its own benefit or the benefit of the Virtus Group (or any joint venture entities), to the effect that the proposed change of control of Virtus on the Control Date will not trigger the change of control (or similar) clauses in the following policies:

- (i) cyber insurance policy; and
- (ii) each of the insurance policies in relation to the following subject matter areas that are written on a claims made basis: directors' and officers' liability, cyber, management liability, business liability insurance, medical malpractice / healthcare liability for any clinics operated or owned by the Virtus Group (or any joint venture entities), employment practices liability, and professional indemnity liability (**Claims Made Policies**).

- (b) Bidder must provide Virtus with all information and confirmations reasonably requested by Virtus in connection with the obligation in clause 14.3(a).
- (c) Virtus must keep Bidder informed of its progress in satisfying its obligation under clause 14.3(a).
- (d) A failure by a member of the Virtus Group to obtain any in principle agreement or endorsement by the relevant insurer in writing prior to the Control Date will not constitute a breach of this deed by Virtus and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this deed.

14.4 Run-off policies

- (a) In the event that Virtus is unable to have the relevant insurer of any of its Claims Made Policies agree to provide its in-principle agreement as contemplated by clause 14.3(a), Virtus must, prior to the Control Date, use reasonable endeavours to effect a fully-paid non-cancellable run-off insurance for that policy for a period of 7 years on and from the Control Date (**Claims Made Run-Off Policies**) (and that any actions to facilitate that insurance or in connection therewith will not be Prescribed Occurrences or breach any provision of this deed), provided that:
 - (i) the amounts payable in connection with the directors' and officers' liability policy are commercially reasonable based on premiums payable for such policies at that time;
 - (ii) the amounts payable in connection with the other Claims Made Run-Off Policies (other than the directors' and officers' liability policy) are commercially reasonable based on premiums payable for such policies at that time;
 - (iii) Virtus uses all reasonable endeavours to place the Claims Made Run-Off Policies on reasonable commercial terms;
 - (iv) Virtus keeps Bidder informed of progress in relation to the placement of Claims Made Run-Off Policies and provides Bidder with all information reasonably requested by Bidder in connection with the placing, or progress, of the Claims Made Run-Off Policies;
 - (v) Virtus consults with Bidder in advance in relation to the progress of obtaining, and all material communications with potential providers regarding, the Claims Made Run-Off Policies; and
 - (vi) the scope and amount of the cover of the Claims Made Run-Off Policies is on the same terms, or terms that are reasonably the same in all material respects, as the existing insurance policies in relation to which they are providing run-off cover 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 required run-off period.

- (b) If requested in writing by Bidder (and provided there is a reasonable period to obtain an alternative quote and place and enter into the relevant Claims Made Run-Off Policy before the Control Date), Virtus will, before placing or entering into the relevant Proposed Claims Made Run-Off Policy (as defined below) obtain a quote from a reputable insurer nominated in writing by Bidder (**Alternative Insurer**) for the relevant Claims Made Run-Off Policy sourced in accordance with (and

which would comply with) clauses 14.4(a)(i) to 14.4(a)(vi) (**Alternative Claims Made Run-Off Policy**), which is on the same terms, or terms that are the same in all material respects, as the relevant Claims Made Run-Off Policy which is proposed to be entered into by Virtus (**Proposed Claims Made Run-Off Policies**) (which was sourced in accordance with (and which would comply with) clauses 14.4(a)(i) to 14.4(a)(vi)) and if:

- (i) the estimated total costs under that relevant Alternative Claims Made Run-Off Policy is equal to or greater than the estimated total costs under the Proposed Claims Made Run-Off Policy;
- (ii) the Alternative Insurer declines to participate or provide a quote; or
- (iii) the Alternative Insurer fails to provide a quote within a period of time that would allow the policy to be placed and entered into before the Implementation Date,

then Virtus will proceed to place and enter into the relevant Proposed Claims Made Run-Off Policy. However, if the estimated total costs under the relevant Alternative Claims Made Run-Off Policy are less than the estimated total costs under the relevant Proposed Claims Made Run-Off Policy and there is a reasonable period for Virtus to place and enter into the relevant Alternative Claims Made Run-Off Policy before the Implementation Date, Virtus must place and enter into the relevant Alternative Claims Made Run-Off Policy, unless Bidder otherwise agrees in writing.

- (c) Subject to the implementation of either Transaction and subject to the Corporations Act, Bidder undertakes in favour of Virtus and each other person who is a Virtus Indemnified Party that it will:
 - (i) for a period of 7 years from the Control Date, ensure that the constitutions of Virtus and each other Virtus Group member continue to contain such rules as are not less favourable to the relevant directors and officers to those contained in those constitutions at the date of this deed that provide for each company to indemnify each of its current and previous 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 Virtus Group member; and
 - (ii) procure that Virtus and each other Virtus 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, not take any action which would prejudice or adversely affect any directors' and officers' run-off insurance cover taken out prior to the Control Date.
- (d) If for any reason the run-off insurance cover referred to in clause 14.4(a) for directors' and officers' liability is not taken out by Virtus, or ceases to be in place or available for any reason during the period of seven years after the Control Date, Bidder must procure that Virtus takes out, to the extent available from insurers:
 - (i) directors' and officers' run-off insurance cover for the directors and officers and maintains it for a period of 7 years from the retirement date of each director and officer to the maximum extent permitted by law; and
 - (ii) such cover is with a reputable insurer, and on terms that are no less advantageous to each of the applicable Virtus Indemnified Party than the coverage provided under the directors' and officers' policies of the Virtus

Group prior to the Control Date, insuring each applicable Virtus Indemnified Party against liabilities incurred by the Virtus Indemnified Party in the course of his or her service as a director or officer of any member of the Virtus Group; and

- (iii) Bidder must use its reasonable endeavours to not do anything, and must use its reasonable endeavours to procure that no other member of the Bidder Group or Virtus Group following the Control Date does anything, which prejudices any insurance cover taken out under clause 14.4(a), 14.4(d)(i) or 14.4(d)(ii), as applicable.
- (e) The undertakings contained in this clause 14.4 are subject to any Corporations Act restriction, or any restriction in the law of a jurisdiction in which an entity is incorporated, and will be read down accordingly.
- (f) Virtus receives and holds the benefit of this clause 14.4 as trustee for each director and officer of a member of the Virtus Group.

15 Confidentiality and Public Announcement

15.1 Confidentiality

Each party agrees and acknowledges that the Confidentiality Deed:

- (a) continues to operate in full force and effect after the date of this deed; and
- (b) survives any termination of this deed,

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

15.2 Public announcements on execution

Immediately after the date of this deed, each of Virtus and Bidder must issue public announcements concerning the Transactions in the form agreed to in writing between them.

15.3 Further public announcements

- (a) Subject to clause 15.3(b), the parties must:
 - (i) consult with each other before issuing and, to the extent practicable, give each other a reasonable opportunity to review and consider in good faith the views of the other party regarding, any press release or other public statement with respect to either Transaction; and
 - (ii) must not issue any such press release or make any such public statement prior to such consultation, except as may be required by applicable law, fiduciary duties or the Listing Rules.
- (b) The provisions of clause 15.3(a) do not apply to:
 - (i) any announcement, document or publication in connection with a Competing Proposal or withdrawal of a Virtus Board recommendation; or
 - (ii) any disclosure by Virtus or Bidder of any information concerning this deed or the transactions contemplated by this deed in connection with any dispute

between the parties regarding this deed, the Scheme, the Takeover Bid or the transactions contemplated by this deed.

16 Process Deed

16.1 Termination

Subject to clause 16.2, Virtus and Bidder agree that, on and from the time of entry into this deed and notwithstanding clause 6 of the Process Deed, the Process Deed is hereby terminated and all obligations under the Process Deed are discharged.

16.2 Survival

Virtus and Bidder agree that each party retains the rights it has against the other in connection with any breach of the Process Deed before entry into this deed.

17 Notices

17.1 Service of notices

(a) A notice, consent or other communication under this deed (**Notice**) is only effective if:

- (i) it is in writing, signed by or on behalf of the party giving it; and
- (ii) it is directed to the recipient's address for notices as follows:

Virtus

Address: Level 3, 176 Pacific Highway, Greenwich, NSW 2065
E-mail: Ava.Bentley@virtushealth.com.au
Attn: Ava Bentley, Company Secretary

with a copy to Gilbert + Tobin:

Address: Level 35, Tower 2, International Towers Sydney,
200 Barangaroo Avenue, Barangaroo, NSW 2000
E-mail: ccondoleon@gtlaw.com.au / kevans-cullen@gtlaw.com.au
Attn: Costas Condoleon, Partner / Karen Evans-Cullen, Partner

Bidder

Address: 100 Pall Mall, St. James's, London SW1Y 5NQ
E-mail: nradia@capvest.co.uk
Attn: Neil Radia, Chief Financial Officer c/o CapVest Partners LLP

with a copy to Ashurst:

Address: Level 11, 5 Martin Place, Sydney NSW 2000
E-mail: anton.harris@ashurst.com; greg.golding@ashurst.com
Attn: Anton Harris, Partner and Greg Golding, Partner

(b) If a party changes address and fails to notify the other party of this change and the new address, delivery of Notices to a new address, or otherwise brought to the

attention of the addressee, are deemed compliance with the notice obligations under this clause 17.1.

17.2 Effective on receipt

A Notice given in accordance with clause 17.1 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, the second Business Day after the date of posting (or the seventh Business Day after the date of posting if posted to or from outside Australia); or
- (c) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) at the time it is sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first,

but if the delivery or transmission under clause 17.2(a) or 17.2(b) is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the Business Day after that delivery, receipt or transmission.

18 General

18.1 Further acts

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

18.2 Payments

Unless otherwise expressly provided in this deed, where an amount is required to be paid to a party (the **Receiving Party**) by another party under this deed, that amount shall be paid:

- (a) in immediately available and irrevocable funds by electronic transfer to a bank account or accounts notified by the Receiving Party in writing on or before the due date for payment, or in other such immediately payable funds as the parties may agree; and
- (b) without deduction, withholding or set-off.

18.3 Consents or approvals

Except as expressly provided in this deed, a party may conditionally or unconditionally in its absolute discretion give or withhold any consent or approval under this deed.

18.4 GST

- (a) Any reference in this clause 18.4 to a term defined or used in the GST Act is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply under or in connection with this deed does not include GST.
- (c) To the extent that any supply made by a party (**Supplier**) to another party (**Supply Recipient**) under or in connection with this deed is a taxable supply, the Supply Recipient must pay to the Supplier, in addition to the consideration to be provided under this deed but for the application of this clause 18.4(c) for that supply (**GST Exclusive Consideration**), an amount equal to the amount of the GST Exclusive Consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. This clause 18.4(c) does not apply to any taxable supply under or in connection with this deed that is expressly stated to include GST.
- (d) The amount on account of GST payable in accordance with this clause 18.4 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.
- (e) Any reference in the calculation of any consideration or of any indemnity, reimbursement or similar amount to a cost, expense or liability incurred by a person (**Relevant Expense**) is a reference to the relevant expense reduced by an amount equal to any input tax credit entitlement of that person (or of the representative member of any GST group to which the person belongs) in relation to the Relevant Expense. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the relevant payment or consideration must be provided.
- (f) Unless expressly included, any monetary thresholds specified in this deed are exclusive of GST.

18.5 Stamp duty

Bidder must pay all stamp duties (if any) and any fines and penalties with respect to stamp duty in respect of this deed, the Scheme or the Takeover Bid or the steps to be taken under this deed, the Scheme or the Takeover Bid (including the acquisition or transfer of Virtus Shares pursuant to either Transaction).

18.6 Expenses

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

18.7 Amendments

This deed may only be varied by a document signed by or on behalf of each of the parties.

18.8 Assignment

A party must not assign or novate this deed or otherwise deal with the benefit of it or a right under it, or purport to do so, without the prior written consent of the other party, which consent may be withheld at the absolute discretion of the party from whom consent is sought.

18.9 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this deed.
- (b) Any waiver or consent given by any party under this deed will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this deed will operate as a waiver of another breach of that term or of a breach of any other term of this deed.
- (d) Nothing in this deed obliges a party to exercise a right to waive any conditional term of this deed that may be in its power.

18.10 Counterparts

- (a) This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. Each counterpart is an original but the counterparts together are one and the same agreement.
- (b) This deed is binding on the parties on the exchange of duly executed counterparts.
- (c) The parties agree that a copy of an electronically executed counterpart sent by email to the email address of the other party specified in clause 17, 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.

18.11 Entire agreement

This deed, the Confidentiality Deed and any other documents specified by the parties for the purposes of this clause 18.11:

- (a) supersede all prior agreements, understandings, negotiations or deeds (including the Process Deed) in respect of their subject matter; and
- (b) embody the entire understanding of the parties and constitutes the entire terms agreed on between the parties with respect to their subject matter.

18.12 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.

- (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.

18.13 No merger

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

18.14 Governing law

- (a) This deed is governed by and will be construed according to the laws of New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and of the courts competent to determine appeals from those courts.

Schedule 1 Dictionary

1 Dictionary

1.1 Defined terms

In this deed, unless the context otherwise requires, the following words and expressions have meanings as follows:

Acceptance Form means the acceptance form that will be enclosed with the Bidder's Statement.

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

Alternative Claims Made Run-Off Policy has the meaning given to that term in clause 14.4(b).

Alternative Financing means debt financing in connection with the Transactions to be provided by one or more debt financing sources other than pursuant to the Debt Commitment Letter as at the date of this deed.

Alternative Insurer has the meaning given to that term in clause 14.4(b).

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in Division 2 of Part 1.2 of the Corporations Act.

ASX means ASX Limited (ABN 98 008 624 691) or, if the context requires, the financial market operated by it.

Authorised Person means, in respect of a person:

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

BGH Proposal means each of the non-binding offers from BGH Capital Pty Ltd as announced to ASX by Virtus on 14 December 2021, the revised non-binding offer from BGH Capital Pty Ltd as announced to ASX by Virtus on 28 February 2022 and the revised non-binding offer from BGH Capital Pty Ltd dated 10 March 2022.

Bidder's Statement means the bidder's statement of Bidder in relation to the Takeover Bid.

Bidder Break Fee means A\$7,192,147.

Bidder Group means Bidder and each of its Related Bodies Corporate (excluding, at any time, any member of the Virtus Group to the extent that any member of the Virtus Group is a subsidiary of Bidder at that time).

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

Bidder Information means such information:

- (a) contained in each Relevant Document for which Bidder will be described as responsible in that Relevant Document in accordance with clause 4.6;
- (b) regarding Bidder that is provided by or on behalf of Bidder to Virtus to enable applications for Regulatory Approvals to be made; and
- (c) regarding Bidder that is provided by or on behalf of Bidder to the Independent Expert.

Bidder Warranties means the representations and warranties of Bidder set out in Schedule 4.

Business Day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Sydney, New South Wales and London, England.

Change of Control Requirements has the meaning given to that term in clause 7.11.

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

Claims Made Policies has the meaning given to that term in clause 14.3(a)(ii).

Claims Made Run-Off Policies has the meaning given to that term in clause 14.4(a).

Competing Proposal means any offer, proposal, agreement, arrangement or transaction, whether existing before, on or after the date of this deed (including for the avoidance of doubt any offer, proposal, agreement, arrangement or transaction arising out of or in connection with the BGH Proposal but excluding any Virtus Shares that BGH acquired or agreed to acquire before the date of this deed while that shareholding is less than 20%), which, if entered into or completed, could mean that a person other than Bidder or its Associates would:

- (a) directly or indirectly acquire Voting Power (as that term is defined in the Corporations Act) in, or have a right to acquire a legal, beneficial or economic interest in, or control of, more than 20% of the securities in any member of the Virtus Group;
- (b) acquire Control of any member of the Virtus Group;
- (c) directly or indirectly acquire or become the holder of, or otherwise acquire or have a right to acquire a legal, beneficial or economic interest in, or control of, all or substantially all or material part of the business or assets of any member of the Virtus Group;
- (d) otherwise directly or indirectly acquire, be stapled with or merge with Virtus; or
- (e) require Bidder to abandon, or otherwise fail to proceed with, a Transaction,

whether by way of a takeover bid, scheme of arrangement, shareholder approved acquisition, capital reduction, buy back, sale, lease or purchase of shares, other securities or assets, assignment of assets or liabilities, joint venture, dual listed company (or other synthetic merger), deed of company arrangements, any debt for equity arrangement or other transaction or arrangement.

Condition means each of the Scheme Conditions and the Takeover Bid Conditions.

Confidentiality Deed means the confidentiality deed between Virtus, Virtus Health Europe Limited and CapVest Partners LLP dated 20 January 2022.

Consultation Notice has the meaning given to that term in clause 3.9(a)(i).

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

Control Date means the date on which Bidder acquires a Relevant Interest in 50.1% or more of all Virtus Shares on issue and either:

- (a) the Offer becomes or is declared unconditional; or
- (b) the Scheme has been implemented.

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

Counter Proposal has the meaning given to that term in clause 10.6(c).

Court means the Supreme Court of New South Wales or any other court of competent jurisdiction under the Corporations Act as the parties may agree in writing.

Debt Commitment Letter means, subject to clause 7.13, the binding, credit-approved, executed commitment letters and accompanying term sheets from certain banks or other financial institutions addressed to one or more Bidder Group members and provided to Virtus on or prior to the execution of this deed (as amended or replaced in a manner not inconsistent with this deed). For purposes of this deed, **Debt Commitment Letter** will include any Replacement Financing Letter(s) and accompanying term sheet in connection with any Alternative Financing.

Debt Document means the syndicated facility agreement and other associated financing documents related to the Debt Financing on terms contemplated by the Debt Commitment Letter (as those terms may be deviated or replaced in accordance with this deed).

Debt Financing means the debt financing provided or intended to be provided to Bidder Group pursuant to the Debt Commitment Letter.

Deed Poll means the deed poll to be executed by Bidder prior to the First Court Date, substantially in the form set out in Schedule 7 or in such other form as is acceptable to Virtus acting reasonably.

Discloser has the meaning given to that term in clause 3.5(b).

Disclosure Letter means the letter so entitled from Virtus provided to Bidder on or prior to the date of this deed and countersigned by Bidder.

Due Diligence Materials means the information in relation to the Virtus Group disclosed in writing by or on behalf of Virtus to Bidder and its Representatives prior to the date of this deed in:

- (a) the Online Data Room; and
- (b) any written answers to requests for further information made by Bidder and its Representatives as contained in the Online Data Room.

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

Effective Date, with respect to the Scheme, means the date on which the Scheme becomes Effective.

End Date means the later of:

- (a) the date that is 6 months after the date of this deed; and
- (b) such other date and time agreed in writing between Bidder and Virtus.

Equity Commitment Letters means the binding, executed commitment letters addressed to Bidder and Virtus from CapVest Equity Partners V SCSp acting via its general partner CapVest Private Equity V S.à.r.l dated on or about the date of this deed.

Excluded Shareholder means any Virtus Shareholder who is Bidder or a wholly-owned subsidiary of Bidder.

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

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

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

FIRB means the Foreign Investment Review Board.

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

Foreign Laws means a law of a jurisdiction other than an Australian jurisdiction.

General Meeting means a general meeting of Virtus Shareholders to be convened at the same time as the Scheme Meeting to consider approval of the Permitted Capital Return.

General Meeting Materials means an explanatory memorandum and notice of meeting for the purposes of the General Meeting which contains such information as is required to comply with the requirements of section 256C of the Corporations Act.

General Meeting Recommendation has the meaning given in clause 8.2(c)(i).

General Meeting Resolution means the resolution to be considered at the General Meeting to approve the Permitted Capital Return.

General Meeting Voting Intention has the meaning given in clause 8.2(c)(ii).

Government Agency means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and

includes any minister, ASIC, ASX and any regulatory organisation established under statute or any stock exchange.

GST means a goods and services tax, or similar value added tax, levied or imposed in Australia under the GST Law.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST Exclusive Consideration has the meaning given to that term in clause 18.4(c).

GST Law has the meaning given to it in the GST Act.

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

Implementation Date means, with respect to the Scheme, the fifth Business Day, or such other Business Day as the parties agree, following the Scheme Record Date.

Independent Expert means an expert, independent of the parties, engaged by Virtus to opine on the Transactions.

Independent Expert's Report means the report from the Independent Expert commissioned by Virtus for inclusion in the Scheme Booklet or the Target's Statement, which includes a statement by the Independent Expert on whether, in its opinion:

- (a) the Scheme is in the best interests of Virtus Shareholders;
- (b) the Takeover Bid and Permitted Capital Return is fair and reasonable,

and includes any update, revision or amendment of that report by the Independent Expert.

Insolvency Event means in relation to a person:

- (a) **(insolvency official)** the appointment of a liquidator, provisional liquidator, administrator, statutory manager, controller, receiver, receiver and manager or other insolvency official (whether under an Australian law or a foreign law) to the person or to the whole or a substantial part of the property or assets of the person and the action is not stayed, withdrawn or dismissed within 14 days;
- (b) **(arrangements)** the entry by the person into a compromise or arrangement with its creditors generally;
- (c) **(winding up)** the calling of a meeting to consider a resolution to wind up the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or order for the winding up or deregistration of the person other than where the application or order (as the case may be) is set aside or withdrawn within 14 days;
- (d) **(ceasing business)** the person ceases or threatens to cease to carry on business;
- (e) **(insolvency)** the person is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act;

- (f) (**deregistration**) the person being deregistered as a company or otherwise dissolved;
- (g) (**deed of company arrangement**) the person executing a deed of company arrangement;
- (h) (**person as trustee or partner**) the person incurs a liability while acting or purporting to act as trustee (or co-trustee) or general partner of a trust or partnership (including a limited partnership) and the person is not entitled to be fully indemnified against the liability out of trust or partnership assets because of one or more of the following:
 - (i) a breach of trust or obligation as partner by the person;
 - (ii) the person acting outside the scope of its powers as trustee or partner;
 - (iii) a term of the trust or partnership denying, or limiting, the person's right to be indemnified against the liability;
 - (iv) the assets of the trust or partnership being insufficient to discharge the liability; or
- (i) (**analogous events**) anything analogous to those set out in any of paragraphs (a) to (f) inclusive occurs in relation to the person under the laws of a foreign jurisdiction,

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

Integration Committee has the meaning given to it in clause 7.10(a).

Interim Dividend means a dividend in an amount not exceeding \$0.12 per Virtus Share announced by Virtus to Virtus Shareholders on 22 February 2022.

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

Material Adverse Change means:

- (a) the Specified Circumstances occur with respect to the Specified Contracts;
- (b) an event, occurrence or matter that occurs after the date of this deed, and which (individually or when aggregated with other events, occurrences or matters) has or is reasonably likely to have the effect of:
 - (i) diminishing the net assets of the Virtus Group by \$34,000,000 or more, as compared to what the net assets of the Virtus Group could reasonably be expected to have been but for the relevant event, occurrence or matter; or
 - (ii) diminishing the annual EBITDA of the Virtus Group (on a recurring basis) by at least \$6,500,000 (calculated after taking into account any event, occurrence or matter after the date of this deed that has or could reasonably be expected to have a positive effect on consolidated annual EBITDA), as compared to what the consolidated annual EBITDA of the Virtus Group (on a recurring basis) could reasonably be expected to have been but for the relevant event, occurrence or matter,

in each case other than an event, occurrence or matter:

- (c) required to be done or procured by Virtus pursuant to this deed or the Transactions (including the payment of a Permitted Special Dividend) or relating to the Debt Documents or the Permitted Capital Return;
- (d) to the extent that it was Fairly Disclosed in the Disclosure Letter or the Due Diligence Materials;
- (e) to the extent it was Fairly Disclosed to the ASX in the 2 years before the date of this deed or in a document lodged with ASIC in the 18 months before the date of this deed or which may arise from an event, occurrence or matter which was so disclosed;
- (f) to the extent it was actually known to Bidder prior to the date of this deed (which does not include knowledge of the risk of an event, matter or circumstance occurring);
- (g) which Bidder has previously approved or requested in writing;
- (h) relating to costs and expenses incurred by Virtus associated with the Transaction process, including all fees payable to external advisers of Virtus, to the extent such amounts are Fairly Disclosed in the Disclosure Letter or the Due Diligence Materials; or
- (i) which arise from:
 - (i) changes in exchange rates or interest rates;
 - (ii) general economic, political or business conditions, including changes or disruptions to, or fluctuations in, domestic or international financial markets;
 - (iii) acts of terrorism, war (whether or not declared), natural disaster or adverse weather conditions or the like;
 - (iv) general outbreaks of illness (including COVID-19 or any mutation, variation or derivative) or the like, or from any law, order, rule or direction of any Government Agency in relation thereto (excluding any change in any law, or rule or regulation of any Government Agency in respect of fertility treatment and health or impacting the market or business in which the Virtus Group operates); or
 - (v) changes to accounting standards or policies or the interpretation of them, applicable laws or policies of a Government Agency in Australia.

Notice has the meaning given to that term in clause 17.1(a).

Offer has the meaning given in clause 2.3(a).

Offer Period means the period that the Offer is open for acceptance.

Online Data Room means the documents and information (including, for the avoidance of doubt, information and responses to questions or requests for information from Bidder and its Representatives provided by Virtus or its Representatives via the "Q&A" function) contained in the Ansarada online data room entitled "Project Elton" to which Bidder and its Representatives were given access prior to the date of this deed, an electronic copy of which has been provided to Bidder by Virtus or its Representatives on or before the date of this deed.

Permitted Capital Return means a capital return in an amount of A\$2.67 per Virtus Share (and if for any reason a Permitted Special Dividend will not be paid or paid for an amount less than A\$0.44 per Virtus Share, the capital return will be increased by the amount per Share that is the difference between A\$0.44 per Virtus Share and the actual amount of the Permitted Special Dividend or in the case that there is no Permitted Special Dividend paid, then the capital return amount is A\$3.11 per Virtus Share), to be paid to Virtus Shareholders as soon as practicable after the Permitted Distribution Record Date if the Offers under the Takeover Bid become unconditional.

Permitted Distribution Record Date means the date that is 5 Business Days following the Offers being declared unconditional.

Permitted Special Dividend means a dividend in an amount of up to A\$0.44 per Virtus Share by Virtus to Virtus Shareholders in accordance with clause 7.2.

Prescribed Occurrence means the occurrence of any of the following matters:

- (a) Virtus converts all or any of its shares into a larger or smaller number of shares;
- (b) Virtus resolves to reduce its share capital in any way;
- (c) Virtus:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement under subsections 257C(1) or 257D(1) of the Corporations Act;
- (d) any member of the Virtus Group issues shares, or grants a performance right or an option over its shares, or agrees to make such an issue of shares or grant such a right or an option;
- (e) any member of the Virtus Group issues, or agrees to issue, convertible notes or any instruments or securities convertible into shares other than where the securities are issued, or agreed to be issued to a member of the Virtus Group;
- (f) any member of the Virtus Group making any change to its constitutive documents;
- (g) Virtus declaring, paying or distributing any dividend, bonus or other share out of its profits or assets, other than the Interim Dividend or the Permitted Special Dividend;
- (h) any member of the Virtus Group disposes, or agrees to dispose, of the whole, or a substantial part, of the business or property of the Virtus Group;
- (i) any member of the Virtus Group creates or agrees to create any mortgage, charge, security interest, lien or other encumbrance over the whole, or a substantial part, of its business or property, other than in the usual and ordinary course of business consistent with past practice; or
- (j) any member of the Virtus Group becomes Insolvent;

in each case provided that a Prescribed Occurrence will not include any matter:

- (k) expressly required to be done or procured by Virtus pursuant to this deed or the Transactions;

- (l) to the extent it is publicly Fairly Disclosed in filings of Virtus with the ASX in the 2 years before the date of this deed or in a document lodged with ASIC in the 18 months before the date of this deed;
- (m) to the extent it is Fairly Disclosed in the Disclosure Letter or the Due Diligence Materials;
- (n) required by law or by an order of a court or Government Agency; or
- (o) the undertaking of which Bidder has previously approved in writing.

Process Deed means the process deed between Virtus and CapVest Partners LLP dated 20 January 2022 as amended by deed of amendment dated 23 February 2022.

Proposed Claims Made Run-Off Policies has the meaning given to that term in clause 14.4(b).

Receiving Party has the meaning given to that term in clause 18.2.

Recipient has the meaning given to that term in clause 3.5(b).

Refinancing means the refinancing of Virtus contemplated by the Refinancing Commitment Letter and the Refinancing Agreement.

Refinancing Agreements means definitive facility agreements and security agreements to give effect to the terms and conditions provided for in the Refinancing Commitment Letter.

Refinancing Commitment Letter means that part of the Debt Commitment Letter relating to the refinancing of Virtus if the Takeover Bid becomes unconditional.

Register Date means the date and time identified as the "Register Date" in the Timetable, which will be the relevant date and time that will be set by Bidder for the purposes of section 633(2) of the Corporations Act.

Regulatory Approval means:

- (a) any approval, consent, authorisation, registration, filing, lodgment, permit, franchise, agreement, notarisation, certificate, permission, licence, direction, declaration, authority, waiver, modification or exemption from, by or with a Government Agency; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Government Agency intervened or acted in any way within a specified period after lodgment, filing, registration or notification, the expiry of that period without intervention or action.

Regulatory Approval Condition means that Condition in clause 3.1(a).

Regulatory Authority means:

- (a) a government or governmental, semi-governmental, administrative, fiscal or judicial entity or authority;
- (b) a minister, department, office, commission, delegate, instrumentality, tribunal, agency, board, authority or organisation of any government;

- (c) any regulatory organisation established under statute; and
- (d) includes the FIRB, ASX and ASIC.

Related Body Corporate means:

- (a) in relation to Bidder:
 - (i) any entity that is a subsidiary of CapVest Partners LLP, or any fund, limited partnership or other investment vehicle that is used to pool the resources of multiple underlying investors and that is managed on a discretionary basis by CapVest Partners LLP or one of its subsidiaries; or
 - (ii) an entity, fund or partnership over which CapVest Partners LLP or any one of its subsidiaries exercises Control (but read as though section 50AA(4) of the Corporations Act were omitted); and
- (b) in relation to Virtus, a related body corporate of Virtus under section 50 of the Corporations Act and includes any body corporate that would be a related body corporate if section 48(2) of the Corporations Act was omitted.

Relevant Expense has the meaning given to that term in clause 18.4(e).

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

Relevant Notice has the meaning given to that term in clause 10.6(b)(iv).

Replacement Financing Letters has the meaning given in clause 7.13.

Representative of a party includes an employee, agent, officer, director, adviser, partner, joint venturer or sub-contractor of that party.

RG 60 means Regulatory Guide 60 issued by ASIC.

Rights means all rights or benefits attaching or arising from Virtus Shares directly or indirectly after the date of this deed, including but not limited to, all dividends or other distributions, other than:

- (a) voting rights attaching to Virtus Shares during the period expiring at the later of the end of the Scheme Meeting and on the day after the date on which all of the Takeover Bid Conditions have been satisfied or waived;
- (b) the Interim Dividend, and any franking credits attaching to the Interim Dividend and any Permitted Special Dividend.

Scheme means the proposed scheme of arrangement pursuant to Part 5.1 of the Corporations Act between Virtus and Scheme Shareholders in respect of all Scheme Shares, substantially in the form set out in Schedule 6 or in such other form as the parties agree in writing, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by each party.

Scheme Booklet means the explanatory booklet to be prepared by Virtus in respect of the Scheme Transaction in accordance with the terms of this deed and to be despatched to Virtus Shareholders.

Scheme Conditions means the conditions set out in clause 3.1 and **Scheme Condition** means any one of them.

Scheme Consideration has the meaning given in clause 5.2.

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

Scheme Recommendation has the meaning given to the term in clause 8.2(b)(i).

Scheme Record Date means, in respect of the Scheme, 7.00pm on the third Business Day (or such other Business Day as the parties agree in writing) following the Effective Date.

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

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

Scheme Transaction means the proposed acquisition by Bidder, in accordance with the terms and conditions of this deed, of all of the Virtus Shares (other than the Virtus Shares held by an Excluded Shareholder) through the implementation of the Scheme.

Scheme Voting Intention has the meaning given to that term in clause 8.2(b)(ii).

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

Sensitive Confidential Information has the meaning given to that term in clause 3.5(b), and may include the identity of limited partners who are investors in funds investing in Bidder.

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

Specified Circumstances means the circumstances described as such in the letter to Bidder from Virtus on or about the date of this Deed.

Specified Contract means each contract disclosed in the letter to Bidder from Virtus on or about the date of this Deed.

Standard Tax Condition means any tax-related conditions which are in the form, or substantially in the form, of those set out in Section D of FIRB Guidance Note 12 on 'Tax Conditions' (in the form released on 9 July 2021).

Subsidiary has the meaning given to that term in section 46 of the Corporations Act.

Superior Proposal means a bona fide Competing Proposal (and not resulting from a breach by Virtus (or any of its Authorised Persons, affiliates or representatives) of any of its obligations under clause 10) which the Virtus Board determines in good faith and in order to satisfy what the Virtus Board reasonably considers to be its fiduciary or statutory

duties, would, after taking advice from its legal and financial advisers, if completed substantially in accordance with its terms, be likely to result in a transaction more favourable to Virtus Shareholders than the Transactions (including the latest proposal provided by Bidder to Virtus) having regard to matters including consideration, conditionality, funding, certainty, timing and the identity, reputation and financial condition of the proponent.

Supplier has the meaning given to that term in clause 18.4(c).

Takeover Acceptance Intention has the meaning given to that term in clause 8.2(d)(ii).

Takeover Bid means a takeover bid by Bidder for the Virtus Shares that satisfies the requirements in clause 2.3.

Takeover Bid Conditions means the conditions to the Takeover Bid set out in clause 1.7 of Schedule 3.

Takeover Bid Consideration has the meaning given in clause 6.1.

Takeover Bid Terms means the terms and conditions of the Takeover Bid set out in Schedule 3.

Takeover Bid Transaction means the acquisition of Virtus Shares by Bidder under the Takeover Bid.

Takeover Recommendation has the meaning given to the term in clause 8.2(d)(i).

Target's Statement means the target's statement that will be issued by Virtus in relation to the Takeover Bid.

Tax Act means the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth), or both as the context requires.

Timetable means the indicative timetable in relation to the Transactions set out in Schedule 2 with such modifications as may be agreed in writing by the parties.

Transaction Booklet means the single combined document to be despatched to Virtus Shareholders contemplated by clause 2.4.

Transaction Recommendation has the meaning given in clause 8.2(a)(i).

Transaction Voting and Acceptance Intention has the meaning given in clause 8.2(a)(ii).

Transactions means the Scheme Transaction and the Takeover Bid Transaction.

Treasurer means the Treasurer of Australia.

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

Virtus Break Fee means A\$7,192,147.

Virtus Consolidated Tax Group means the consolidated group of which Virtus is the head company (where 'consolidated group' and 'head company' have the same meaning as in the Tax Act).

Virtus Group means Virtus, its Subsidiaries and includes each of:

- (a) City East Specialist Day Hospital Trust of which Alexandria Specialist Day Hospital Pty Ltd is the trustee;
- (b) The Hunter Fertility Unit Trust of which Hunter Fertility Pty Ltd is the trustee;
- (c) QFG Day Theatres Unit Trust of which Spring Hill Specialist Day Hospital Pty Ltd is the trustee;
- (d) Labservices Unit Trust of which Labservices Pty Ltd is the trustee; and
- (e) The Heptarchy Trust of which Melbourne IVF Pty Ltd is the trustee.

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

Virtus Indemnity means the indemnity given by Virtus in clause 9.4.

Virtus Information means such information:

- (a) contained in each Relevant Document for which Virtus will be described as responsible in that Relevant Document in accordance with clause 4.6; and
- (b) regarding Virtus that is provided by or on behalf of Virtus to the Independent Expert.

Virtus Party means any member of the Virtus Group or any officer, employee or Adviser of any member of the Virtus Group.

Virtus Performance Right means a performance right issued under an employee incentive plan which confers on the holder a right to acquire a Virtus Share.

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

Virtus Share means a fully paid ordinary share in the capital of Virtus.

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

Virtus Warranties means the representations and warranties of Virtus set out in Schedule 5.

1.2 Interpretation

In this deed the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation, trust or other body corporate;
 - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its agents, successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this deed;
 - (vi) this deed includes all schedules and attachments to it;
 - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
 - (viii) a statute includes any regulation, ordinance, by-law or other subordinate legislation made under it;
 - (ix) an agreement other than this deed includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
 - (x) a monetary amount is in Australian dollars;
- (g) an agreement on the part of two or more persons binds them jointly and each of them severally;
- (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (i) a reference to time is to Sydney, Australia time;
- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it;
- (k) a reference to a fact, matter, circumstance or thing being **Fairly Disclosed** to a party means disclosed in writing to any of that party or any of its Authorised Persons in good faith and in sufficient detail so as to reasonably apprise a party (or one of its Authorised Persons) as to the nature and scope of the relevant matter, event or circumstance;
- (l) an obligation imposed by this deed on a party to use reasonable endeavours to ensure that an act or thing occurs or does not occur is to be read as including an obligation on that party to cause its subsidiaries to use reasonable endeavours to ensure that such act or thing occurs or does not occur, as the case may be; and
- (m) a Takeover Bid Condition will be taken to **correspond** to a Scheme Condition for the purposes of this deed if the Takeover Bid Condition and the Scheme Condition are expressed on substantially the same terms disregarding any references in the

respective Conditions to the date and time by, or the period of time during, which the Conditions must be satisfied.

1.3 Best and reasonable endeavours

A reference to a party using or obligation on a party to use its best endeavours or reasonable endeavours or all reasonable endeavours does not oblige that party to:

- (a) pay money:
 - (i) in the form of an inducement or consideration to a third party to procure something (other than the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing); or
 - (ii) in circumstances that are commercially onerous or unreasonable in the context of this deed;
- (b) provide other valuable consideration to or for the benefit of any person; or
- (c) agree to commercially onerous or unreasonable conditions.

1.4 Consents or approvals

If the doing of any act, matter or thing under this deed is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion unless expressly provided otherwise.

1.5 Knowledge, belief or awareness of Virtus

- (a) Certain statements made in this deed (including certain Virtus Warranties) are given and made by Virtus only on the basis of its knowledge, belief or awareness. For the purposes of this deed, Virtus' knowledge, belief or awareness is limited to the actual knowledge, belief or awareness of Kate Munnings, Matthew Prior, Teena Pisarev and Ava Bentley. The knowledge, belief or awareness of any person other than the persons identified in this clause 1.5(a) will not be imputed to Virtus.
- (b) None of the persons named in clause 1.5(a) will bear any personal liability in respect of the Virtus Warranties or otherwise under this deed.

Schedule 2 Indicative Timetable

Event	Date
Enter into this Transaction Implementation Deed	Sunday 13 March 2022
Virtus lodges Transaction Booklet with ASIC for review and comment	By Tuesday 12 April 2022
Bidder executes Deed Poll	Wednesday 27 April 2022
First Court Date	Thursday 28 April 2022
Transaction Booklet registered with ASIC	Friday 29 April 2022
Register Date	Friday 29 April 2022
Despatch Transaction Booklet to Virtus Shareholders	Monday 2 May 2022
Offer Period commences	Monday 2 May 2022
Scheme Meeting and General Meeting	Thursday 2 June 2022
If the Scheme is approved by Virtus Shareholders	
Second Court Date	Monday 6 June 2022
Effective Date – lodge office copy of Court order approving the Scheme with ASIC	Tuesday 7 June 2022
Scheme Record Date	Friday 10 June 2022
Implementation Date: Pay Scheme Consideration to participants in the Scheme. Reconstitute boards of each Virtus Group company	Friday 17 June 2022
If Virtus Shareholders approve the General Meeting Resolution but do <u>not</u> approve the Scheme	
Bidder to give notice on status of the Conditions ¹	By Monday 13 June 2022
Permitted Distribution Record Date	5 Business Days after Takeover Bid is declared unconditional

¹ As required by section 630(1) of the Corporations Act.

Event	Date
End of the Offer Period (unless extended or withdrawn)	Wednesday 22 June 2022

Schedule 3 Takeover Bid Terms

1.1 The Offer

- (a) Bidder will offer to acquire all (but not some only) of the Virtus Shares on and subject to the terms and conditions set out in this Schedule 3.
- (b) The consideration under the Offer will be the Takeover Bid Consideration.
- (c) By accepting the Offer, each Virtus Shareholder will undertake to transfer to Bidder not only the Virtus Shares to which the Offer relates, but also all Rights attached to those Virtus Shares. The effect of this clause is that the Takeover Bid Consideration will be reduced by the cash amount of any Permitted Special Dividend, and any Permitted Capital Return to which you become entitled.
- (d) The Offer will be made to each person registered as the holder of Virtus Shares in the Virtus Register at open of business (Sydney time) on the Register Date. It will also extend to:
 - (i) holders of securities that come to be Virtus Shareholders during the period from the Register Date to the end of the Offer Period due to the conversion of, or exercise of rights conferred by, such securities and which are on issue as at the Register Date; and
 - (ii) any person who becomes registered as the holder of Virtus Shares during the Offer Period.
- (e) The Offer will be dated in accordance with the Timetable.

1.2 Offer Period

- (a) Unless withdrawn, the Offer will remain open for acceptance during the period commencing on the date of the Offer and ending at 7.00pm (Sydney time) on the later of:
 - (i) the date set pursuant to the Timetable; or
 - (ii) any date to which the Offer Period is extended.
- (b) Despite anything else in this Schedule 3 the Offer Period must not expire prior to the date that is 20 Business Days after the date of the Scheme Meeting.

1.3 How the Offer will be accepted

- (a) A Virtus Shareholder will be required to accept the Offer for all (but not some only) of their Virtus Shares.
- (b) A Virtus Shareholder will be allowed to accept the Offer at any time during the Offer Period.
- (c) Bidder may establish an institutional acceptance facility to facilitate the acceptance of the Offer by institutional shareholders of Virtus.

1.4 Validity of acceptances

- (a) Bidder will be entitled to determine, in its sole discretion, all questions as to the form of documents, eligibility to accept the Offer and time of receipt of an acceptance of the Offer. The determination of Bidder will be final and binding on all parties.
- (b) Bidder will be entitled, in its sole discretion, at any time and without further communication to Virtus Shareholders, to deem any Acceptance Form it receives to be a valid acceptance in respect of Virtus Shares, even if a requirement for acceptance has not been complied with but the payment of the consideration in accordance with the Offer may be delayed until any irregularity has been resolved or waived and any other documents required to procure registration have been received by Bidder.
- (c) Where a Virtus Shareholder satisfies the requirement for acceptance in respect of only some of its Virtus Shares, Bidder will be entitled, in its sole discretion, to regard the Offer to be accepted in respect of those Virtus Shares but not the remainder.

1.5 The effect of acceptance

Virtus Shareholders who have accepted the Offer will be able to revoke their acceptance at any time until the Takeover Bid Condition in clause 1.7(a) of this Schedule 3 has been satisfied or waived in accordance with this deed and the Corporations Act. When the Takeover Bid Condition in clause 1.7(a) has been satisfied or waived, a Virtus Shareholder that has accepted the Offer will be unable to revoke its acceptance and the contract resulting from their acceptance will be binding on them and they will be unable to withdraw their Virtus Shares from the Offer or otherwise dispose of their Virtus Shares, except as permitted under the Corporations Act.

1.6 Payment of consideration

Bidder will provide the consideration due to Virtus Shareholders for their Virtus Shares within the time required under the Corporations Act.

1.7 Takeover Bid Conditions

- (a) **(FIRB)** before the end of the Offer Period, one of the following has occurred:
 - (i) Bidder has received a written notice under FATA from the Treasurer (or his or her delegate) stating that, or to the effect that, the Commonwealth Government does not object to Takeover Bid Transaction, either without condition or on terms that are acceptable to Bidder (acting reasonably);
 - (ii) following notice of the Takeover Bid Transaction having been given by Bidder to the Treasurer under FATA, the Treasurer ceases to be empowered to make any order under Part 3 of FATA; or
 - (iii) where an interim order is made under the FATA in respect of the Scheme, the subsequent period for making a final order prohibiting the Scheme elapses without a final order being made;
- (b) **(No Prescribed Occurrence)** no Prescribed Occurrence occurs between the date of this deed and the end of the Offer Period;

- (c) **(Restraints)** no law, statute, ordinance, regulation, rule, temporary restraining order, preliminary or permanent injunction or other judgment, order or decree issued by any Court of competent jurisdiction or Government Agency or other legal restraint or prohibition preventing or materially restricting the Takeover Bid is in effect at the end of the Offer Period;
- (d) **(Scheme fails)** Either:
 - (i) the Scheme is not approved at the Scheme Meeting by the requisite majority of Virtus Shareholders under subparagraph 411(4)(a)(ii)(B) of the Corporations Act; or
 - (ii) following the approval of the Scheme at the Scheme Meeting by the requisite majority of Virtus Shareholders under subparagraph 411(4)(a)(ii)(B) of the Corporations Act, the Court does not approve the Scheme in accordance with section 411(4)(b) of the Corporations Act;
- (e) **(Minimum acceptance)** Bidder has a Relevant Interest in at least 50.1% of the Virtus Shares (on a fully diluted basis);
- (f) **(approval of General Meeting Resolution)** Virtus Shareholders approve the General Meeting Resolution;
- (g) **(No Material Adverse Change)** no Material Adverse Change occurs between (and including) the date of this deed and the end of the Offer Period;
- (h) **(Termination of Transaction Implementation Deed)** the Transaction Implementation Deed is not terminated by Bidder under clause 13.1(a) before the end of the Offer Period.

1.8 Nature and waiver of Takeover Bid Conditions

- (a) Each of the Takeover Bid Conditions apart from the Condition in clause 1.7(a) will be conditions subsequent. The non-fulfilment of any condition subsequent does not, until the end of the Offer Period (or in the case of the Condition in clause 1.7(b) of this Schedule 3, until the end of the third Business Day after the end of the Offer Period), prevent a contract to sell Virtus Shares from arising, but will entitle Bidder by written notice to Virtus Shareholders, to rescind the contract resulting from Virtus Shareholders' acceptance of the Offer.
- (b) The Takeover Bid Condition in clause 1.7(a) is a condition precedent to the acquisition of any interest in Virtus Shares and will prevent a contract to sell Virtus Shares from arising until it is satisfied or waived in accordance with this deed and the Corporations Act. Notwithstanding the acceptance of the Offer by a Virtus Shareholder, unless and until the Condition in that clause is fulfilled:
 - (i) no contract for the sale of the Virtus Shares will come into force or be binding on the Virtus Shareholder or on Bidder; and
 - (ii) Bidder will have no rights (conditional or otherwise) in relation to the Virtus Shares.
- (c) Subject to the Corporations Act and clause 1.8(d) of this Schedule 3, Bidder may declare the Takeover Bid to be free from any Takeover Bid Condition by giving written notice to Virtus declaring the Offer to be free from the relevant Condition or Conditions specified, in accordance with section 650F of the Corporations Act. This notice may be given:

- (i) in the case of the Condition in clause 1.7(b) of this Schedule 3, not later than three Business Days after the end of the Offer Period; and
 - (ii) in the case of all the other Conditions in clause 1.7 of this Schedule 3, not less than 7 days before the end of the Offer Period.
- (d) The Takeover Bid Conditions in clause 1.7(d) of this Schedule 3 may only be waived by Bidder with the prior written consent of Virtus (in its absolute discretion).
 - (e) If a Scheme Condition is waived or satisfied, Bidder must declare the Takeover Bid free from the corresponding Takeover Bid Condition.
 - (f) If, at the end of the Offer Period (or in the case of the Condition in clause 1.7(b) of this Schedule 3, at the end of the third Business Day after the end of the Offer Period), the Takeover Bid Conditions have not been fulfilled and Bidder has not declared the Offer (or it has not become) free from those Conditions, all contracts resulting from the acceptance of the Offer will be automatically void.

1.9 Withdrawal of the Offer

- (a) Bidder will be entitled to withdraw the Offer with the consent in writing of ASIC, which consent may be subject to conditions. If ASIC gives such consent, Bidder will give notice of the withdrawal to the ASX and to Virtus and will comply with any other conditions imposed by ASIC.
- (b) If, at the time the Offer is withdrawn, all the Takeover Bid Conditions have been freed, all contracts arising from acceptance of the Offer before it was withdrawn will remain enforceable.
- (c) If, at the time the Offer is withdrawn, the Offer remains subject to one or more of the Takeover Bid Conditions, all contracts arising from its acceptance will become void (whether or not the events referred to in the relevant conditions have occurred).
- (d) A withdrawal pursuant to this clause 1.9 of this Schedule 3 will be deemed to take effect:
 - (i) if the withdrawal is not subject to conditions imposed by ASIC, on and after the date on which that consent in writing is given by ASIC; or
 - (ii) if the withdrawal is subject to conditions imposed by ASIC, on and after the date on which those conditions are satisfied.

1.10 Notice on status of conditions

The date for giving the notice on the status of the conditions required by section 630(1) of the Corporations Act will be determined in accordance with the Timetable (subject to extension in accordance with section 630(2) of the Corporations Act if the Offer Period is extended).

1.11 Variation of the Offer

Bidder will be entitled to vary the Offer in accordance with the Corporations Act.

1.12 Power of attorney

- (a) Immediately upon the Offer being declared or becoming unconditional and until Virtus registers Bidder as the holder of the relevant Virtus Shares in the Virtus Register, each Virtus Shareholder that has accepted the Offer:
 - (i) is deemed to have appointed Bidder as attorney and agent (and directed Bidder in each such capacity) to appoint any director, officer, secretary or agent nominated by Bidder as its sole proxy and, where applicable or appropriate, corporate representative to attend shareholders' meetings, exercise the votes attaching to the relevant Virtus Shares registered in their name and sign any shareholders' resolution or document;
 - (ii) must not 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 1.12(a)(i));
 - (iii) must take all other actions in the capacity of a registered holder of the relevant Virtus Shares as Bidder reasonably directs; and
 - (iv) acknowledges and agrees that in exercising the powers referred to in clause 1.12(a)(i), Bidder and any director, officer, secretary or agent nominated by Bidder under clause 1.12(a)(i) may act in the best interests of Bidder as the intended registered holder of the relevant Virtus Shares.

- (b) Immediately upon Bidder obtaining a Relevant Interest in at least 50.1% of the Virtus Shares (on a fully diluted basis) and until Virtus registers Bidder as the holder of the relevant Virtus Shares in Virtus' members register, each Virtus Shareholder that has accepted the Offer:
 - (i) is deemed to have appointed Bidder as attorney and agent (and directed Bidder in each such capacity) to appoint any director, officer, secretary or agent nominated by Bidder as its sole proxy and, where applicable or appropriate, corporate representative to attend the General Meeting, exercise the votes attaching to the relevant Virtus Shares at the General Meeting (including by voting in favour of the General Meeting Resolution (in person, by proxy or by corporate representative)) and sign any shareholders' resolution, proxy form or other related document;
 - (ii) must not attend or vote at the General Meeting or sign any resolutions related to the General Meeting Resolution, whether in person, by proxy or by corporate representative (other than pursuant to clause 1.12(a)(i)); and
 - (iii) acknowledges and agrees that in exercising the powers referred to in clause 1.12(b)(i), Bidder and any director, officer, secretary or agent nominated by Bidder under clause 1.12(b)(i) may act in the best interests of Bidder.

1.13 Return of documents

If the Offer does not become unconditional or any contract arising the Offer is rescinded by Bidder on the grounds of a breach of a condition of that contract, Bidder will, at its election, either return by post to the relevant Virtus Shareholder any Acceptance Form and any other documents sent with it by the Virtus Shareholder, or destroy those documents and notify the ASX of this.

1.14 Rights

If Bidder becomes entitled to any Rights as a result of an acceptance of the Offer, it may require the person who accepted the Offer to give to Bidder all documents necessary to vest title to those Rights in Bidder. If those documents are not provided to Bidder, or if a person who accepted the Offer received or is entitled to receive (or any previous holder of the relevant Virtus Shares received or is entitled to receive) the benefit of those Rights, Bidder will be entitled to deduct the amount (or value as reasonably assessed by Bidder) of such Rights (excluding the value of any franking credit) from any consideration otherwise payable. If Bidder does not, or cannot, make such a deduction, the person who accepted the Offer will be required to pay that amount to Bidder.

1.15 Offerees

(a) Registered holders

Offers will be made to each person registered as the holder of Virtus Shares in the register of Virtus Shareholders at 7.00 pm (Sydney time) on the Register Date. Offers will also extend to:

- (i) holders of Virtus Shares issued during the period from the Register Date to the end of the Offer Period (inclusive) as a result of the exercise or vesting of Virtus Performance Rights that are on issue as at the Register Date;
- (ii) any person who becomes registered, or entitled to be registered, as the holder of Virtus Shares during the Offer Period.

(b) Transferees

Offers will extend to all persons who, during the Offer Period are able to give good title to a parcel of Virtus Shares as if those persons held the Virtus Shares on the Register Date.

(c) Trust and nominees

Offers will be made to persons who hold Virtus Shares in two or more separate parcels within the meaning of section 653B of the Corporations Act (for example, because a person is a trustee or nominee for several distinct beneficial owners), in accordance with section 653B of the Corporations Act so that:

- (i) Bidder will be taken to have made a separate Offer for each separate parcel of Virtus Shares; and
- (ii) acceptance of the Offer for any distinct parcel of Virtus Shares will be ineffective unless:
 - (A) the Virtus Shareholder gives Bidder notice in accordance with the Offer in the Bidder's Statement stating that the Virtus Shares consist of separate parcels; and
 - (B) the acceptance specifies the number of Virtus Shares in each separate parcel to which the acceptance relates.

1.16 Foreign Laws

Bidder will not be required to register the Offer in any jurisdiction outside Australia (unless an applicable Foreign Law treats it as registered as a result of the Bidder's Statement being lodged with ASIC).

1.17 Stamp duty

Bidder will pay any stamp duty on the transfer of the Virtus Shares.

1.18 Governing law

The Offer and any contract that results from an acceptance of the Offer will be governed by the laws in force in New South Wales, Australia.

Schedule 4 Bidder Warranties

Bidder represents and warrants that:

- (a) Bidder is a validly existing corporation registered under the laws of its place of incorporation;
- (b) the execution and delivery of this deed has been properly authorised by all necessary corporate action and Bidder has full corporate power and lawful authority to execute and deliver this deed and the Deed Poll, and to perform or cause to be performed its obligations under this deed and the Deed Poll;
- (c) this deed constitutes legal, valid and binding obligations on it and this deed does not result in a breach of or default under any deed or any writ, order or injunction, rule or regulation to which Bidder is a party or is bound;
- (d) as far as Bidder is aware, no Regulatory Approval is required to be obtained by Bidder in order for it to execute, deliver and perform this deed, other than those approvals set out in clause 3.1;
- (e) CapVest Equity Partners V SCSp acting through its general partner CapVest Private Equity V S.à.r.l (**CapVest**) holds 100% of the direct or indirect legal title to the shares in Bidder and no other person (other than a Subsidiary of CapVest) has any direct shareholding or direct legal, beneficial or equitable interest in Bidder or any right to be issued or transferred any share or interest in Bidder;
- (f) the information about the direct and indirect ownership of Bidder set out in the FIRB application provided to Virtus' solicitors on 9 March 2022 is true and accurate in all material respects;
- (g) as at the date the Relevant Document is despatched to Virtus Shareholders the Bidder Information:
 - (i) will be prepared and included in the Relevant Document in good faith; and
 - (ii) complies in all material respects with the requirements of the Corporations Act, the Listing Rules and relevant ASIC regulatory guides (as applicable);
- (h) as at the date the Relevant Document is despatched to Virtus Shareholders, the Bidder Information will not be misleading or deceptive in any material respect (whether by omission or otherwise) and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;
- (i) any statement of opinion or belief contained in the Bidder Information is honestly held and there are reasonable grounds for Bidder holding that opinion or belief;
- (j) all information provided by or on behalf of Bidder to the Independent Expert to enable the Independent Expert's Report to be included in the Scheme Booklet and Target's Statement will not be misleading or deceptive in any material respect (whether by omission or otherwise) and will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's Report for inclusion in the Scheme Booklet and Target's Statement;

- (k) as at the date of this deed, neither Bidder nor any of its Associates has a Relevant Interest in any Virtus Shares;
- (l) neither Bidder nor any of its Associates has any agreement, arrangement or understanding with any Virtus Shareholder under which:
 - (i) that Virtus Shareholder (or an Associate of that Virtus Shareholder) would be entitled to receive any collateral benefit in relation to the Transactions, or any consideration for their Virtus Shares that is different from the Scheme Consideration or the Takeover Bid Consideration; or
 - (ii) the Virtus Shareholder agrees to vote in favour of the Scheme (or against any Competing Proposal) or accept the Takeover Bid;
- (m) other than as disclosed to Virtus and approved by the Virtus Board, neither Bidder nor any of its Associates has any agreement, arrangement or understanding with any director or employee of Virtus relating in any way to the Transactions or operations of Virtus after the Effective Date or the date on which the Takeover Bid becomes unconditional;
- (n) Bidder does not require the approval of its shareholders or the approval or consent of any other person to enter into or perform any of its obligations under this deed or the Deed Poll;
- (o) no Insolvency Event has occurred in relation to Bidder or another member of the Bidder Group, nor has any regulatory action of any nature of which Bidder is aware been taken that would prevent or restrict Bidder's ability to fulfil its obligations under this deed; and
- (p) in relation to the Equity Commitment Letter:
 - (i) Bidder has disclosed a true and complete copy of the Equity Commitment Letter to Virtus;
 - (ii) the Equity Commitment Letter has been executed by the parties thereto and constitutes legally valid and enforceable obligations on, and rights of, those parties that are enforceable in accordance with their terms;
 - (iii) other than as permitted under this deed, the Equity Commitment Letter has not been:
 - (A) terminated or rescinded, and Bidder is not in default thereunder; or
 - (B) amended in any respect which will, or is reasonably likely to, prejudice Bidder's ability to pay the Scheme Consideration or the Takeover Bid Consideration in accordance with this deed and the Deed Poll or to pay any other amount payable under the Equity Commitment Letter; and
 - (iv) without the prior written consent of Virtus, Bidder will not and must procure that each other member of the Bidder Group does not:
 - (A) replace, amend, or agree to amend, the Equity Commitment Letter;
 - (B) waive, or agree to waive, any of its rights under the Equity Commitment Letter; and

- (C) agree or consent to any novation, assignment or transfer of any counter-party's obligations under the Equity Commitment Letter,

where to do so will prejudice Bidder's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll or to pay the consideration due to Virtus Shareholders who accept the Offer in accordance with this deed or to pay any other amount under the Equity Commitment Letter;

- (q) in relation to the Debt Commitment Letter:
 - (i) Bidder has disclosed a true and complete copy of the Debt Commitment Letter to Virtus (subject only to the redaction of commercially sensitive information that is not material to an understanding of the terms of the Debt Commitment Letter);
 - (ii) the Debt Commitment Letter has been executed by the parties thereto and constitutes legally valid and enforceable obligations on, and rights of, those parties that are enforceable in accordance with their terms;
 - (iii) other than as permitted under this deed, the Debt Commitment Letter has not been:
 - (A) terminated or rescinded, and Bidder is not in default thereunder; or
 - (B) amended in any respect which will, or is reasonably likely to, prejudice Bidder's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll or to pay the consideration due to Virtus Shareholders who accept the Offer;
 - (iv) without the prior written consent of Virtus, other than in accordance with this deed, Bidder will not and must procure that each other member of the Bidder Group does not:
 - (A) replace, amend, or agree to amend, the Debt Commitment Letter;
 - (B) waive, or agree to waive, any of its rights under the Debt Commitment Letter; and
 - (C) agree or consent to any novation, assignment or transfer of any counter-party's obligations under any Debt Commitment Letter, where to do so will prejudice Bidder's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll or to pay the consideration due to Virtus Shareholders who accept the Offer;
 - (v) Bidder will enforce, and must procure that each other member of the Bidder Group enforces, its rights under the Debt Commitment Letter to the extent failure to do so will prejudice Bidder's ability to pay the Scheme Consideration in accordance with this deed, the Scheme and the Deed Poll or to pay the consideration due to Virtus Shareholders who accept the Offer;
 - (vi) as at the date on which the Debt Document is entered into and at 8.00am on the Second Court Date, the Debt Document:

- (A) has been duly executed by the parties thereto and constitutes legally valid and enforceable obligations on, and rights of, those parties that are enforceable in accordance with their terms;
- (B) has not been terminated or rescinded, and no default is subsisting; and
- (C) other than as permitted under this deed, has not been amended in any respect which will, or is reasonably likely to, prejudice Bidder's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll or to pay the consideration due to Virtus Shareholders who accept the Offer,

and Bidder will enforce its rights under the Debt Document to the extent failure to do so may prejudice its ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll or to pay the consideration due to Virtus Shareholders who accept the Offer;

- (r) at all times between the date of this deed and 8.00am on the Second Court Date, Bidder has a reasonable basis to expect that it will have available to it on the Implementation Date sufficient cash amounts (whether from internal cash resources or external funding (including debt and equity financing) arrangements or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll;
- (s) by 8.00am on the Second Court Date and the Implementation Date, Bidder will have available to it on a certain funds basis (other than any conditions relating to the approval of the Schemes by the Court, or procedural or documentary matters which can only be satisfied or performed after the Second Court Date) sufficient cash amounts (whether from internal cash resources or external funding (including debt and equity financing) arrangements or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll; and
- (t) from the point at which the Takeover Bid becomes unconditional, Bidder will have available to it on an unconditional basis sufficient cash amounts (whether from internal cash resources or external funding (including debt and equity financing) arrangements or a combination of both) to satisfy Bidder's obligations to pay the Takeover Bid Consideration in accordance with the terms of the Takeover Bid and the timing requirements of the Corporations Act.

Schedule 5 Virtus Warranties

Virtus represents and warrants that:

- (a) Virtus is a validly existing corporation registered under the laws of its place of incorporation;
- (b) the execution and delivery of this deed by Virtus has been properly authorised by all necessary corporate action and Virtus has full corporate power and lawful authority to execute and deliver this deed and to perform or cause to be performed its obligations under this deed and the Transactions;
- (c) this deed constitutes legal, valid and binding obligations on Virtus and the execution of this deed of itself does not result in a breach of or default under any agreement or deed or any writ, order or injunction, rule or regulation to which any member of the Virtus Group is a party or to which they are bound;
- (d) neither this deed nor the carrying out by it of the transactions contemplated by this deed conflicts with or results in the breach of or a default under any provision of Virtus' constituent documents;
- (e) no Insolvency Event has occurred in relation to a member of the Virtus Group;
- (f) the Virtus Information:
 - (i) will be prepared and included in the Relevant Document in good faith; and
 - (ii) will comply in all material respects with the requirements of the Corporations Act, Listing Rules and relevant ASIC regulatory guides (as applicable, including RG 60);
- (g) as at the date the Relevant Document is despatched to Virtus Shareholders, the Virtus Information will not be misleading or deceptive in any material respect (whether by omission or otherwise, after regard is had to the content of the Bidder Information and the Independent Expert's Report) and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;
- (h) any statement of opinion or belief contained in the Virtus Information is honestly held and there are reasonable grounds for Virtus holding that opinion or belief;
- (i) all information provided by or on behalf of Virtus to the Independent Expert to enable the Independent Expert's Report to be included in the Scheme Booklet and Target's Statement will not be misleading or deceptive in any material respect (whether by omission or otherwise) and will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's Report for inclusion in the Scheme Booklet and Target's Statement;
- (j) the issued capital of Virtus as of the date of this deed is:
 - (i) 85,536,996 Virtus Shares; and
 - (ii) 1,720,286 Virtus Performance Rights,

and there are no other Virtus options, performance rights, shares, warrants, convertible notes, instruments or other securities (or offers or agreements to issue any of the foregoing) that may convert into Virtus Shares;

- (k) so far as Virtus is aware, as at the date of this deed, there is no material breach by any Virtus Group member of any law or regulation applicable to them (or order of any Regulatory Authority having jurisdiction over them);
- (l) the Virtus Group has all material licences, permits and franchises necessary for it to conduct its activities as they are conducted as at the date of this deed;
- (m) Virtus has complied in all material respects with its continuous disclosure obligations under ASX Listing Rule 3.1 and, other than in relation to this Transaction, it is not relying on the carve-out in ASX Listing Rule 3.1 to withhold any material information from public disclosure;
- (n) Virtus has disclosed all fee arrangements currently in place with its advisors in connection with implementation of the transactions contemplated in this deed; and
- (o) as at the date of this deed the Due Diligence Materials were compiled in good faith and Virtus is not aware of any information contained in Due Diligence Materials that is false, incomplete, misleading or deceptive in any material respect (including because of any material omission). Other than Sensitive Confidential Information, Virtus has not deliberately withheld from the Due Diligence Materials any information of which the Bidder is aware which, if disclosed, might reasonably be expected to affect the decision of Bidder to enter into this deed and complete the Transactions. For the avoidance of doubt, Virtus makes no representation or warranty whatsoever as to the adequacy or sufficiency of the Due Diligence Materials for the purpose of Bidder acquiring Virtus Shares or for Bidder's funding of that acquisition, which are matters of which Bidder has to satisfy itself.

Schedule 6 Scheme of arrangement

Scheme of arrangement

Virtus Health Limited
Each person who holds one or more Scheme Shares

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Date:

Parties

- 1 **Virtus Health Limited** (ACN 169 263 094) of Level 3, 176 Pacific Highway, Greenwich, NSW 2065 (**Virtus**)
 - 2 Each person who holds one or more Scheme Shares (**Scheme Shareholders**)
-

1 Defined terms and interpretation

1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1, has the meaning given to it in the Dictionary; and
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

1.2 Interpretation

The interpretation clause in Schedule 1 sets out rules of interpretation for this deed.

2 Preliminary matters

- (a) Virtus is a public company limited by shares and is admitted to the official list of ASX.
- (b) As at 13 March 2022, Virtus had on issue or had granted (as applicable):
 - (i) 85,536,996 Virtus Shares; and
 - (ii) 1,720,286 Virtus Performance Rights;
- (c) Evergreen BidCo Pty Ltd (ACN 657 613 860) (**Bidder**) is a proprietary company limited by shares incorporated in Australia.
- (d) On 13 March 2022, Bidder and Virtus entered into the Implementation Deed pursuant to which, amongst other things, Virtus has agreed to propose this Scheme to the Scheme Shareholders, and each of Virtus and Bidder have agreed to take certain steps to give effect to this Scheme.
- (e) If this Scheme becomes Effective, then all the Scheme Shares and all of the rights and entitlements attaching to them on the Implementation Date will be transferred to Bidder, and the Scheme Consideration will be provided to the Scheme Shareholders in accordance with the provisions of this Scheme and the Deed Poll.
- (f) Bidder has entered into the Deed Poll for the purposes of covenanting in favour of Scheme Shareholders to perform all actions attributed to it under this Scheme.

3 Conditions

3.1 Conditions to this Scheme

This Scheme is conditional upon, and will have no force or effect until, the satisfaction of each of the following:

- (a) as at 8.00am on the Second Court Date, each of the conditions set out in clause 3.1 of the Implementation Deed (other than the condition relating to the approval of the Court set out in clause 3.1(d) of the Implementation Deed) have been satisfied or waived in accordance with the terms of the Implementation Deed;
- (b) as at 8.00am on the Second Court Date, neither the Implementation Deed nor the Deed Poll have been terminated in accordance with their terms;
- (c) the Court approves this Scheme under section 411(4)(b) of the Corporations Act either unconditionally or subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and that are agreed to by Bidder and Virtus (such agreement not to be unreasonably withheld or delayed); and
- (d) the coming into effect of the Scheme Order, in accordance with section 411(10) of the Corporations Act, on or before the End Date.

3.2 Certificate

Virtus and Bidder will each provide to the Court on the Second Court Date certificates signed by Bidder and Virtus (or such other evidence as the Court requests) confirming (in respect of matters within their knowledge) whether or not the conditions in clauses 3.1(a) and 3.1(b) of this Scheme have been satisfied or waived in accordance with the terms of the Implementation Deed as at 8.00am on the Second Court Date.

4 The Scheme

- (a) Subject to clause 3.1, this Scheme takes effect for all purposes on and from the Effective Date.
- (b) This Scheme will lapse and be of no further force or effect if:
 - (i) the Effective Date has not occurred on or before the End Date; or
 - (ii) the Implementation Deed or the Deed Poll is terminated in accordance with its terms unless Virtus and Bidder otherwise agree in writing.

5 Implementation of the Scheme

5.1 Lodgement of Scheme Order with ASIC

If the conditions in clauses 3.1(a) to 3.1(c) are satisfied or waived, Virtus must lodge with ASIC, in accordance with section 411(10) of the Corporations Act, an office copy of the Scheme Order approving this Scheme as soon as possible after, and in any event by 5.00pm on the first Business Day after, the day on which the Court approves this Scheme.

5.2 Transfer of Scheme Shares

Subject to this Scheme becoming Effective, the following actions will occur (in the order set out below):

- (a) Bidder will deposit (or procure the deposit of) the Scheme Consideration in the manner contemplated by clause 6.2(a); and
- (b) on the Implementation Date:
 - (i) the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to Bidder, without the need for any further act by any Scheme Shareholder (other than acts performed by Virtus as attorney and agent for Scheme Shareholders under clause 9) by:
 - (A) Virtus delivering to Bidder a duly completed Scheme Transfer (and one or more Scheme Transfers can be a master transfer of all or part of all of the Scheme Shares), executed on behalf of the Scheme Shareholders by Virtus; and
 - (B) Bidder duly executing the Scheme Transfer, attending to the stamping of the Scheme Transfer (if required) and delivering it to Virtus for registration; and
 - (ii) immediately following receipt of the Scheme Transfer in accordance with clause 5.2(b)(i)(B) or the transfer being effected under section 1074D of the Corporations Act (as the case may be), Virtus must enter, or procure the entry of, the name of Bidder in the Virtus Register in respect of all the Scheme Shares transferred to Bidder in accordance with this Scheme.

6 Scheme Consideration

6.1 Entitlement to Scheme Consideration

Subject to the terms of this Scheme, on the Implementation Date, in consideration for the transfer to Bidder of the Scheme Shares, each Scheme Shareholder will be entitled to the provision of the Scheme Consideration in respect of each of their Scheme Shares in the manner contemplated by clause 6.2.

6.2 Provision of Scheme Consideration

- (a) Bidder must, by no later than midday on the Business Day before the Implementation Date, deposit (or procure the deposit) in cleared funds an amount equal to the aggregate amount of the Scheme Consideration payable to the Scheme Shareholders into the Trust Account, provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to Bidder's account.
- (b) Subject to Bidder having complied with clause 6.2(a), Virtus must, on the Implementation Date and from the Trust Account, pay or procure the payment to each Scheme Shareholder the Scheme Consideration attributable to that Scheme Shareholder, based on the number of Scheme Shares held by that Scheme Shareholder as at the Scheme Record Date.

- (c) Virtus' obligation under clause 6.2(b) will be satisfied by Virtus (in its absolute discretion):
 - (i) where a Scheme Shareholder has, before the Scheme Record Date, made a valid election in accordance with the requirements of the Virtus Share Registry to receive dividend payments from Virtus by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount of Australian currency by electronic means in accordance with that election;
 - (ii) 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 Virtus; or
 - (iii) whether or not the Scheme Shareholder has made an election referred to in clause 6.2(c)(i), dispatching, or procuring the dispatch of, a cheque in Australian currency to the Scheme Shareholder by prepaid post to their address shown in the Virtus Register 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 6.3), for the relevant amount.
- (d) If, following satisfaction of Bidder's obligations under clause 6.2(a) but prior to the occurrence of all of the events described in clause 5, this Scheme lapses under clause 4(b):
 - (i) Virtus must immediately repay (or cause to be repaid) to or at the direction of Bidder the funds that were deposited in the Trust Account plus any interest on the amounts deposited (less bank fees and other charges);
 - (ii) the obligation to transfer Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, to Bidder under clause 5 will immediately cease;
 - (iii) Bidder must return the Scheme Transfers, if provided pursuant to clause 5; and
 - (iv) Virtus is no longer obliged to enter, or procure the entry of, the name of Bidder in the Virtus Register in accordance with clause 5.

6.3 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any cheque required to be paid to Scheme Shareholders will be payable to the joint holders and will be forwarded to the holder whose name appears first in the Virtus Register on the Scheme Record Date or to the joint holders; and
- (b) any other document required to be sent under this Scheme will be forwarded to the holder whose name appears first in the Virtus Register as at the Scheme Record Date or to the joint holders.

6.4 Unclaimed monies

- (a) 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)).
- (b) Virtus may cancel a cheque issued under clause 6.2(c) if the cheque:
 - (i) is returned to Virtus; or
 - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (c) During the period of one year commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Virtus (or the Virtus Share Registry) (which request may not be made until the date which is 20 Business Days after the Implementation Date), Virtus must reissue a cheque that was previously cancelled under this clause 6.4.

6.5 Remaining monies (if any) in Trust Account

To the extent that, following satisfaction of Virtus' obligations under the provisions of clause 5 and this clause 6 and provided Bidder has by that time acquired the Scheme Shares in accordance with this Scheme, there is a surplus in the Trust Account, then subject to compliance with applicable laws, the other terms of this Scheme, the Deed Poll and the Implementation Deed, that surplus (less any bank fees and related charges) shall be paid by Virtus (or the Virtus Share Registry on Virtus' behalf) to Bidder.

6.6 Orders of a Court or Governmental Agency

- (a) If written notice is given to Virtus (or the Virtus Share Registry) of an order or direction made by a court or Governmental Agency that:
 - (i) 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 Virtus in accordance with clause 5, then Virtus shall be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
 - (ii) prevents Virtus from providing consideration to any particular Scheme Shareholder in accordance with clause 5, or the payment or issuance of such consideration is otherwise prohibited by applicable law, Virtus shall be entitled to (as applicable) retain an amount equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Scheme Consideration until such time as payment in accordance with this clause 6 is permitted by that (or another) order or direction or otherwise by law.
- (b) To the extent that amounts are so deducted or withheld in accordance with clause 6.6(a), such deducted or withheld amounts will be treated for all purposes under this Scheme as having been paid to the person in respect of which such deduction and withholding was made.

7 Dealings in Virtus Shares

7.1 Determination of Scheme Shareholders

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

- (a) in the case of dealings of the type to be effected using CHES, the transferee is registered in the Virtus Register as the holder of the relevant Virtus Shares on or 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 on or before the 5.00pm on the date that is the Scheme Record Date at the place where the Virtus Register is kept,

and Virtus will not accept for registration, nor recognise for the purpose of establishing the persons who are Scheme Shareholders nor for any other purpose (other than a transfer to Bidder pursuant to this Scheme and any subsequent transfer by Bidder or its successors in title), any transfer or transmission application in respect of Virtus Shares received after such times, or received prior to such times but not in registrable or actionable form (as appropriate).

7.2 Register

- (a) Virtus will, until the Scheme Consideration has been provided and the name and address of Bidder has been entered in the Virtus Register as the holder of all of the Scheme Shares, maintain, or procure the maintenance of, the Virtus Register in accordance with the provisions of this clause 7.2. The Virtus Register in this form and the terms of the Scheme will solely determine entitlements to the Scheme Consideration.
- (b) As from the Scheme Record Date, each entry in the Virtus Register (other than entries in the Virtus Register in respect of Bidder and subsequent transferees) will cease to have effect, except as evidence of the entitlements of Scheme Shareholders to the Scheme Consideration in respect of those Virtus Shares.
- (c) As soon as possible after the Scheme Record Date, and in any event within two Business Days after the Scheme Record Date, Virtus will ensure that details of the names, registered addresses and holdings of Virtus Shares for each Scheme Shareholder as shown in the Virtus Register as at the Scheme Record Date are available to Bidder.

7.3 Effect of share certificates and holding statements

As from the Scheme Record Date (and other than for Bidder following the Implementation Date), all share certificates and holding statements for Scheme Shares (other than statements of holding in favour of Bidder) will cease to have effect as documents of title in respect of those Scheme Shares.

7.4 No disposals after Scheme Record Date

If this Scheme becomes Effective, each Scheme Shareholder, and any person claiming through that Scheme Shareholder, must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them after 5.00pm on the Scheme Record Date (other than to Bidder in accordance with this Scheme and any subsequent transfers by

Bidder to its successors in title), and any attempt to do so will have no effect and Virtus shall be entitled to disregard any such disposal, purported disposal or agreement.

8 Quotation of Virtus Shares

- (a) Virtus must apply to ASX to suspend trading of Virtus Shares on the ASX with effect from the close of trading on the Effective Date.
 - (b) Virtus must apply:
 - (i) for termination of the official quotation of Virtus Shares on the ASX; and
 - (ii) to have itself removed from the official list of the ASX,in each case with effect on and from the close of the trading day immediately following the Implementation Date or on such other date as determined by Bidder.
-

9 General Scheme provisions

9.1 Appointment of agent and attorney

- (a) On this Scheme becoming Effective, each Scheme Shareholder, without the need for any further act by that Scheme Shareholder, irrevocably appoints Virtus as its agent and attorney for the purposes of:
 - (i) doing all things and executing and delivering all deeds, instruments, transfers or other documents as may be necessary or desirable to give effect to the terms of this Scheme and the transactions contemplated by it, including, without limitation, the effecting of a valid transfer or transfers (or the execution and delivery of any Scheme Transfer);
 - (ii) enforcing the Deed Poll against Bidder,and Virtus accepts such appointment.
- (b) Virtus, as agent and attorney of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 9.1 to all or any of its directors and officers (jointly, severally, or jointly and severally).

9.2 Enforcement of Deed Poll

Virtus undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against Bidder (as applicable on behalf of and as agent and attorney for the Scheme Shareholders).

9.3 Scheme Shareholders' agreements

Under this Scheme:

- (a) each Scheme Shareholder irrevocably agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares other than any right to receive a Permitted Special Dividend (if any), to Bidder in accordance with the terms of this Scheme;

- (b) each Scheme Shareholder irrevocably acknowledges that this Scheme binds Virtus and all Scheme Shareholders (including those who did not attend the Scheme Meeting and those who did not vote, or voted against this Scheme, at the Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of Virtus; and
- (c) each Scheme Shareholder irrevocably consents to Virtus and Bidder doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental or expedient to the implementation and performance of this Scheme,

without the need for any further act by that Scheme Shareholder.

9.4 Warranty by Scheme Shareholders

- (a) Each Scheme Shareholder is deemed to have warranted to Bidder, and to the extent enforceable, to have appointed and authorised Virtus as that Scheme Shareholder's agent and attorney to warrant to Bidder, that:
 - (i) all their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the date of the transfer of them to Bidder pursuant to this Scheme, be fully paid and free from all mortgages, charges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)), liens, encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind; and
 - (ii) they have full power and capacity to sell and to transfer their Scheme Shares (together with all rights and entitlements attaching to those Scheme Shares) to Bidder pursuant to this Scheme.
- (b) Virtus undertakes in favour of each Scheme Shareholder that it will provide such warranty, to the extent enforceable, to Bidder on behalf of that Scheme Shareholder.

9.5 Title to Scheme Shares

- (a) Immediately upon the deposit of the Scheme Consideration in the manner contemplated by clause 6.2(a), Bidder will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by Virtus of Bidder in the Virtus Register as the holder of the Scheme Shares.
- (b) 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 will, at the time of transfer of them to Bidder, vest in Bidder free from all mortgages, charges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)), liens, encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind.

9.6 Appointment of sole proxy

From the time that Bidder has satisfied its obligations in clauses 6.2(a) until Bidder is registered in the Virtus Register as the holder of all Scheme Shares, each Scheme Shareholder:

- (a) without the need for any further act by that Virtus Shareholder, irrevocably appoints Bidder as its proxy to (and irrevocably appoints Bidder as its attorney and agent for the purpose of appointing any director or officer of Bidder as that Virtus Shareholder's proxy and, where appropriate, its corporate representative to):
 - (i) attend shareholders' meetings of Virtus;
 - (ii) exercise the votes attaching to the Virtus Shares registered in the name of the Virtus Shareholder; and
 - (iii) sign any Virtus Shareholders' resolution;
- (b) acknowledges that no Scheme Shareholder may itself attend or vote at any meetings of Virtus Shareholders or sign any Virtus Shareholders' resolution, whether in person, by proxy or by corporate representative (other than pursuant to clause 9.6(a));
- (c) must take all other actions in the capacity of Virtus Shareholder as Bidder reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers conferred in clause 9.6(a), Bidder and any person nominated by Bidder under clause 9.6(a) may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.

9.7 Notices

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

9.8 Inconsistencies

This Scheme binds Virtus and all Virtus Shareholders, and to the extent of any inconsistency, overrides the Virtus constitution.

9.9 No liability when acting in good faith

Neither Virtus nor any director, officer, secretary or employee of Virtus will be liable for anything done or omitted to be done in good faith in the performance of this Scheme.

9.10 Further assurance

Each Scheme Shareholder and Virtus will do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of this Scheme and the transactions contemplated by it.

9.11 Alterations and conditions

If the Court proposes to approve this Scheme subject to any alterations or conditions under section 411(6) of the Corporations Act, Virtus may, by its counsel or solicitors, and with the prior consent of Bidder:

- (a) consent on behalf of all persons concerned, including each Virtus Shareholder, to those alterations or conditions; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions which Virtus has consented to.

9.12 Consent

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

9.13 Duty

Bidder will:

- (a) pay all duty (including stamp duty and any related fines and penalties) payable on or in connection with the Deed Poll and any instrument executed under or any transaction evidenced by the Deed Poll (including, the transfer by Scheme Shareholders of the Scheme Shares to Bidder pursuant to this Scheme); and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 9.13(a).

9.14 Governing Law

- (a) This Scheme is governed by and will be construed according to the laws of New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and of the courts competent to determine appeals from those courts. The parties irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process have been brought in an inconvenient forum.

Schedule 1 Dictionary

1 Dictionary

In this deed:

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited (ABN 98 008 624 691) or, if the context requires, the financial market operated by it.

Business Day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Sydney, New South Wales or London, England.

CHESS means the Clearing House Electronic Subregister System operated by ASX Settlement Pty Ltd and ASX Clear Pty Limited.

Corporations Act means the *Corporations Act 2001* (Cth), as amended by any applicable ASIC class order, ASIC legislative instrument or ASIC relief.

Court means the Supreme Court of New South Wales or any other court of competent jurisdiction under the Corporations Act as the parties may agree in writing.

Deed Poll means the deed poll dated [*date to be inserted*] under which Bidder covenants in favour of the Scheme Shareholders to perform all actions attributed to it under this Scheme.

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

Effective Date means the date on which this Scheme becomes Effective.

End Date means the date that is 6 months after the date of the Implementation Deed (or such other date and time agreed in writing between Bidder and Virtus).

Excluded Shareholder means any Virtus Shareholder who is Bidder or a wholly owned subsidiary of Bidder.

Governmental Agency means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, Australian Taxation Office, Foreign Investment Review Board, ASIC, ASX and any regulatory organisation established under statute or any stock exchange.

Implementation Date means the fifth Business Day, or such other Business Day as Bidder and Virtus agree, following the Scheme Record Date.

Implementation Deed means the transaction implementation deed dated 13 March 2022 between Bidder and Virtus, as amended or varied from time to time.

Permitted Special Dividend has the meaning given to that term in the Implementation Deed.

Scheme means this scheme of arrangement pursuant to Part 5.1 of the Corporations Act proposed between Virtus and the Virtus Shareholders as set out in this document together with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and that are agreed to by Bidder and Virtus.

Scheme Consideration means the consideration to be provided to each Virtus Shareholder for the transfer to Bidder of each Scheme Share being, in respect of each Scheme Share, a cash amount of \$8.13 less the amount of any Permitted Special Dividend paid by Virtus pursuant to clause 7.2 of the Implementation Deed.

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

Scheme Order means the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme.

Scheme Record Date means, in respect of this Scheme, 7.00pm on the third Business Day (or such other Business Day as the parties agree in writing) following the Effective Date.

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

Scheme Shareholder means each person who holds one or more Scheme Shares.

Scheme Transfer means, in relation to each Scheme Shareholder, 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, which may be a master transfer of all or part of all of the Scheme Shares.

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

Subsidiary has the meaning given to that term in section 46 of the Corporations Act.

takes effect or taking effect means on and from the first time when an office copy of the Scheme Order approving the Scheme pursuant to section 411(4)(b) of the Corporations Act is lodged with ASIC pursuant to section 411(10) of the Corporations Act.

Trust Account means an Australian dollar denominated trust account operated by or on behalf of Virtus as trustee of the Scheme Shareholders for the purpose of paying the Scheme Consideration to applicable Scheme Shareholders in accordance with clause 6.2.

Virtus Performance Right means a performance right issued under an employee incentive plan which confers on the holder a right to acquire a Virtus Share.

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

Virtus Share means a fully paid ordinary share in the capital of Virtus.

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

Virtus Share Registry means Link Market Services Limited of Level 12, 680 George Street, Sydney NSW 2000, or any replacement share registry services provider to Virtus.

2 Interpretation

In this Scheme, except where the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this Scheme;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation, trust or other body corporate;
 - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its agents, successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this Scheme;
 - (vi) this Scheme includes all schedules and attachments to it;
 - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
 - (viii) a statute includes any regulation, ordinance, by-law or other subordinate legislation made under it;
 - (ix) an agreement other than this Scheme includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
 - (x) a monetary amount is in Australian dollars;
- (g) an agreement on the part of two or more persons binds them jointly and each of them severally;

- (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (i) a reference to time is to Sydney, Australia time; and
- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Scheme or any part of it.

Schedule 7 Deed Poll

Deed poll

Evergreen BidCo Pty Ltd

In favour of each person registered as a holder of Virtus Shares as at the Scheme Record Date

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Date:

This deed poll is made by

Evergreen BidCo Pty Ltd (ACN 657 613 860) of Level 16, 80 Collins Street South Tower, Melbourne, VIC 3000 (**Bidder**)

in favour of

each person registered as a holder of Virtus Shares as at the Scheme Record Date (**Scheme Shareholders**).

Background

- A Bidder and Virtus Health Limited (ACN 129 643 492) of Level 3, 176 Pacific Highway, Greenwich, NSW 2065 (**Virtus**) have entered into the Implementation Deed.
- B In the Implementation Deed, Bidder agreed to make this deed poll.
- C Bidder is executing this deed poll for the purpose of covenanting in favour of the Scheme Shareholders to perform its obligations under the Implementation Deed and the Scheme.

This deed poll provides as follows:

1 Defined terms and interpretation

1.1 Defined terms

In this deed poll:

- (a) **Implementation Deed** means the transaction implementation deed dated 13 March 2022 between Virtus and Bidder relating to the implementation of the Scheme;
- (b) **Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between Virtus and the Scheme Shareholders, the form of which is set out in Schedule 6 to the Implementation Deed, subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by Bidder and Virtus; and
- (c) unless the context otherwise requires, terms defined in the Implementation Deed have the same meaning when used in this deed poll.

1.2 Interpretation

Clause 1.2 of Schedule 1 of the Implementation Deed applies to the interpretation of this deed poll, except those references to 'this deed' are to be read as references to 'this deed poll'.

1.3 Nature of deed poll

Bidder acknowledges 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, from the Effective Date, each Scheme Shareholder irrevocably appoints Virtus 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.
-

2 Conditions

2.1 Conditions

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

2.2 Termination

The obligations of Bidder 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 before the Effective Date; or
 - (b) the Scheme is not Effective on or before the End Date,
- unless Virtus and Bidder otherwise agree.

2.3 Consequences of termination

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

- (a) Bidder is released from its obligations to further perform this deed poll except those obligations contained in clause 6.1; and
 - (b) each Scheme Shareholder retains the rights and remedies they have against Bidder in respect of any breach of this deed poll which occurred before it was terminated.
-

3 Scheme obligations

Subject to clause 2, Bidder undertakes in favour of each Scheme Shareholder to:

- (a) deposit, or procure the deposit of, in cleared funds by no later than midday on the Business Day before the Implementation Date, an amount equal to the aggregate Scheme Consideration payable to all Scheme Shareholders under the Scheme into an Australian dollar denominated trust account operated by Virtus as trustee for the Scheme Shareholders, except that any interest on the amounts deposited (less bank fees and other charges) will be credited to Bidder's account; and
 - (b) undertake all other actions attributed to it under the Scheme,
- subject to and in accordance with the terms of the Scheme.

4 Warranties

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

- (a) it is a corporation validly existing under the laws of its place of incorporation;
- (b) it has the corporate power to 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 by it 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 is 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 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 has fully performed its obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.2.

6 General

6.1 Duty

Bidder will:

- (a) pay all duty (including stamp duty and any related fines, penalties and interest) payable in respect of the Scheme and this deed poll, the performance of this deed poll and each transaction effected by or made under the Scheme and this deed poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 6.1(a).

6.2 Governing law and jurisdiction

- (a) This deed poll is governed by the laws in force in New South Wales.
- (b) Bidder irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts competent to determine appeals from those courts in respect of any proceedings arising out of or in connection with this deed poll. Bidder 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.

6.3 Notices

- (a) Any notice or other communication to Bidder in connection with this deed poll must be:
 - (i) in legible writing in English;
 - (ii) signed by the person making the communication or that person's duly authorised agent; and
 - (iii) given by hand delivery, pre-paid post, facsimile or email in accordance with the details set out below:

Bidder

Attention: Neil Radia
Chief Financial Officer c/o CapVest Partners LLP
Address: 100 Pall Mall, St. James's, London SW1Y 5NQ
Email: nradia@capvest.co.uk

with a copy (for information purposes only) to:

anton.harris@ashurst.com and greg.golding@ashurst.com (by email)

- (b) Subject to clause 6.3(c), any notice or other communication given in accordance with clause 6.3(a) will be deemed to have been duly given as follows:
 - (i) if delivered by hand, on delivery;
 - (ii) if sent by pre-paid post, on the 6th Business Days after the date of postage, or if to or from a place outside Australia, on the 10th Business Day after the date of postage; and
 - (iii) if sent by email:
 - (A) when the sender receives an automated message confirming delivery;
 - (B) the time that the intended recipient confirms receipt of the email by reply email; or
 - (C) two hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.
- (c) Any notice or other communication that, pursuant to clause 6.3(b), would be deemed to be given:
 - (i) other than on a Business Day or after 5.00pm on a Business Day is regarded as given at 9.00am on the following Business Day; and
 - (ii) before 9.00am on a Business Day is regarded as given at 9.00am on that Business Day,

where references to time are to time in the place the recipient is located.

6.4 Waiver

- (a) Bidder 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.
- (b) No Scheme Shareholder may rely on words or conduct of Bidder as a waiver of any right unless the waiver is in writing and signed by Bidder.
- (c) The meanings of the terms used in this clause 6.4 are set out below.

Term	Meaning
conduct	includes a failure or delay in the exercise, or partial exercise, of a right.
right	any right arising under or in connection with this deed poll (including a breach of, or default under this deed poll) and includes the right to rely on this clause.
waiver	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

6.5 Variation

A provision of this deed poll or any right created under it may not be varied unless:

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

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

6.6 Cumulative rights

The rights, powers and remedies of Bidder 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.

6.7 Assignment

- (a) The rights created by this deed poll are personal to Bidder and each Scheme Shareholder and must not be dealt with at law or in equity without the prior written consent of Bidder.
- (b) Any purported dealing in contravention of clause 6.7(a) is invalid.

6.8 Further action

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

Execution page

Executed as a deed poll

Signed, sealed and delivered by **Evergreen BidCo Pty Ltd** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

Execution page

Executed as a deed.

Signed, sealed and delivered by **Virtus Health Limited** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

Signed, sealed and delivered by **Evergreen
BidCo Pty Ltd** in accordance with section 127 of
the *Corporations Act 2001* (Cth) by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)