



17 June 2021

**ASX Limited
Market Announcement**

Think Childcare Group (ASX Code: TNK)

Execution of Implementation Agreement with Busy Bees Early Learning Australia Pty Ltd

Key Highlights

- Total value to Think Childcare Group securityholders of up to \$3.28 per Stapled Security (before the benefit of any franking credits)¹
- Proposed acquisition of Think by Busy Bees by way of two inter-conditional schemes of arrangement
- Scheme consideration of \$3.20 cash per Stapled Security
- The Scheme Consideration represents a 176% premium to the 10 trading day VWAP² and 192% premium to the one month VWAP²
- Think is permitted to pay:
 - a fully franked interim dividend of up to \$0.08 per Stapled Security, subject to the finalisation of the interim result for the six months ending 30 June 2021, which would not operate to reduce the Scheme consideration; and
 - a fully franked permitted dividend of up to \$0.24 per Stapled Security, subject to the Schemes being approved by securityholders and the Court. The scheme consideration of \$3.20 per Stapled Security will be reduced by the amount of any such permitted dividend³

¹ Subject to being a Think securityholder as at 7.00pm (Sydney time) on the respective record dates for both the interim and permitted dividends and the record date for the Schemes. Also subject to the Think Board declaring the interim dividend and permitted dividend and those dividends being declared up to the maximum amounts.

² VWAP means the volume weighted average price of Stapled Securities based on cumulative trading volume and value up to and including 13 November 2020, being the last trading date prior to the announcement of the indicative proposal from Alceon Group Pty Ltd to acquire 100% of the Group.

³ Franking credits will be subject to a class ruling from the Australian Taxation Office.



Think Childcare Group

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- Entities associated with Mathew Edwards (CEO and Managing Director) have agreed to acquire the development business of the Think Childcare Group and management rights in respect of 35 Nido Centres ("**MGE Acquisition**")
- Accordingly, Mathew Edwards (CEO and Managing Director) and his controlled entities will not vote on or participate in the Schemes
- The Schemes and the MGE Acquisition are commercially integrated transactions and neither will proceed if the other does not proceed
- The Independent Directors of Think⁴ unanimously recommend that Think securityholders vote in favour of the Schemes and the MGE Acquisition, in the absence of a Superior Proposal and subject to an Independent Expert engaged by Think concluding the Schemes are in the best interest of Independent Securityholders and the MGE Acquisition is either fair and reasonable or not fair but reasonable to Independent Securityholders

Overview

Think Childcare Group (ASX:TNK) ("**Think**" or the "**Group**") is pleased to announce that it has entered into a binding Implementation Agreement ("**Implementation Agreement**" or "**IA**") with Busy Bees Early Learning Australia Pty Ltd ("**Busy Bees**").

The Implementation Agreement provides for the proposed acquisition by :

- Busy Bees of 77.85% of the shares on issue in Think Childcare Limited ("**TNK**"); and
- Busy Bees subsidiary, FEL Child Care Developments Pty Ltd ("**FEL Dev**"), of 77.85% of the shares on issue in Think Childcare Development Limited ("**TND**"),

(together, "**Stapled Securities**") under two inter-conditional schemes of arrangement (i.e., a TNK Scheme and a TND Scheme, together the "**Schemes**") between Independent Securityholders (being all Think securityholders other than Mathew Edwards and his controlled entities (collectively, "**MGE Entities**")) for the aggregate cash consideration of \$3.20 per Stapled Security ("**Scheme Consideration**") subject to all applicable conditions being satisfied or waived and the Schemes being implemented. Busy Bees will acquire the remaining 22.15% of the TNK shares on issue from the MGE Entities directly under a private treaty agreement for the same consideration payable under the TNK Scheme.

Under the terms of the Implementation Agreement:

- Think is permitted to pay a fully franked cash dividend of up to \$0.24 per Stapled Security ("**Permitted Dividend**") on or prior to implementation of the Schemes, with the Scheme Consideration to be reduced by the amount of any such Permitted Dividend. The amount of the Permitted Dividend will be determined by the Think

⁴ The Independent Directors are all directors of the Group, excluding Mathew Edwards.



Board (in its absolute discretion) having regard to a range of factors, including the availability of franking credits and a class ruling from the Australian Taxation Office. Details of any Permitted Dividend will be provided in the explanatory booklet to be circulated to Think securityholders in relation to the Schemes.

- Think is also permitted to pay a fully franked cash dividend of up to \$0.08 per Stapled Security ("**Interim Dividend**"). The Think Board intends to declare and pay (in its absolute discretion) the Interim Dividend subject to the finalisation of Think's interim results for the six months ending 30 June 2021. The Interim Dividend is not conditional on the Schemes proceeding and will not operate to reduce the Scheme Consideration received by Think securityholders.

Busy Bees will acquire the remaining 22.15% of the TNK shares on issue (i.e., those not being acquired by Busy Bees under the TNK Scheme) from the MGE Entities under a private treaty agreement ("**MGE Share Acquisition Agreement**") for the same consideration attributable to the TNK shares under the TNK Scheme. The MGE Share Acquisition Agreement includes restrictions on the MGE Entities dealing in Think Group securities, a requirement that they vote against competing proposals and exclusivity commitments from the MGE Entities to Busy Bees.

Busy Bees FEL Dev have been granted joint bid relief by the Australian Securities and Investment Commission consistent with Part M of ASIC Regulatory Guide 9. The terms of the relief do not include a "match or accept" condition.

MGE Acquisition

In addition to the Schemes, the Implementation Agreement contemplates that:

- immediately following, but subject to, implementation of the Schemes, one or more of the MGE Entities will acquire the development business of the Think Childcare Group, comprised of the following assets and liabilities, for nominal consideration under separate agreements between TNK, Busy Bees and the relevant MGE Entities:
 - all of TND shares acquired by FEL Dev under the TND Scheme (such that the MGE Entities will own 100% of the issued share capital of TND);
 - the "Nido" branded childcare centre located in Franklin, ACT;
 - the "Nido" brand and associated intellectual property rights;
 - the head office function and certain specified non-income producing assets of the Group (including the assumption of the head office and related employee costs and associated liabilities of TNK and entities that hold leases for TNK development greenfield sites); and



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- 100% of the shares in Think Childcare Services Pty Ltd (being the entity that holds all childcare centre service approvals for each TNK centre that is the subject of the Centre Management Agreement (as detailed below)),

(together the “**Think Rump**”); and

- TNK and one of the MGE Entities will enter into a Centre Management Agreement (“**Management Agreement**”) under which the MGE Entity will manage 35 Nido Centres (as at the commencement date) owned by TNK for a term not exceeding three years and for an amount not exceeding A\$100,000 per centre per annum. These are considered to be arm’s length terms.

(together, the “**MGE Acquisition**”).

The MGE Acquisition will be subject to Think securityholder approval at general meetings to be held immediately after the Scheme meetings, for the purposes of sections 200B and 200C and Chapter 2E of the Corporations Act and ASX Listing Rule 10.1.

Think securityholder approval of the MGE Acquisition will also be a condition of the Schemes proceeding.

Accordingly, the Schemes and the MGE Acquisition are commercially integrated transactions and neither will proceed if the other does not.

Unanimous recommendation of the Independent Directors

The Independent Directors of Think⁵ (“**Independent Directors**”) consider that the Schemes and the MGE Acquisition are in the best interest of Independent Securityholders and unanimously recommend that Independent Securityholders vote in favour of the Schemes and the resolutions to be proposed at general meetings to be held immediately after the Scheme meetings, in the absence of a Superior Proposal and subject to an Independent Expert concluding in the Independent Expert’s Report (and continuing to conclude) the Schemes are in the best interests of Independent Securityholders and the MGE Acquisition is either fair and reasonable or not fair but reasonable to Independent Securityholders.

Subject to those same qualifications, each Independent Director intends to vote all Stapled Securities held or controlled by them in favour of the Schemes and the resolutions to be proposed at general meetings to be held immediately after the Scheme meetings.

⁵ The Independent Directors are all directors of the Group, excluding Mathew Edwards.



In making this recommendation, the Independent Directors have considered several factors, including:

- **Premium:** the Scheme Consideration of \$3.20 per Stapled Security represents a:
 - 52% premium to Busy Bees' previous non-binding and indicative proposal of \$2.10 per Stapled Security (announced on 20 January 2021);
 - 83% premium to Alceon Group's ("**Alceon**") previous non-binding and indicative proposal of \$1.75 per Stapled Security (announced on 24 December 2020);
 - 176% premium to the 10 trading day VWAP⁶; and
 - 192% premium to the one month VWAP⁶.
- **Certainty of value:** Think's securityholders will receive 100% cash consideration at a certain cash price; and
- **Limited conditionality:** the Schemes are subject to customary conditions for a transaction of this nature, including (but not limited to) regulatory, court and Think securityholder approval and no material adverse change occurring in relation to Think. The Schemes are not subject to financing or due diligence.⁷

Mathew Edwards has abstained from making a recommendation on the Schemes and the MGE Acquisition, given his material personal interest in the MGE Acquisition and the commercially integrated nature of the Schemes and the MGE Acquisition. Mathew Edwards and the other MGE Entities will also be excluded from voting on or participating in the Schemes. They will also be excluded from voting on all of the resolutions to be proposed at the general meetings to be held immediately after the Scheme meetings, apart from technical resolutions required to facilitate the implementation of the Schemes (including the unstapling of the TNK and TND shares and a special resolution to approve a proposed technical amendment of the constitution of TNK).

Think Childcare and Independent Board Committee Chairman, Mark Kerr, said:

"We are proud of what the Think team has created, and the proposed transaction is an endorsement of the quality of our brand and the exceptional company that our people have built over a number of years. It also reflects the strong trading performance of the Group coming out of the challenging COVID-19 period. We are pleased to be entering into a

⁶ VWAP means the volume weighted average price of TNK shares based on cumulative trading volume and value up to and including 13 November 2020, being the last trading date prior to the announcement of the indicative proposal from Alceon Group Pty Ltd to acquire 100% of the Group.

⁷ Busy Bees has agreed to provide an interest-free loan to Think to fully or partly fund (as required) the payment of any Permitted Dividend (if declared by the Think Board). Think can only access the loan from Busy Bees if the Schemes become legally effective.



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binding transaction with Busy Bees today and believe it is in the best interests of our securityholders. It provides an opportunity for securityholders to realise a significant premium, 348% above the 90 day VWAP to the trading price of Think's securities prior to the original announcement of Alceon's indicative proposal in November 2020 and some 320%, excluding dividends, above our IPO price in October 2014."

Chief Executive Officer of Busy Bees Early Learning Australia, Robert Hughes said: "We are delighted to partner with Think Childcare and welcome it to the Busy Bees family. In doing so, we are able to support more children, families and staff than ever before across Australia. Think Childcare is a high-quality business and offers Busy Bees a compelling opportunity and platform for continued growth, whilst strengthening our global portfolio and bringing further talent into the Busy Bees business. We are very impressed by Think Childcare's track record and believe the business' vision and core values are consistent with our own, and we are committed to continued growth to enable more children the opportunity to have the best start in life."

Details of the Implementation Agreement

The conditions of the Schemes are contained in the Implementation Agreement and include:

- FIRB, ACCC and other regulatory approvals;
- the continuing recommendation of the transaction by the Independent Directors
- Think securityholder approval of both the Schemes, the MGE Acquisition and other technical matters required to facilitate the implementation of the Schemes (including the unstapling of the TNK shares and TND shares and a special resolution to approve a proposed technical amendment of the constitution of TNK);
- Court approval;
- no material adverse change;
- no prescribed occurrences;
- no regulatory restraints;
- no material breach of warranty by Think or Busy Bees;
- execution of each of the agreements between Busy Bees, TNK and the MGE Entities in respect of the acquisition of TNK shares held by the MGE Entities and the MGE Acquisition and those agreements not being terminated or amended without the consent of Think and Busy Bees; and
- completion of an internal restructure involving the transfer of service approvals.

The Implementation Agreement contains customary exclusivity provisions, including 'no-shop' and 'no-talk' restrictions and a notification obligation, as well as a matching right. The Implementation Agreement also details circumstances under which Think may be required to pay Busy Bees a break-fee of A\$1,950,000 inclusive of GST. Busy Bees may also be required to pay Think a reverse break-fee of A\$1,950,000 inclusive of GST in certain circumstances.



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Full details of the conditions to the Schemes and other agreed terms are set out in the Implementation Agreement, a copy of which has been attached to this announcement (with certain schedules redacted).

Alceon statement of intention

Alceon, through NKT Investments Pty Ltd, has a relevant interest in 11,739,083 stapled securities of Think Childcare Group, representing 19.1% of the stapled securities of Think Childcare Group on issue ("**Alceon Parcel**").

Consistent with Alceon's support of the Further Revised Busy Bees Proposal, the Independent Board Committee has received correspondence from Alceon that it is supportive of the Schemes and that it intends to vote the Alceon Parcel in favour of the Schemes.

Independent Expert's Report

The Board has appointed Grant Thornton as the independent expert to prepare a report opining on whether the Schemes are fair and reasonable and in the best interests of Think's independent securityholders and as to whether the MGE Acquisition is fair and reasonable to Think's independent securityholders. A copy of this report will be included in the Explanatory Booklet.

Guidance update

Whilst the business is trading in line with expectations, given the pending transaction, TNK has paused acquisitions from third parties, and as a result, full year Group guidance is adjusted to \$23m (EBITDA underlying).

Indicative timetable and next steps

Think securityholders do not need to take any action at the present time.

An Explanatory Booklet containing information relating to the Schemes and the MGE Acquisition, reasons for the Independent Directors' recommendation, the Independent Expert's Report for independent securityholders and the details of the Scheme meetings and general meetings, is expected to be sent to Think securityholders in mid August 2021.

Securityholders will be given the opportunity to vote on the Schemes at Court-convened shareholder meetings of TNK and TND. Securityholders will also vote to approve the MGE Agreements and other technical matters required to facilitate the implementation of the Schemes (including the unstapling of the TNK shares and TND shares and a special resolution to approve a proposed technical amendment of the constitution of TNK) at general meetings of TNK and TND to be held immediately after the Scheme meetings.



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Subject to the securityholder approval and Court approval being obtained and the other conditions of the Schemes being satisfied or waived, the Schemes are expected to be implemented in early October 2021 (this timing is indicative and subject to change).

An indicative timetable for the Schemes is set out below:

| Event | Expected date |
|---|---------------------|
| First court hearing | Early August 2021 |
| Dispatch of Explanatory Booklet | Mid August 2021 |
| Scheme Meetings and General Meetings | Mid September 2021 |
| Second court hearing | Late September 2021 |
| Effective date | Late September 2021 |
| Record date | Late September 2021 |
| Implementation date and completion of the MGE Acquisition | Early October 2021 |

The Think Board (in its absolute discretion), anticipates that the indicative timetable for the declaration of the Interim Dividend will be late August.

Advisers

Think is being advised by MA Moelis Australia and MinterEllison as legal adviser.

Busy Bees is being advised by Rothschild & Co and DLA Piper Australia as legal adviser.

END

For further information, please contact:

Mark Kerr

Chairman, Think Childcare Limited and Think Childcare Development Limited
Chairman of the Independent Board Committee
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This announcement was authorised for release by the Board of Think Childcare Limited and the Board of Think Childcare Development Limited



Implementation Agreement

—
Think Childcare Limited ACN 600 793 388 and
Think Childcare Development Limited ACN 635 178 166 (**Think Group**)

Busy Bees Early Learning Australia Pty Ltd ACN 168 187 979 (**Busy Bees**)
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Implementation Agreement

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Details

Date 16 June 2021

Parties

Name **Think Childcare Limited** ACN 600 793 388 and **Think Childcare Development Limited** ACN 635 178 166

Short form name **Think Group**

Address Suite 3, 1 Park Avenue, Drummoyne, NSW 2047
Email: notices@thinkchildcare.com.au

Notice details Attention: Independent Board Committee

Name **Busy Bees Early Learning Australia Pty Ltd** ACN 168 187 979

Short form name **Busy Bees**

Address 34 Station Street, Nundah Qld 4012
Email: Robert.H@busybees.edu.au

Notice details Attention: Robert Hughes

Background

- A Think Group is a stapled group listed on ASX, comprising TNK and TND.
- B Think Group and Busy Bees have agreed to implement a proposed transaction under which:
- (i) Busy Bees would acquire all of the TNK Shares under the TNK Scheme; and
 - (ii) the TND Purchaser would acquire all of the TND Shares under the TND Scheme, excluding in each case Stapled Securities held by the MGE Entities.
- C Think Group and Busy Bees have agreed certain other matters in connection with the Proposed Transaction as set out in this agreement.

Agreed terms

1. Defined terms & interpretation

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

ACCC means the Australian Competition and Consumer Commission.

ACCC Condition means the Condition specified in clause 3.1(a)(iii).

Acceptable Confidentiality Agreement means a confidentiality agreement which contains obligations on the recipient of confidential information which are no less onerous in any material respect than the obligations of Busy Bees under the Confidentiality Deed (including in respect of the standstill obligations set out in clause 14 of the Confidentiality Deed).

Accounting Standards means:

- (a) the applicable accounting standards made by the relevant regulatory body, and the requirements relating to the preparation and content of accounts; and
- (b) generally accepted accounting principles that are consistently applied, except those inconsistent with the standards or requirements referred to in paragraph (a).

Adviser means in relation to an entity:

- (a) a financier to the entity in connection with the Proposed Transaction; or
- (b) a financial, corporate, legal, accounting, technical or other expert adviser or consultant, who provides advisory or consultancy services in a professional capacity in the ordinary course of its business and has been engaged in that capacity in connection with the Proposed Transaction by the entity.

Affected Scheme has the meaning given in clause 7.1(o).

Affiliate means, in respect of a person (**Primary Person**), a person:

- (a) Controlled directly or indirectly by the Primary Person;
- (b) Controlling directly or indirectly the Primary Person;
- (c) who is Controlled, directly or indirectly, by a person or persons who Control the Primary Person; or
- (d) directly or indirectly under the common Control of the Primary Person and another person or persons.

Ancillary Rights Deed means the deed so titled between a Busy Bees Group Member and an entity that is Controlled by Mathew Graeme Edwards which will only come into effect if the Schemes are implemented.

Announcement means the announcement by Think Group in the form agreed by Think Group and Busy Bees (each acting reasonably), prior to signing of this agreement.

Appointor Structure Approval Resolutions means the special resolutions (in a form agreed by the parties prior to signing of this agreement and in accordance with clause 4.4) of the TNK Shareholders to approve technical amendments to the Constitution of TNK required to facilitate the acquisition of TNK Shares under the TNK Scheme as a result of the shareholding structure of Busy Bees.

Approved COVID-19 Response Plan means Think Group's existing COVID-19 response plan, being the documents in folder 15 in the Data Room.

Approved Budgets means:

- (a) the cash flow budget for the Think Consolidated Group dated 25 May 2021 as set out in tab 'CY21_Cash' in document 2.16.2 in the Data Room;
- (b) the capital expenditure budget for the Think Consolidated Group dated 25 May 2021 as set out in tab 'CY21_Cash' in document 2.16.2 in the Data Room; and
- (c) the Funds Flow Budget.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in Division 2 of Part 1.2 of the Corporations Act as if section 12(1) of that Act included a reference to this agreement and either company or both companies comprising Think Group was the designated body.

ASX means ASX Limited ABN 98 008 624 691 or as the context requires or permits, the financial market known as the Australian Securities Exchange operated by it.

Authorised Person means, in respect of a person:

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

Baker Street means Baker Street Childcare Education Pty Limited ACN 168 941 839.

Business means the business carried on by Think Consolidated Group as at the date of this agreement.

Business Day means a day on which banks are open for general banking business in Melbourne, Victoria and Sydney, New South Wales (not being a Saturday, Sunday or public holiday).

Busy Bees Break Fee has the meaning given to that term in clause 15.1(a).

Busy Bees Group means Busy Bees and its Related Bodies Corporate (but excluding, at any time, Think Group and its Subsidiaries to the extent that Think Group and its Subsidiaries are Subsidiaries of Busy Bees at that time). A reference to a member of the **Busy Bees Group** or a **Busy Bees Group Member** is a reference to Busy Bees or any such Related Bodies Corporate.

Busy Bees Information means such information regarding Busy Bees or the Busy Bees Group that is provided by or on behalf of Busy Bees or any of its Advisers, to Think Group or the Independent Expert for inclusion in the Explanatory Booklet (and that is specifically identified as such by Busy Bees) and, for the avoidance of doubt, does not include the Think Group Information and the Independent Expert's Report.

Busy Bees Parties means each member of the Busy Bees Group and their respective Related Bodies Corporate, Affiliates and Authorised Persons.

Busy Bees Prescribed Occurrence means the occurrence of an Insolvency Event in relation to Busy Bees.

Busy Bees Warranties means the representations and warranties of Busy Bees set out in clause 10.1.

CCA means the *Competition and Consumer Act 2010* (Cth).

Centre means an early childhood education and care centre.

Centre Management Agreement means a management contract between an entity that is Controlled by Mathew Graeme Edwards as manager and an entity within the Busy Bees Group for a management fee of \$100,000 per Centre under management per annum (which at the commencement date of the management agreement would be 35 Centres).

Claim means, in relation to a person, a demand, claim, action or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent.

Competing Proposal means any offer, expression of interest, proposal, agreement, arrangement or transaction, whether existing before, on or after the date of this agreement, which, if entered into or completed, could mean that the Proposed Transaction cannot be completed or that a person (either alone or with any of its Associates) other than Busy Bees or its Affiliates (which for the avoidance of doubt, does not include any MGE Entities) would, other than pursuant to the Proposed Transaction:

- (a) directly or indirectly acquire a Relevant Interest in or Voting Power of, or have a right to acquire a legal, beneficial or economic interest in, or control of, 15% or more of the securities in any member of the Think Consolidated Group;
- (b) acquire Control of any member of the Think Consolidated 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 a material part of the business or assets of any member of the Think Consolidated Group; or
- (d) otherwise directly or indirectly acquire, be stapled with or merge with, Think Group or any other member of the Think Consolidated Group,

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, issue of shares or other securities in a member of the Think Consolidated Group, assignment of assets or liabilities, joint venture, dual listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement or other transaction or arrangement.

Competing Proposal Notice has the meaning given in clause 16.6(a).

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

Confidentiality Deed means the document of that name entered into between Think Group and Busy Bees dated 7 December 2020.

Consolidated Group means a "consolidated group" or a "MEC group" as those terms are defined in section 995-1(1) of the Tax Act.

Constitutions means the constitutions of TNK and of TND and **Constitution** means either of them.

Control means with respect to any person (other than an individual) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person whether through the ownership of voting securities, by agreement or otherwise, and for the avoidance of doubt, a general partner is deemed to Control a limited partnership of which it is the general partner and, solely for the purposes of this document, a fund advised or managed directly or indirectly by or forming a stapled entity or group with a person will also be deemed to be Controlled by such person.

Convertible Notes means unsecured convertible notes issued by TND, with the terms of the notes having been agreed by the parties on or before the date of this agreement.

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

Counter Proposal has the meaning given in clause 16.7(b).

Court means the Federal Court of Australia (Victorian registry) or any other court of competent jurisdiction under the Corporations Act as the parties may agree in writing.

Cut Off Date has the meaning given in clause 16.7(b).

Data Room means the Project Tiffany data room hosted by thedocyard at <https://app.thedocyard.co/AU/YardDashboard/DealDashboard?YardID=LFoYgXu7cDKdkfbik4KbW@@@YFrBzpC2L>.

Deed Polls means TNK Deed Poll and the TND Deed Poll.

Delivery Time means 8:00am (Melbourne time) on the Second Court Date or, if the hearing on the Second Court Date is adjourned, on the day on which the adjourned hearing occurs.

Due Diligence Material means the written information disclosed by, or on behalf of, Think Group and its Subsidiaries (including management presentations and all written responses provided in response to written questions or requests for information) to Busy Bees or any of its Authorised Persons contained or made available in the Data Room prior to 5:00pm (Melbourne time) on 15 June 2021, the index for which has been initialled for identification by Authorised Persons of each of Think Group and Busy Bees on execution of this agreement and as evidenced by the USB provided by Think Group to Busy Bees within 5 Business Days of the date of this agreement.

Duty means any stamp, transaction or registration duty or similar charge imposed by any Governmental Agency and includes any interest, fine, penalty, charge or other amount imposed in respect of any of them, but excludes Tax.

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

Effective Date means the date on which the Schemes become Effective.

Encumbrance means a Security Interest, or an easement, restrictive covenant, caveat or similar restriction over property.

End Date means:

- (a) the date that is 6 months after the date of this agreement; or
- (b) such other date and time agreed in writing between Think Group and Busy Bees.

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

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

Existing Financing Agreements means the existing financing agreements of the TNK Group and the TND Group as agreed in writing by the parties on or before the date of this agreement.

Explanatory Booklet means the explanatory booklet to be prepared by Think Group in respect of the Proposed Transaction in accordance with the terms of this agreement and to be dispatched to Think Group Securityholders.

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

FIRB means the Australian Foreign Investment Review Board.

FIRB Application means the notice to the Treasurer of the Commonwealth of Australia in the form prescribed by the FATA or applicable regulations to seek clearance for Busy Bees or Affiliates of Busy Bees, to undertake the Proposed Transaction.

Financial Indebtedness means any debt or other monetary liability (whether actual or contingent) in respect of monies borrowed or raised or any financial accommodation including under or in respect of any:

- (a) borrowing from any bank or other financial institution;
- (b) bill, bond, debenture, note or similar instrument;
- (c) acceptance, endorsement or discounting arrangement;
- (d) guarantee;
- (e) finance or capital lease;
- (f) swap, hedge arrangement, option, futures contract, derivative or analogous transaction;

- (g) agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or business;
- (h) agreement for the deferral of a purchase price or other payment in relation to the provision of services other than in the ordinary course of business of the Think Group; or
- (i) obligation to deliver goods or provide services paid for in advance by any financier.

First Court Date means the date the Court first hears the application to order the convening of the Scheme Meetings under section 411(1) of the Corporations Act or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

Funds Flow Budget means the agreed flow of funds for the budget for the Think Consolidated Group dated 25 May 2021 as set out in tab 'Flow of Funds' in document 2.16.2 in the Data Room.

General Meetings means the general meetings of:

- (a) Think Group Securityholders to vote on and consider the MGE Agreements Approval Resolutions; and
- (b) the TNK Shareholders to vote on and consider the Appointor Structure Approval Resolutions.

GST goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply.

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

GST Law has the meaning given in the GST Act.

Governmental Agency means, whether domestic or foreign, any government or representative of a state or federal 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, ACCC, the Takeovers Panel, FIRB and any regulatory organisation established under statute or any stock exchange or financial market.

Headcount Test means the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the resolutions to approve the Schemes at the Scheme Meetings are passed by a majority in number of the relevant Independent Securityholders present and voting, either in person or by proxy.

Head Office Asset Transfer Deed means the document titled 'Head Office Asset Sale And Purchase Agreement' for the transfer of certain assets relating to the Centre development arm of the Business conducted by TND including the head office and certain specific non-income producing assets to an entity that is Controlled by Mathew Graeme Edwards conditional on the Schemes being implemented and with effect on the Implementation Date and promptly after implementation of the Schemes.

IBC means the Independent Board Committee of the Think Group Boards.

Implementation Date means the later of:

- (a) the fifth Business Day following the Scheme Record Date; and
- (b) such other Business Day as the relevant parties agree.

Impugned Amount has the meaning given in clause 17.5.

Independent Director means any Think Group Director other than Mathew Graeme Edwards.

Independent Expert means an expert, independent of the parties, engaged by Think Group in good faith to prepare the Independent Expert's Report.

Independent Expert's Report means the report from the Independent Expert commissioned by Think Group for inclusion in the Explanatory Booklet, which includes an opinion from the Independent Expert on whether the Schemes are in the best interest of the Independent

Securityholders and the MGE Acquisition is fair and reasonable to Independent Securityholders and includes any update of that report by the Independent Expert.

Independent Securityholders means all Think Group Securityholders except for the MGE Entities.

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 scheme of arrangement (other than the Schemes or any restructuring arrangement with the relevant person's financier in cases where the person is not insolvent or unable to pay its debts and where Busy Bees has expressly approved such arrangement in writing) or composition with its creditors or takes similar actions as a result of which the entity's assets are, or are proposed to be, submitted to the control of its creditors;
- (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 (other than where the application is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) 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) **non payments**: the person suspends or threatens to suspend payment of debts to its creditors generally or becomes unable to pay its debts, as and when they become due which, if the person is Think Group or member of the Think Consolidated Group, excludes any non payment of debts by a member of the Think Consolidated Group that has been expressly approved in writing by Busy Bees (such approval not to be unreasonably withheld or delayed);
- (e) **ceasing business**: the person permanently ceases or threatens to cease to carry on business, when compared to the business (if any) that the person carried on at the date of this agreement, or a Think Consolidated Group Member ceases or threatens to cease to carry on business at a Centre that the Think Consolidated Group Member carried on at the date of this agreement except as otherwise expressly approved in writing by Busy Bees, but does not include:
 - (i) the person having temporarily ceased or threatened to temporarily cease to carry on business solely or predominantly as a result of the COVID-19 virus provided that, if the person is a Think Consolidated Group Member, the cessation is in accordance with an Approved COVID-19 Response Plan; or
 - (ii) a member of the TND Group ceasing or threatening to cease to carry on business;
- (f) **insolvency**: the person is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act;
- (g) **creditor protection**: the person seeks or obtains protection from its creditors under any statute or any other law;
- (h) **deregistration**: the person being deregistered as a company or otherwise dissolved in cases where the person is insolvent or unable to pay its debts;
- (i) **deed of company arrangement**: the person executing a deed of company arrangement;
- (j) **assets**: any attachment, distress, execution or other process is made or levied against any asset of the entity in excess of:

- (i) A\$500,000 (individually or in aggregate), in respect of any one or more Think Consolidated Group Members; and
- (ii) A\$1,000,000 (individually or in aggregate), in respect of Busy Bees, and is not withdrawn, stayed or dismissed within 14 days;
- (k) **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
- (l) **analogous events:** anything analogous to those set out in any of paragraphs (a) to (k) inclusive occurs in relation to the person under the laws of a foreign jurisdiction,

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

Intellectual Property Licence Deed (Nido) means the deed so titled between a Busy Bees Group Member and TND which will only come into effect if the Schemes are implemented.

Interest Rate means the 90 day Bank Bill Swap Reference Rate as published as at the relevant due date for payment by the Australian Financial Markets Association.

Interim Dividend means any cash only fully franked dividend, not exceeding \$0.08 per Stapled Security (or such higher amount as the Think Group and Busy Bees agree in writing), that may be paid by Think Group in accordance with clause 7.4.

Interim Dividend Record Date means the record date for any Interim Dividend as determined by the TNK Board.

Key Person has the meaning given in clause 8.1(b)(iv).

Licensed Entity Restructure has the meaning given to it in the Head Office Asset Transfer Deed.

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

Material Adverse Change means an event, change, condition, matter, thing or circumstance that occurs, is announced or becomes known to Busy Bees or the Think Group Boards (in each case whether or not it becomes public) after the date of this agreement which:

- (a) has or could reasonably be expected to have, individually or when aggregated with all such changes, conditions, matters, things, events or circumstances the result of a diminution of the consolidated Underlying EBITDA of TNK Group by \$3.35 million or more as compared against the consolidated EBITDA (underlying) set out in document 2.16.2 within tab 'CONSOL FS', in the Data Room,

but does not include any event or circumstance:

- (b) which relates solely to TND or the TND development pipeline;
- (c) expressly required to be done or procured by Think Group under this agreement, the Schemes, the MGE Share Acquisition Agreement or the MGE Agreements;
- (d) which Busy Bees has previously approved in writing;
- (e) to the extent it was an existing event or circumstance that, and the impact of which, was Fairly Disclosed in the Due Diligence Materials or in public filings of Think Group with ASX and ASIC made in the 12 months prior to 5:00pm (Melbourne time) on 15 June 2021;

- (f) relating to reasonable costs and expenses incurred by Think Group associated with the process for the Proposed Transaction, being no more than 110% of the costs contemplated in the Funds Flow Budget and in accordance with the terms of the mandates and engagements set out in the Data Room;
- (g) comprising a change in any applicable law or a change in Accounting Standards or the interpretation of Accounting Standards;
- (h) relating to the COVID-19 global pandemic or any related epidemic or pandemic arising from a mutation, variation or derivative of the COVID-19 virus, where the Think Consolidated Group is acting in accordance with the Approved COVID-19 Response Plan; or
- (i) relating to any material adverse change or major disruption to the existing financial markets or interest rates in Australia or the occurrence of acts of terrorism or war (whether declared or not), excluding any events, changes, conditions, matters, things or circumstances which have a disproportionate effect on the Think Consolidated Group as compared to other participants in the industry in which the Think Consolidated Group operates.

Material Contracts means the contracts identified as material contracts as agreed in writing by the parties on or before the date of this agreement.

MGE Acquisition means the proposed acquisition or proposed entry into by an entity that is Controlled by Mathew Graeme Edwards of:

- (a) the Think Rump; and
- (b) the Centre Management Agreement;

as provided by the MGE Agreements conditional among other things on the implementation of the Schemes.

MGE Agreements means:

- (a) the Centre Management Agreement;
- (b) the Ancillary Rights Deed;
- (c) the Intellectual Property Licence Deed (Nido);
- (d) the TND Share Transfer Deed;
- (e) the Head Office Asset Transfer Deed; and
- (f) the Nido Franklin Transfer Deed.

MGE Agreements Approval Resolutions means:

- (a) the resolutions of Think Group Securityholders to approve the transactions under the MGE Agreements for the purposes of sections 200B and 200C and Chapter 2E of the Corporations Act and of Listing Rule 10.1; and
- (b) the Unstapling Resolutions,

each in a form agreed by the parties prior to signing of this agreement.

MGE Entities means:

- (a) Mathew Graeme Edwards;
- (b) Isamax Pty Ltd ACN 156 123 241 as trustee for the Edwards Family Trust;
- (c) Seuss Tpywg Pty Ltd ACN 608 961 637 as trustee for EDSUPER; and
- (d) any other entity that is Controlled by Mathew Graeme Edwards that holds Stapled Securities.

MGE TNK Shares means all of the TNK Shares held by the MGE Entities or any of them on the Scheme Record Date.

MGE Share Acquisition means the proposed acquisition by Busy Bees of the MGE TNK Shares under the MGE Share Acquisition Agreement.

MGE Share Acquisition Agreement means the agreement of that name dated on or about the date of this agreement for the acquisition by Busy Bees from the MGE Entities of all of the MGE TNK Shares at the same consideration per TNK Share as allocated to TNK Scheme Shares under the TNK Scheme conditional among other things on the implementation of the Schemes.

New Think Group Director means a person nominated by Global Appointor Corp. (Ontario Corporation Number: 2710549), and notified to Think Group not less than 2 Business Days prior to the Implementation Date, to be appointed a Think Group Director or a director of a Subsidiary of Think Group (as the context requires) on and from the Implementation Date in accordance with clause 9.1(a).

Nido Franklin means the Nido Early School Centre located at 2 Mavis Latham Street, Franklin ACT 2913.

Nido Franklin Transfer Deed means the document titled 'Nido Franklin Business Sale Agreement' for the transfer of Nido Franklin to an entity that is Controlled by Mathew Graeme Edwards conditional on the Schemes being implemented and with effect on the Implementation Date and promptly after implementation of the Schemes.

Outgoing Director means each person who is a Think Group Director or a director of a Subsidiary of Think Group and is not a New Think Group Director.

Performance Right means a right granted under the Performance Rights Plan to acquire by way of issue or transfer a Think Group Security subject to the terms of the Performance Rights Plan and the terms of grant.

Performance Rights Holder means a person who holds one or more Performance Rights.

Performance Rights Plan means the Think Childcare Group Employee Share Option Plan.

Performance Rights Plan Rules means the rules of the Performance Rights Plan.

Permitted Dividend means any cash only fully franked dividend of up to \$0.24 per Stapled Security (or such other higher amount as the Think Group and Busy Bees agree in writing), that may be paid by Think Group in accordance with clause 7.4.

Permitted Dividend Record Date means the record date for any Permitted Dividend, being 7.00pm (Melbourne time) on the second Business Day (or such other Business Day as the parties agree in writing) following the Effective Date.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Proposed Transaction means:

- (a) the proposed acquisition by Busy Bees, directly or indirectly, of all of the Think Group Securities from the Independent Securityholders in accordance with the implementation of the Schemes;
- (b) the MGE Share Acquisition;
- (c) the MGE Acquisition; and
- (d) all associated transactions and steps contemplated by this agreement, the MGE Share Acquisition Agreement or any of the MGE Agreements.

Proxy Cut-Off Date means the last day on which proxies must be lodged for the Scheme Meetings and the General Meetings.

Recommendation has the meaning set out in clause 6.1(a)(i).

Regulatory Approvals means the approvals set out in clause 3.1(a).

Related Body Corporate of a person means a related body corporate of that person 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 Interest has the meaning given in the Corporations Act.

Restructure means the Licensed Entity Restructure on terms agreed by the parties (each acting reasonably, provided that nominal consideration (if any is required) is paid by the transferee, and no liabilities are incurred by any member of the Think Consolidated Group (other than to pay future renewal fees)).

RG 60 means Regulatory Guide 60 issued by ASIC.

RG 76 means Regulatory Guide 76 issued by ASIC.

Run-off Policy has the meaning given in clause 11.4(b).

Scheme Consideration means the TND Scheme Consideration or the TNK Scheme Consideration (as applicable), on the basis that the aggregate of the TND Scheme Consideration and the TNK Scheme Consideration will be \$3.20 for each Stapled Security (less the amount of any Permitted Dividend).

Schemes means the TND Scheme and the TNK Scheme.

Scheme Meetings means the meetings of the Independent Securityholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Schemes and includes any meeting convened following any adjournment or postponement of those meetings.

Scheme Record Date means 7.00pm (Melbourne time) on the fifth Business Day (or such other Business Day as the Think Group and Busy Bees agree in writing) following the Effective Date.

Scheme Security means a Stapled Security held on the Scheme Record Date other than those held by the MGE Entities.

Scheme Securityholder means a person who holds one or more Scheme Securities.

Scheme Share means a TNK Scheme Share or a TND Scheme Share, as the context otherwise requires or permits.

Scheme Shareholder means a TND Scheme Shareholder or a TNK Scheme Shareholder, as the context requires or permits.

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

Security Interest means any mortgage, charge, pledge, lien, assignment or other security interest or any other arrangement (including a right of set off or combination) entered into for the purpose of conferring a priority, or securing the payment of money or the performance of an obligation, including any security interest as defined in section 51A of the Corporations Act or in the PPSA.

Senior Manager means an employee of any member of the Think Consolidated Group reporting directly to the managing director, chief financial officer or group chief operating officer of Think Group.

Share Registry means Computershare Investor Services Pty Ltd of Yarra Falls, 452 Johnston St, Abbotsford VIC 3067 or any replacement provider of share registry services to Think Group.

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

Stapled has the meaning given in the Constitutions.

Stapled Security means one TNK Share Stapled to one TND Share.

Stapling Deed means the deed of that name dated 28 October 2019 between TNK and TND.

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

Superior Proposal means a bona fide Competing Proposal (in relation to which there has been no contravention of clause 16 by Think Group), which the Independent Directors, acting in good faith in the interests of Think Group and the Think Group Securityholders, and after taking written advice from its external legal and financial Advisers, determines:

- (a) is reasonably capable of being valued and completed taking into account all aspects of the Competing Proposal, including its conditions, whether it is likely to receive the required support from Think Group Securityholders to be capable of completing, the identity, reputation and financial credentials of the person making such proposal, and all relevant legal, regulatory and financial matters; and
- (b) would be likely to be more favourable to Think Group Securityholders than the latest proposal provided by Busy Bees to Think Group, taking into account all aspects of the Competing Proposal and the latest proposal provided by Busy Bees to Think Group, including the identity, reputation and financial credentials of the person making such proposal, legal, regulatory and financial matters, certainty, any delay in paying, or uncertainty regarding the payment of, some or all of the consideration and any other matters affecting the probability of the relevant proposal being completed in accordance with its terms.

TAA means the *Taxation Administration Act 1953* (Cth)

Tax means any tax, levy, charge, impost, fee, deduction, offset (including research and development tax offsets), goods and services tax, payroll tax, superannuation guarantee, fringe benefits tax, compulsory loan, PAYG instalment and withholding, that is assessed, levied, imposed or collected by any Governmental Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above, but excludes Duty.

Tax Act means the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth) or the TAA, as applicable.

Tax Law means any law relating to either Tax or Duty as the context requires.

Takeovers Panel means the Takeovers Panel constituted under the *Australian Securities and Investments Commission Act 2001* (Cth).

TCS means Think Childcare Services Pty Ltd ACN 160 028 277.

Think Consolidated Group means Think Group and each Related Body Corporate of TNK or TND. A reference to a member of the **Think Consolidated Group** or a **Think Consolidated Group Member** is a reference to Think Group or any such Related Bodies Corporate.

Think Group Boards means the TNK Board and the TND Board collectively (or any committee of the TNK Board and the TND Board constituted to consider the Proposed Transaction on behalf of Think Group).

Think Group Break Fee has the meaning given to that term in clause 14.3(a).

Think Group Director means a director of either TNK or TND or both.

Think Group Information means information to be included by Think Group in the Explanatory Booklet that explains the effect of the Schemes, the MGE Share Acquisition and the MGE Acquisition and sets out the information prescribed by the Corporations Act and the *Corporations Regulations 2001* (Cth), and any other information that is material to the making of a decision by Independent Securityholders whether or not to vote in favour of the Schemes and the MGE Acquisition Approval Resolutions, being information that is within the knowledge of the Think Group Boards and has not previously been disclosed to Think Group Securityholders, other than the Busy Bees Information and the Independent Expert's Report.

Think Group Parties means Think Group and its Related Bodies Corporate and Authorised Persons.

Think Group Prescribed Occurrence means the occurrence of any of the following on or after the date of this agreement:

- (a) either or both of TNK and TND converts all or any of its shares into a larger or smaller number of shares (see section 254H of the Corporations Act);
- (b) any member of the Think Consolidated Group resolves to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (c) any member of the Think Consolidated Group:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) any member of the Think Consolidated Group issues securities (including shares or securities convertible into shares), or grants a performance right, or an option over its securities, or agrees to make such an issue or grant such a security, right or an option;
- (e) any member of the Think Consolidated Group issues, or agrees to issue, convertible notes;
- (f) any member of the Think Consolidated Group makes any change to its constitution or similar constituent document;
- (g) any member of the Think Consolidated Group disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;
- (h) any member of the Think Consolidated Group creates or agrees to create, any Encumbrance over the whole, or a substantial part, of its business or property;
- (i) an Insolvency Event occurs in relation to any member of the TNK Group;
- (j) either or both of TNK and TND pays, declares, determines as payable, fixes for payment, distributes or incurs a liability to make or pay a dividend, bonus or other share of its profits, income, capital or assets by way of dividend or other form of distribution other than in respect of any Permitted Dividend or Interim Dividend;
- (k) any member of the Think Consolidated Group permanently ceases, or threatens to permanently cease to, carry on the business conducted as at the date of this agreement except in circumstances where this could not reasonably be expected to result in a Material Adverse Change; and
- (l) any member of the Think Consolidated Group directly or indirectly authorises, commits, offers or agrees (whether or not conditionally) to take or announces any of the actions referred to in paragraphs (a) to (k) inclusive above,

provided that a Think Group Prescribed Occurrence will not include any matter:

- (m) expressly required to be done or procured by the Think Group or expressly permitted to be done by the Think Group under this agreement, the TNK Scheme, the TND Scheme, the MGE Share Acquisition Agreement or any of the MGE Agreements, including under the Appointor Structure Approval Resolutions and the Unstapling Resolutions;
- (n) required by law or by an order of a court or Governmental Agency; or
- (o) the undertaking of which Busy Bees or any of its Affiliates has previously expressly approved in writing.

Think Group Register means the register of Stapled Securityholders maintained by Think Group under section 168(1) of the Corporations Act.

Think Group Security means a Stapled Security.

Think Group Securityholder or **Stapled Securityholder** means a person who is registered in the Think Group Register as a holder of one or more Think Group Securities.

Think Group Warranty or **Think Group Warranties** means the representations and warranties of Think Group set out in clause 10.3.

Think Rump means the TND Scheme Shares, the Nido brand and all associated intellectual property rights, Nido Franklin, together with head office and certain specific non-income producing assets of the Centre development arm of the Business conducted by TND immediately prior to the Implementation Date.

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

TND means Think Childcare Development Limited ACN 635 178 166.

TND Board means the board of directors for the time being of TND.

TND Deed Poll means the deed poll to be executed by TND Purchaser prior to the First Court Date in relation to the TND Scheme, in the form set out in Schedule 5 or in such other form as agreed in writing by Think Group and Busy Bees acting reasonably.

TND Group means TND and its Subsidiaries.

TND Purchaser means FEL Child Care Developments Pty Ltd ACN 619 686 181.

TND Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between TND and the TND Scheme Shareholders substantially in the form set out in Schedule 3, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing by TND and Busy Bees.

TND Scheme Consideration means \$0.0001 for each TND Scheme Share.

TND Scheme Share means a TND Share as at the Scheme Record Date, other than a TND Share held by an MGE Entity.

TND Scheme Shareholder means a person who is registered in the Think Group Register as the holder of one or more TND Scheme Shares at the Scheme Record Date.

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

TND Shareholder means a person who is registered in the Think Group Register as the holder of one or more TND Shares.

TND Share Transfer Deed means the share sale and purchase agreement for the transfer of all of the TND Shares (other than those held by the MGE Entities) by Busy Bees to an entity that is Controlled by Mathew Graeme Edwards conditional among other things on the Schemes being implemented.

TNK means Think Childcare Limited ACN 600 793 388.

TNK Board means the board of directors for the time being of TNK.

TNK Constitution means the Replacement Constitution of TNK, adopted by special resolution of the members of TNK on 5 December 2019.

TNK Deed Poll means the deed poll to be executed by Busy Bees prior to the First Court Date in relation to the TNK Scheme, in the form set out in Schedule 4 or in such other form as agreed in writing by Think Group and Busy Bees acting reasonably.

TNK Group means TNK and its Subsidiaries.

TNK Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between TNK and the TNK Scheme Shareholders substantially in the form set out in Schedule 2, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing by TNK and Busy Bees.

TNK Scheme Consideration means \$3.1999 for each TNK Scheme Share less the amount of any Permitted Dividend.

TNK Scheme Share means a TNK Share as at the Scheme Record Date, other than a TNK Share then held by an MGE Entity.

TNK Scheme Shareholder means a person who is registered in the Think Group Register as the holder of one or more TNK Scheme Shares at the Scheme Record Date.

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

TNK Shareholder means a person who is registered in the Think Group Register as the holder of one or more TNK Shares.

Treasurer means the Treasurer of the Commonwealth of Australia.

Underlying EBITDA means earnings for TNK Group and includes the underlying financial performance before interest, taxation, depreciation and amortisation and excludes AASB 16 leases, profit or loss on sale of assets, acquisition expenses including stamp duty and commission, transaction, implementation and restructuring costs in relation to the Proposed Transaction, development costs and earn-out and clawback adjustments, and other non-cash statutory adjustments including share based payments and impairment charges.

Unstapling Resolutions means the special resolutions of Think Group Securityholders to approve the unstapling of TNK Shares and TND Shares from each other under clause 39 of the Constitution of TNK and clause 40 of the Constitution of TND, respectively, and pursuant to clause 10.1 of the Stapling Deed, conditional on the Schemes becoming Effective and with effect from immediately following payment of the Scheme Consideration to Scheme Shareholders set out in clause 9.2(b)(i) (being prior to the transfer of the TNK Shares to Busy Bees under clauses 9.2(b)(vi) and 9.2(b)(viii) and the transfer of the TND Shares to the TND Purchaser under clause 9.2(b)(vii)) on the Implementation Date.

Voting Power has the meaning given in section 610 of the Corporations Act.

Voting Intention has the meaning set out in clause 6.1(a)(ii).

1.2 Interpretation

In this agreement, except where the context otherwise requires:

- (a) the singular includes the plural, and the converse also applies;
- (b) gender includes other genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to **A\$, \$A, dollars** or **\$** is to Australian currency;
- (g) a reference to time is to Melbourne, Australia time;
- (h) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (j) a reference to legislation or to a provision of legislation (including a listing rule or operating rule of a financial market or of a clearing and settlement facility) includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (k) unless otherwise defined, a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;

- (l) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (m) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- (o) a reference to **Fairly Disclosed** means disclosed to a party or any of its Authorised Persons accurately and to a sufficient extent and in sufficient detail so as to enable a reasonable person who is experienced in transactions similar to the Proposed Transaction to identify the nature, scope and significance of the relevant matter, event or circumstance and its likely ramifications.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

1.4 Business Day

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

1.5 Consents or approvals

If the doing of any act, matter or thing under this agreement 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 provided otherwise.

1.6 Listing requirements included as law

A listing rule or operating rule of a financial market or of a clearing and settlement facility will be regarded as a law and a reference to legislation (as appropriate), and a reference to such a rule is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

1.7 Reasonable endeavours

Any provision of this agreement which requires a party to use reasonable endeavours or best endeavours to procure that something is performed or occurs or does not occur does not include any obligation:

- (a) to pay any money or provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person except for payment of any applicable fee for the lodgement or filing of any relevant application with any Governmental Agency; or
- (b) to commence any legal action or proceeding against any person,
- except where that provision specifies otherwise.

1.8 Think Group

Any agreement, representation, warranty or indemnity by TNK, TND or Think Group binds and is given by TNK and TND jointly and severally and any agreement, representation, warranty and indemnity in favour of TNK, TND or Think Group is for the benefit of them jointly and severally.

2. Agreement to propose the Schemes

2.1 Agreement to propose and implement the Schemes

- (a) Each of TND and TNK agrees to propose its respective Scheme and to implement it on and subject to the terms and conditions of this agreement, and substantially in accordance with the Timetable.
- (b) Busy Bees agrees to assist Think Group in proposing and implementing the Schemes on and subject to the terms and conditions of this agreement, and substantially in accordance with the Timetable.

2.2 TND Purchaser

Notwithstanding any other provision of this agreement, Busy Bees must procure the TND Purchaser to acquire the TND Scheme Shares under the TND Scheme and Busy Bees must procure that the TND Purchaser complies with:

- (a) all of the relevant obligations of the TND Purchaser under this agreement in respect of the TND Scheme and its implementation;
- (b) following its execution, the TND Deed Poll; and
- (c) subject to it becoming Effective, the obligations attributed to the TND Purchaser under the TND Scheme.

3. Conditions precedent for Schemes

3.1 Conditions for Schemes

Subject to this clause 3, the Schemes will not become Effective, and the respective obligations of Think Group and Busy Bees in relation to the implementation of the Schemes 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) **(Regulatory Approvals):**
 - (i) **(ASIC and ASX)** before the Delivery Time, ASIC and ASX issue or provide such additional consents, waivers, relief or approvals as are necessary or which Think Group and Busy Bees agree (acting reasonably) are desirable to implement the Proposed Transaction (noting that if such consents, waivers and/or approvals are subject to conditions, those conditions must be acceptable to the parties (each acting reasonably)) and such consent, approval or other act has not been withdrawn or revoked before the Delivery Time;
 - (ii) **(FIRB)** before the Delivery Time, either:
 - (A) the Treasurer (or their delegate) has provided a notice in writing (without any term or condition other than a standard tax condition, or a term or condition which is satisfactory to Busy Bees (acting reasonably)) stating, or to the effect, that, in terms of Australia's foreign investment policy, the Australian Government does not object to Busy Bees acquiring the TNK Scheme Shares under the TNK Scheme and the MGE TNK Shares under the MGE Share Acquisition Agreement and the TND Purchaser acquiring the TND Scheme Shares under the TND Scheme; or

- (B) by reason of lapse of time, the Treasurer is no longer empowered under the FATA to make an order prohibiting the acquisition on grounds that the Treasurer was otherwise empowered to make under the FATA by Busy Bees of the TNK Scheme Shares under the TNK Scheme and the MGE TNK Shares under the MGE Share Acquisition Agreement and the TND Purchaser acquiring the TND Scheme Shares under the TND Scheme,

and in the case of clause 3.1(a)(ii)(A), the notice has not been varied on terms not acceptable to Busy Bees or withdrawn, suspended or revoked on or before the Delivery Time.

For the purposes of this clause, a standard tax condition is a condition included in the list of tax conditions set out in items 1 to 6 (inclusive) of Section D: 'Examples of Tax Conditions', under the sub-heading "Standard' tax conditions', in Foreign Investment Review Board Guidance Note 12 'Tax Conditions' as last updated on 18 December 2020;

- (iii) **(ACCC)** before the Delivery Time, either:
- (A) Busy Bees has received, either unconditionally or on terms and conditions that are acceptable to Busy Bees and Think Group acting reasonably, notice in writing from the ACCC stating, or stating to the effect, that, based on the information before it and other matters noted, the ACCC has no objection to and/or does not intend to intervene or prevent, or does not intend to conduct a public review in relation to, the acquisition by Busy Bees of the TNK Scheme Shares and the MGE TNK Shares and by the TND Purchaser of the TND Scheme Shares and that notice has not been withdrawn, revoked or amended (**Informal Clearance**); or
 - (B) the ACCC (or the Australian Competition Tribunal on review of an ACCC decision) has made a written determination authorising the acquisition by Busy Bees of the TNK Scheme Shares and the MGE TNK Shares and the TND Purchaser of the TND Scheme Shares, either unconditionally or on terms and conditions that are acceptable to Busy Bees and Think Group acting reasonably, such written notice or determination shall have become effective pursuant to the terms of such written notice or determination and either no application has been made to review, or appeal, the decision of the ACCC to grant authorisation or the time for making such an application has expired (**Merger Authorisation**); or
 - (C) the Federal Court of Australia declares or makes orders to the effect that the acquisition by Busy Bees of the TNK Scheme Shares and the MGE TNK Shares and the TND Purchaser of the TND Scheme Shares will not contravene section 50 of the CCA or Busy Bees successfully defends proceedings in the Federal Court of Australia alleging that the acquisition by Busy Bees of the TNK Scheme Shares and the MGE TNK Shares and the TND Purchaser of the TND Scheme Shares contravenes section 50 of the CCA (and, in either case, the declaration or decision of the Federal Court has been finally determined) (**Final Federal Court Decision**);
- (iv) **(Other Governmental Authorities)** before the Delivery Time, each other relevant Governmental Agency issues or provides such consents, waivers, approvals as are necessary or which Think Group and Busy Bees agree are desirable to implement the Proposed Transaction (noting that if such consents, waivers and/or approvals are subject to conditions those conditions must be acceptable to the parties (each acting reasonably)) and such consent, approval or other act has not been withdrawn or revoked before the Delivery Time;
- (b) **(No change of Independent Directors recommendation)** between the date of this agreement and the date of the Scheme Meetings and the General Meetings, none of the Independent Directors changing, qualifying or withdrawing their unanimous

Recommendation or their Voting Intention (even if permitted to do so under this agreement but other than a withdrawal of Recommendation permitted by clause 6.2);

- (c) **(No Think Group Prescribed Occurrence)** no Think Group Prescribed Occurrence occurs between the date of this agreement and the Delivery Time;
- (d) **(No Busy Bees Prescribed Occurrence)** no Busy Bees Prescribed Occurrence occurs between the date of this agreement and the Delivery Time;
- (e) **(Think Group Warranties)** the Think Group Warranties being true and correct in all material respects on the date of this agreement and at the Delivery Time;
- (f) **(Busy Bees Warranties)** the Busy Bees Warranties being true and correct in all material respects on the date of this agreement and at the Delivery Time;
- (g) **(Securityholder approvals)**
 - (i) the Schemes are approved by Independent Securityholders at the Scheme Meetings by the majorities required under section 411(4)(a)(ii) of the Corporations Act; and
 - (ii) each of:
 - (A) the MGE Agreements Approval Resolutions is passed by Stapled Securityholders; and
 - (B) the Appointor Structure Approval Resolutions is passed by TNK Shareholders,at the relevant General Meetings in accordance with the Corporations Act and the Listing Rules;
- (h) **(Court approval)** the Schemes are approved by orders of the Court in accordance with section 411(4)(b) of the Corporations Act;
- (i) **(No Material Adverse Change)** no Material Adverse Change occurs between the date of this agreement and the Delivery Time;
- (j) **(Restraints)** no temporary restraining order, preliminary or permanent injunction or other order including cease trade orders, in each case issued by a court of competent jurisdiction or securities regulatory authority in Australia in a proceeding brought by a Governmental Agency in Australia, preventing, delaying or otherwise materially adversely impacting the Proposed Transaction, unless such order or injunction has been disposed of to the reasonable satisfaction of the parties acting reasonably, is in effect at the Delivery Time;
- (k) **(Performance Rights)** Think Group has at the Delivery Time complied with its obligations under clause 5;
- (l) **(Third party consents)** all consents, approvals or waivers of rights by parties other than Think Consolidated Group Members under any Material Contracts that in the reasonable opinion of Busy Bees are necessary or desirable are obtained in a form and subject to conditions acceptable to Busy Bees (acting reasonably), and such consents, approvals or waivers have not been withdrawn, cancelled or revoked before the Delivery Time;
- (m) **(Execution of MGE Agreements)** each of the MGE Agreements and the MGE Share Acquisition Agreement is executed by the persons named as parties to those agreements in a form acceptable to Think Group and Busy Bees (acting reasonably) and has not been terminated or amended without the consent of Think Group and Busy Bees (acting reasonably) by the Delivery Time; and
- (n) **(Restructure)** the Restructure has been completed by the Delivery Time.

3.2 Benefit and waiver of conditions precedent

- (a) The Conditions in clauses 3.1(a) (Regulatory Approvals) (other than clause 3.1(a)(iii) (ACCC)), 3.1(j) (Restraints), and 3.1(m) (Execution of MGE Agreements) are for the

benefit of Busy Bees and Think Group and any breach or non-fulfilment of them may only be waived (if capable of waiver) with the written consent of Busy Bees and Think Group, which consent either party may give or withhold in its absolute discretion.

- (b) The Conditions in clauses 3.1(a)(iii) (ACCC), 3.1(b) (No change in Independent Directors Recommendation), 3.1(c) (No Think Group Prescribed Occurrences), 3.1(e) (Think Group Warranties), 3.1(i) (No Material Adverse Change), 3.1(k) (Performance Rights), 3.1(l) (Third party consents), and 3.1(n) (Restructure) are for the sole benefit of Busy Bees and any breach or non-fulfilment of them may only be waived by Busy Bees giving its written consent.
- (c) The Conditions in clauses 3.1(d) (No Busy Bees Prescribed Occurrences) and 3.1(f) (Busy Bees Warranties), are for the sole benefit of Think Group and any breach or non-fulfilment of them may only be waived by Think Group giving its written consent.
- (d) The Conditions in clauses 3.1(g) (Securityholder approvals) and 3.1(h) (Court approval) cannot be waived.
- (e) If the Court exercises its discretion under section 411(4)(a)(ii)(A) of the Corporations Act by making an order to disregard the Headcount Test as contemplated by clause 3.6, the Condition in clause 3.1(g)(i) (Securityholder Approval) will be deemed to have been satisfied as at the date of the Scheme Meetings.
- (f) A party entitled to waive a Condition under this clause 3.2 may do so in its absolute discretion. Any waiver of a Condition by a party for whose benefit the condition applies must take place on or prior to the Delivery Time.
- (g) If a party waives the breach or non-fulfilment of any of the Conditions in clause 3.1, that waiver will not preclude it from suing the other parties for any breach of this agreement including a breach that resulted in the non-fulfilment of the Condition that was waived.

3.3 Reasonable endeavours

- (a) Each of the parties will use its reasonable endeavours (to the extent within that party's control) to procure that each of the Conditions (as applicable) is satisfied as soon as reasonably practicable after the date of this agreement or continues to be satisfied at all times until the last time they are to be satisfied (as the case may require).
- (b) Without limiting clauses 3.4 and 3.5 below, in relation to the FIRB Application:
 - (i) Think Group must provide Busy Bees with all information reasonably requested by Busy Bees to the extent reasonably required in connection with the FIRB Application;
 - (ii) each of Busy Bees and Think Group must respond, at the earliest date reasonably practicable, to any reasonable requests for additional information or documentary material made by FIRB or any other Governmental Agency in respect of the FIRB Application, but Busy Bees (acting reasonably) may withhold information that it is commercially sensitive to Busy Bees; and
 - (iii) notify Think Group as soon as reasonably practicable upon becoming aware of any material matters or developments concerning the FIRB Application, including any fact or circumstances that will or may result in the clearance being sought by Busy Bees pursuant to the FIRB Application not being obtained or being incapable of being obtained,

but for the avoidance of doubt, Busy Bees is not required to accept any other conditions which are not satisfactory to Busy Bees, other than the standard tax conditions as described in 3.1(a)(ii).

- (c) Without limiting clauses 3.3(e), 3.4 and 3.5 below, in relation to any application to the ACCC for Informal Clearance, Busy Bees must:
 - (i) prepare and file an application seeking Informal Clearance with the ACCC, together with all necessary and appropriate information, as soon as practicable

- after signing this agreement and thereafter take all reasonable steps to obtain Informal Clearance;
- (ii) engage in prior consultation with Think Group as to the content, and supply to Think Group copies of the application, and any other proposed written or oral communication with the ACCC in connection with the application, subject to redactions for information that is commercially sensitive to Busy Bees;
 - (iii) invite and permit a representative of Think Group to attend any proposed meeting with the ACCC in connection with the application whether such meeting is to be held in person, by telephone or any other audio or visual link, subject to the ACCC not wanting the representative of Think Group to attend the meeting or the meeting containing any discussion of Busy Bees' commercially sensitive information in which case the representative of Think Group will be required to leave the meeting for the duration of the discussion about that commercially sensitive information;
 - (iv) promptly provide an accurate summary of any oral communication between Busy Bees and the ACCC to which a representative of Think Group is, for any reason, not present and provide copies of any written communication received by Busy Bees from the ACCC in connection with the application, subject to redactions for information that is commercially sensitive to Busy Bees;
 - (v) provide copies of any expert or third party reports commissioned or obtained by Busy Bees in connection with its application, subject to redactions for any information that is commercially sensitive to Busy Bees; and
 - (vi) at the request of Think Group, offer to the ACCC any undertakings or offer to agree to such conditions that the parties agree are likely to facilitate Busy Bees obtaining Informal Clearance in a timely manner, subject to such conditions being acceptable to Busy Bees (acting reasonably).
- (d) In connection with the ACCC Condition, Busy Bees must not, other than after consultation with Think Group:
- (i) apply to the ACCC for Merger Authorisation;
 - (ii) apply to the Australian Competition Tribunal for a review of the ACCC's decision regarding to Merger Authorisation under Division 1 of Part IX of the CCA; or
 - (iii) apply for a declaration in the Federal Court of Australia with respect to section 50 of the CCA in order to obtain a Final Federal Court Decision,
- in relation to the acquisition by Busy Bees of the TNK Scheme Shares and the MGE TNK Shares and by the TND Purchaser of the TND Scheme Shares.
- (e) Without limiting clauses 3.4 and 3.5 below, in relation to all Regulatory Approvals (other than the FIRB Application), each party must:
- (i) consult and co-operate fully with the other parties in relation to the satisfaction of the Conditions, including in relation to all material communications with any Governmental Agency in relation to Regulatory Approvals;
 - (ii) promptly apply for all relevant Regulatory Approvals and provide the other party with a copy of all applications for Regulatory Approvals and all material communications with any Governmental Agency in relation to Regulatory Approvals;
 - (iii) take all the steps for which it is responsible as part of the Regulatory Approvals process;
 - (iv) respond to all requests for information in respect of the applications for Regulatory Approvals at the earliest practicable time; and
 - (v) provide the others with all information and assistance reasonably requested in connection with the applications for Regulatory Approvals,

provided that:

- (vi) the party applying for a Regulatory Approval may withhold or redact information or documents from any other party if and to the extent that they are either confidential to a third party or commercially sensitive and confidential to the applicant; and
- (vii) no party is required to disclose materially commercially sensitive information to any other party.

3.4 Notifications

Each party must:

- (a) keep the other parties promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) promptly notify the other parties in writing if it becomes aware that any Condition has been satisfied; and
- (c) promptly notify the other parties in writing if it becomes aware that any Condition is or has or may have become incapable of being satisfied.

3.5 Certificate

- (a) At or before the hearing on the Second Court Date:
 - (i) Busy Bees and Think Group will provide a joint certificate to the Court confirming whether or not the Conditions set out in clauses 3.1(a) (Regulatory Approvals), 3.1(j) (Restraints), 3.1(m) (Execution of MGE Agreements) have been satisfied or waived in accordance with the terms of this agreement;
 - (ii) Think Group will provide a certificate to the Court confirming whether or not the Conditions set out in clauses 3.1(b) (No change in Independent Directors Recommendation), 3.1(c) (No Think Group Prescribed Occurrences), 3.1(e) (Think Group Warranties), 3.1(g) (Securityholder approvals), 3.1(i) (No Material Adverse Change), 3.1(k) (Performance Rights), 3.1(l) (Third party consents) and 3.1(n) (Restructure) have been satisfied or waived in accordance with the terms of this agreement;
 - (iii) Busy Bees will provide a certificate to the Court confirming whether or not the Conditions set out in clauses 3.1(d) (No Busy Bees Prescribed Occurrences) and 3.1(f) (Busy Bees Warranties) have been satisfied or waived in accordance with the terms of this agreement.
- (b) No later than 40 minutes before the Delivery Time:
 - (i) Think Group will provide a certificate to Busy Bees confirming whether or not, as at one hour before the Delivery Time:
 - (A) Think Group has breached any of its obligations under this agreement (including a breach of a representation or warranty), and if it has, giving details of such breaches; and
 - (B) any Material Adverse Change has occurred and, if it has, giving details of each Material Adverse Change; and
 - (ii) Busy Bees will provide a certificate to Think Group confirming whether or not, as at one hour before the Delivery Time, Busy Bees has breached any of its obligations under this agreement (including a breach of a representation or warranty), and if it has, giving details of such breaches.

3.6 Schemes voted down because of Headcount Test

If the Schemes are not approved by the Independent Securityholders at the Scheme Meetings by reason only of the non-satisfaction of the Headcount Test and Think Group and Busy Bees

consider, 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 Think Group 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 relevant 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 Think Group to represent it in Court proceedings related to the relevant Scheme, in consultation with Busy Bees, 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.

3.7 Conditions not capable of being fulfilled

- (a) If:
 - (i) any Condition relating to the Schemes is not satisfied (other than the Conditions in clause 3.1(g) (Securityholder approval) or clause 3.1(h) (Court approval)) or (where capable of waiver) waived by the date specified in this agreement for its satisfaction (or an event occurs which would or does prevent a condition precedent being satisfied by the date specified in this agreement);
 - (ii) a circumstance occurs with the result that a Condition relating to the Schemes is not capable of being fulfilled (other than the Conditions in clause 3.1(g) (Securityholder approvals) or clause 3.1(h) (Court approval)) and, if the Condition is able to be waived by a party under clause 3.2 the party does not waive the Condition within 10 Business Days after becoming aware of the occurrence of the circumstance; or
 - (iii) it becomes more likely than not that the Schemes will not become Effective by the End Date (other than because any of the Conditions in clause 3.1(g) (Securityholder approvals) or clause 3.1(h) (Court approval) are not satisfied),and neither of the following has occurred:
 - (iv) the Independent Expert opines to the effect that the Schemes are not in the best interest of Independent Securityholders and the MGE Acquisition is not fair and not reasonable to Independent Securityholders; or
 - (v) Think Group has, without breach of clause 16, entered into a legally binding agreement (other than an Acceptable Confidentiality Agreement) in relation to a Superior Proposal,then Think Group and Busy Bees must consult in good faith with a view to determining whether:
 - (vi) the Proposed Transaction may proceed by way of alternative means or methods;
 - (vii) to extend the relevant time or date for satisfaction of the relevant Condition;
 - (viii) 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 Schemes or adjourning that application (as applicable) to another date agreed by the parties; or
 - (ix) to extend the End Date.
- (b) Subject to clause 3.7(c), if a Condition becomes incapable of being satisfied before the End Date (other than the Conditions in clause 3.1(g) (Securityholder approvals) or clause 3.1(h) (Court approval)) and Think Group and Busy Bees are unable to reach agreement under clause 3.7(a) within 10 Business Days of the date on which they both become aware that the Condition has become incapable of being satisfied (or, if earlier, by the Delivery Time), then unless the relevant Condition (where capable of waiver) is waived:

- (i) in relation to the Conditions in clauses 3.1(a) (Regulatory Approvals), 3.1(j) (Restraints), 3.1(m) (Execution of MGE Agreements), either Busy Bees or Think Group may terminate this agreement by giving the other notice without any liability to any party by reason of that termination alone;
 - (ii) in relation to the Conditions in clauses 3.1(b) (No change in Independent Directors Recommendation), 3.1(c) (No Think Group Prescribed Occurrences), 3.1(e) (Think Group Warranties) and 3.1(i) (No Material Adverse Change), 3.1(k) (Performance Rights), 3.1(l) (Third party consents) or 3.1(n) (Restructure) Busy Bees may terminate this agreement by giving Think Group notice without any liability to any party by reason of that termination alone; and
 - (iii) in relation to the clauses 3.1(d) (No Busy Bees Group Prescribed Occurrences) or 3.1(f) (Busy Bees Warranties), Think Group may terminate this agreement by giving Busy Bees notice without any liability to any other party by reason of that termination alone.
- (c) Busy Bees or Think Group will not be entitled to terminate this agreement under clause 3.7(b) if the relevant Condition has not been satisfied as a result of:
- (i) a breach of this agreement by that party; or
 - (ii) a deliberate act or omission of that party which either alone or together with other circumstances prevents that Condition being satisfied.

3.8 Interpretation

For the purposes of this clause 3, a Condition will be incapable of satisfaction, or incapable of being fulfilled if:

- (a) in the case of a Condition relating to a Regulatory Approval – the relevant Governmental Agency makes or has made a final adverse determination in writing to the effect that it will not provide the Regulatory Approval; and
- (b) in all other cases – 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-fulfilment that would otherwise have occurred has not already been waived in accordance with this agreement).

4. Structure of Schemes

4.1 Schemes

- (a) Think Group must, as soon as reasonably practicable after the date of this agreement and substantially in compliance with the Timetable, propose the Schemes under which all of the Scheme Shares will be transferred to Busy Bees or TND Purchaser (as applicable) and the Scheme Shareholders will be entitled to receive, for each Scheme Share held at the Scheme Record Date, the relevant Scheme Consideration.
- (b) Think Group must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, a Scheme without the prior written agreement or consent of Busy Bees.

4.2 Scheme Consideration

- (a) Busy Bees covenants in favour of Think Group (in Think Group's own right and separately as trustee for each Scheme Shareholder) that, in consideration of the transfer to Busy Bees of the TNK Scheme Shares and the transfer to TND Purchaser of the TND Scheme Shares under the terms of the Schemes, on the Implementation Date Busy Bees will:
 - (i) accept the transfer of the TNK Scheme Shares and procure that the TND Purchaser accepts the transfer of the TND Scheme Shares; and

- (ii) provide to each TNK Scheme Shareholder the TNK Scheme Consideration, and procure that the TND Purchaser provides to each TND Scheme Shareholder the TND Scheme Consideration in accordance with the Deed Polls and the Schemes.
- (b) Notwithstanding any other provision of this agreement, if Busy Bees determines, having regard to professional advice, that Busy Bees is required by law to make a withholding under Subdivision 14-D of Schedule 1 to the TAA from the Scheme Consideration payable to a Scheme Shareholder, Busy Bees:
- (i) may withhold and remit to the ATO a sum equal to 12.5% (of some lesser rate expressly approved by the Commissioner of Taxation in writing) of the Scheme Consideration payable to that Scheme Shareholder (**CGT Withholding Amount**); and
- (ii) is taken to have paid the CGT Withholding Amount to the Scheme Shareholder for the purposes of this agreement and the Schemes.

4.3 Deed Polls

Busy Bees covenants in favour of Think Group (in Think Group's own right and separately as trustee for each of the Scheme Shareholder) to execute and deliver to Think Group, the TNK Deed Poll and procure that the TND Purchaser executes and delivers to Think Group the TND Deed Poll, in each case no later than the Business Day before the First Court Date.

4.4 Appointor Structure Approval Resolutions

The parties acknowledge that the Appointor Structure Approval Resolutions will provide for modifications to the TNK Constitution to:

- (a) remove all rights attaching to TNK Shares to vote on the appointment, election and/or removal of directors of TNK; and
- (b) add a provision which provides that an entity designated by Busy Bees prior to the Effective Date will have the sole authority to appoint and remove all directors of TNK,

which modifications will be conditional on the Schemes becoming Effective and will take effect immediately following payment of the Scheme Consideration to Scheme Shareholders set out in clause 9.2(b)(i) (being prior to the transfer of the TNK Shares to Busy Bees under clauses 9.2(b)(vi) and 9.2(b)(viii)).

5. Performance Rights

- (a) Within 15 Business Days of any such date on which the Court makes an order under section 411(1) of the Corporations Act directing Think Group to convene the Scheme Meetings, the Think Group Boards must give a written notice to each Performance Rights Holder whose Performance Rights they have determined will become exercisable in accordance with clause 5(b)(i) stating that:
- (i) subject to Independent Securityholders approving the Schemes at the Scheme Meetings and the Court approving the Schemes in accordance with section 411(4)(b) of the Corporations Act (**Exercise Condition**), the Performance Rights which the Think Group Boards have determined will become exercisable in accordance with clause 5(b)(i), will vest on the basis that all vesting conditions will be deemed to have been satisfied and that if the Performance Rights Holder wants to exercise those Performance Rights, the Performance Rights Holder must provide notice to Think Group prior to the Second Court Date confirming that they wish to exercise those Performance Rights subject to the Exercise Condition being satisfied; and
- (ii) subject to the Performance Rights Holder conditionally exercising their rights in accordance with clause 5(a)(i), Think Group agrees to transfer to each Performance Rights Holder (from the pool of Stapled Securities held by the trustee

of the Think Childcare Employee Share Trust as at the date of this agreement) such number of Think Group Securities prior to the Scheme Record Date to which the Performance Rights Holder is entitled under the terms of the Performance Rights Plan Rules, but that otherwise those Performance Rights will lapse.

- (b) Without limiting clause 5(a), Think Group must:
- (i) subject to obtaining the necessary waivers from ASX, take all necessary steps in accordance with the Performance Rights Plan Rules to permit up to 478,638 Performance Rights to become exercisable prior to the Scheme Record Date; and
 - (ii) ensure that any Performance Right which becomes exercisable as permitted by clause 5(b)(i) and which is not exercised in accordance with clause 5(a)(i) with the resulting Stapled Securities transferred before the Scheme Record Date, and all other Performance Rights lapse, for no consideration, by the Scheme Record Date, so that by the Scheme Record Date there are no outstanding Performance Rights and no rights or other securities outstanding that may convert into, or give the holder the right to be issued TNK Shares or TND Shares.
- (c) Think Group confirms that that trustee of the Think Childcare Employee Share Trust already holds 478,638 Stapled Securities as at the date of this agreement and undertakes to Busy Bees:
- (i) to ensure that those Stapled Securities will be used to satisfy the obligation to transfer Stapled Securities to Performance Rights Holders who exercise their Performance Rights in accordance with clause 5(a);
 - (ii) that it will not issue or acquire any further Stapled Securities for the purpose of satisfying that obligation; and
 - (iii) that it will ensure that no further Stapled Securities are acquired by the trustee of the Think Childcare Employee Share Trust (or any other entity), for the purpose of satisfying that obligation.

6. Recommendation and intentions

6.1 Independent Directors Recommendation and Voting Intention

- (a) Subject to clause 6.2, Think Group must ensure that the Announcement, the Explanatory Booklet and each public statement made by Think Group in relation to the Proposed Transaction state that each Independent Director:
- (i) considers the Schemes and the MGE Acquisition to be in the best interest of Independent Securityholders and that the Independent Directors recommend that Independent Securityholders vote in favour of the Schemes, the MGE Agreements Approval Resolutions and the Appointor Structure Approval Resolutions (**Recommendation**); and
 - (ii) intends to cause any Think Group Securities in which it has a Relevant Interest or Voting Power to be voted in favour of the Schemes, the MGE Agreements Approval Resolutions and the Appointor Structure Approval Resolutions (**Voting Intention**),

in each case qualified only by words to the effect of:

- (iii) *'in the absence of a Superior Proposal'*;
- (iv) prior to registration by ASIC of the explanatory statement included in the Explanatory Booklet: *'subject to the Independent Expert concluding that the Schemes are in the best interest of Independent Securityholders and the MGE Acquisition is either fair and reasonable or not fair but reasonable to Independent Securityholders'*; and

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- (v) from registration by ASIC of the explanatory statement included in the Explanatory Booklet (including in any statements related to the Recommendation and Voting Intention in the Explanatory Booklet): *'subject to the Independent Expert continuing to conclude that the Schemes are in the best interest of Independent Securityholders and the MGE Acquisition is either fair and reasonable or not fair but reasonable to Independent Securityholders'*.
 - (b) Subject to clause 6.2, Think Group must ensure that the Independent Directors collectively, and individually, do not change, withdraw or modify its, his or her Recommendation or Voting Intention unless:
 - (i) Think Group has received, other than as a result of a breach of clause 16, a Superior Proposal and (i) has entered into a legally binding agreement to undertake or give effect to that proposal or (ii) in the case of a proposal by way of takeover bid which is not subject to an agreement with Think Group, an announcement has been made which attracts section 631(1) of the Corporations Act; or
 - (ii) the Independent Expert concludes in the Independent Expert's Report (either in its initial report or any subsequent update of its report) that the Schemes are not in the best interest of the Independent Securityholders or the MGE Acquisition is not fair and not reasonable to Independent Securityholders,and Think Group has complied with its obligations under clause 16 (including ensuring that all of Busy Bees' rights under clause 16.7 have been exhausted).
 - (c) Without limiting the operation of the preceding provisions of this clause 6, if circumstances arise, including the receipt or expected receipt of an unfavourable report from the Independent Expert (including either the Independent Expert's Report or any update of, or any revision, amendment or supplement to, that report) which may lead to any one or more Independent Directors changing, withdrawing or varying his or her Recommendation or Voting Intention, Think Group must:
 - (i) immediately notify Busy Bees of this fact; and
 - (ii) consult with Busy Bees in good faith for two Business Days after the date on which the notice under clause 6.1(c)(i) is given to consider and determine whether there are any steps that can be taken to avoid such a change, withdrawal or variation (as applicable).

6.2 Exclusion from Recommendation

The obligation of Think Group under clause 6.1 to ensure that each Independent Director provides and maintains the Recommendation is qualified to the extent that any Independent Director considers, after first obtaining written advice from independent Senior or Queen's Counsel of the New South Wales or Victorian bar that as a result of a change in law or change in the Independent Director's circumstance after the date of this agreement he or she should not provide or continue to maintain any recommendation (positive or adverse) because that Independent Director has an interest in either of the Schemes that is so materially different from other Think Group Securityholders that it would properly preclude or render it inappropriate for him or her to provide any such recommendation, in which case the Independent Director may withdraw their Recommendation, and must abstain from providing a recommendation.

6.3 Confirmation

Think Group represents and warrants to Busy Bees that each Independent Director has confirmed that he or she intends to make the Recommendation and the Voting Intention and his or her agreement not to do anything inconsistent with their Recommendation and Voting Intention (including withdrawing, changing or in any way qualifying their Recommendation or Voting Intention) other than in the circumstances referred to in clauses 6.1(b).

7. Proposed Transaction – parties' respective implementation obligations

7.1 Think Group's obligations

Think Group must take all steps reasonably necessary to propose and (subject to all of the Conditions being satisfied or waived in accordance with their terms) implement the Schemes and complete the MGE Share Acquisition and the MGE Acquisition as soon as reasonably practicable and after the date of this agreement and substantially in accordance with the Timetable, including taking each of the following steps:

- (a) **(Explanatory Booklet)** prepare the Explanatory Booklet in accordance with clause 7.3;
- (b) **(Independent Expert)** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (c) **(review of draft Independent Expert's Report)** on receipt from the Independent Expert, provide Busy Bees with the draft report (and any updates to such report) received from the Independent Expert for factual accuracy review, and promptly give to the Independent Expert any comments that Busy Bees provides Think Group in relation to factual matters in any draft of the Independent Expert's Report;
- (d) **(approval of draft for ASIC and ASX)** as soon as reasonably practicable after the preparation of an advanced draft of the Explanatory Booklet suitable for review by ASIC and ASX, procure that a meeting of the IBC, or of a committee of the IBC appointed for that purpose, is held to consider approving that draft as being in a form appropriate for provision to ASIC for its review and approval for the purposes of sections 411(2) and 218 of the Corporations Act and to ASX for its review and approval for the purposes of Listing Rules 15.1.4 and 15.1.7 and Appendix 7A to the Listing Rules;
- (e) **(liaison with ASIC and ASX)** as soon as reasonably practicable after the date of this agreement:
 - (i) provide an advanced draft of the Explanatory Booklet, in a form approved in accordance with clauses 7.1(d) and 7.2(e), to ASIC for its review and approval for the purposes of sections 411(2) and 218 of the Corporations Act and to ASX for its review and approval for the purposes of Listing Rules 15.1.4 and 15.1.7 and Appendix 7A to the Listing Rules; and
 - (ii) liaise with ASIC and ASX during the period of their respective consideration of that draft of the Explanatory Booklet and keep Busy Bees reasonably informed of any matters raised by ASIC or ASX in relation to the Explanatory Booklet and use reasonable endeavours, in consultation with Busy Bees, to resolve any such matters (provided that, where any matters relate to Busy Bees Information, Think Group must not take any steps to address them without the prior written consent of Busy Bees, not to be unreasonably withheld or delayed);
- (f) **(approval of Explanatory Booklet)** as soon as reasonably practicable after the conclusion of the reviews by ASIC and ASX of the Explanatory Booklet, procure that a meeting of the IBC, or of a committee of the IBC appointed for that purpose, is held to consider approving the Explanatory Booklet for dispatch to the Think Group Securityholders, subject to orders of the Court under section 411(1) of the Corporations Act;
- (g) **(section 411(17)(b) statements)** apply to ASIC for the production of statements in writing under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Schemes;
- (h) **(confirmation of no objection from ASX)** request ASX to confirm that it has no objection to the draft Explanatory Booklet;

- (i) **(first Court hearing)** lodge all documents with the Court and take all other reasonable steps to ensure that an application is heard by the Court for an order under section 411(1) of the Corporations Act directing Think Group to convene the Scheme Meetings;
- (j) **(registration of explanatory statement)** request ASIC to register the explanatory statement included in the Explanatory Booklet in relation to the Schemes in accordance with section 412(6) of the Corporations Act;
- (k) **(information):**
- (i) provide reasonable information about the Schemes, the MGE Share Acquisition, the MGE Acquisition and the Think Group Securityholders to Busy Bees and its Related Bodies Corporate, which Busy Bees requests and reasonably requires in order to:
 - (A) canvass views on the Schemes by Think Group Securityholders;
 - (B) facilitate the provision by, or on behalf of, Busy Bees of the Scheme Consideration and the consideration payable under the MGE Share Acquisition Agreement; and
 - (C) review the tally of proxy appointments and directions received by Think Group before the Scheme Meetings;
 - (ii) keep Busy Bees reasonably informed:
 - (A) on the status of proxy forms for the Scheme Meetings and the General Meetings, including over the period commencing 10 Business Days before the Scheme Meetings and the General Meetings and ending on the deadline for receipt of proxy forms; and
 - (B) of such other information as the Think Group may receive concerning the voting intentions of Independent Securityholders;
 - (iii) within 5 Business Days after the date of this agreement, provide Busy Bees with:
 - (A) a copy of the Think Group Register as at the date of this agreement to the extent doing so does not breach applicable privacy laws; and
 - (B) the most recently available information in Think Group's possession regarding the beneficial ownership of Think Group Securities including a copy of the most recent beneficial ownership analysis report received by Think Group (which, for the avoidance of doubt, may be as at a date prior to the date of this agreement); and
 - (iv) provide Busy Bees:
 - (A) on a weekly basis, a copy of the latest Think Group Register; and
 - (B) on a weekly basis, the most recently available information in Think Group's possession regarding the beneficial ownership of Think Group Securities including a copy of the most recent beneficial ownership analysis report received by Think Group,

provided that if the Think Group Register or any beneficial ownership analysis report is received by Think Group more frequently than on a weekly basis Think Group must provide Busy Bees with a copy of each such report after it is received by Think Group;
 - (l) **(convene Scheme Meetings)** take all reasonable steps necessary to comply with the orders of the Court including, as required, dispatching the Explanatory Booklet to the Think Group Securityholders and convening and holding the Scheme Meetings;
 - (m) **(convene General Meetings)** take all reasonable steps necessary to convene and hold the General Meetings in accordance with the Constitutions, the Listing Rules, the Stapling Deed and the Corporations Act, so that the General Meetings are held as soon as practicable after the conclusion or adjournment of the Scheme Meetings;

- (n) **(Court approval application for Schemes if parties agree that conditions are capable of being satisfied)** if the resolutions submitted to the Scheme Meetings are passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act, the MGE Acquisition Approval Resolutions and the Appointor Structure Approval Resolutions are passed at the relevant General Meetings and, if it can be reasonably expected that all of the Conditions (other than the Condition in clause 3.1(h) (Court approval)) will be satisfied or waived prior to the proposed Second Court Date, apply to the Court for orders approving the Schemes;
- (o) **(appeal process)** if the Court refuses to make any orders directing Think Group to convene the Scheme Meetings or approving either or both of the TNK Scheme or the TND Scheme (**Affected Scheme**), Think Group and Busy Bees must:
- (i) consult with each other in good faith as to whether to appeal the Court's decision on the Affected Scheme; and
 - (ii) appeal the Court's decision on the Affected Scheme unless the parties agree otherwise or an independent Senior or Queen's Counsel of the New South Wales or Victorian bar opines that, in his or her view, an appeal would have no reasonable prospect of success;
- (p) **(representation at Second Court Date)** ensure that it is represented by counsel at the Court hearings convened for the purposes of, and give such undertakings (if any) to the Court (through its counsel) as are reasonably necessary to ensure the Court makes an order under, for orders under sections 411(1) and 411(4)(b) of the Corporations Act ordering respectively the convening of the Scheme Meetings and approving the Schemes;
- (q) **(implementation of Schemes)** if the Schemes are approved by the Court:
- (i) subject to the Listing Rules, promptly lodge with ASIC an office copy of the orders approving the Schemes in accordance with section 411(10) of the Corporations Act;
 - (ii) determine entitlements to the relevant Scheme Consideration as at the Scheme Record Date in accordance with the Schemes;
 - (iii) execute proper instruments of transfer of and effect and, subject to stamping, register the transfer of the Scheme Shares to Busy Bees on the Implementation Date; and
 - (iv) do all other things contemplated by or necessary to give effect to the Schemes and the orders of the Court approving the Schemes;
- (r) **(Regulatory notifications)** in relation to the Regulatory Approvals, lodge with any Governmental Agency within the relevant periods all documentation and filings required by law to be so lodged by Think Group in relation to the Proposed Transaction;
- (s) **(Busy Bees Information)** without the prior written consent of Busy Bees, not use the Busy Bees Information for any purposes other than those contemplated by this agreement, the Schemes, the MGE Share Acquisition Agreement or the MGE Agreements;
- (t) **(Documents)** consult with Busy Bees in relation to the content of the documents required for the purpose of the Schemes the MGE Acquisition Approval Resolutions and the Appointor Structure Approval Resolutions, including the originating process, affidavits, submissions and draft minutes of Court orders;
- (u) **(Securityholder support)** in consultation with Busy Bees, promote to its securityholders the merits of the Schemes, the MGE Acquisition Approval Resolutions and the Appointor Structure Approval Resolutions and encourage Independent Securityholders to vote on the Schemes, the MGE Acquisition Approval Resolutions and the Appointor Structure Approval Resolutions in accordance with the Recommendation of the Independent Directors, including soliciting proxy votes in favour of the Schemes and, if requested to do so by Busy Bees, engage a proxy solicitation firm to assist in soliciting proxy votes (and

Think Group may independently decide to appoint a proxy solicitation firm after consulting in good faith with Busy Bees);

- (v) **(quotation of Think Group Securities and ASX delisting)** apply to ASX to have:
 - (i) trading in Think Group Securities suspended from the close of trading on the Effective Date; and
 - (ii) Think Group removed from the official list of ASX from a date after the Implementation Date to be determined by Busy Bees; and
- (w) **(Compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this agreement and the MGE Agreements are effected in accordance with all applicable laws and regulations.

7.2 Busy Bees' obligations

Busy Bees must take all steps reasonably necessary to assist Think Group to implement the Schemes and to complete the MGE Share Acquisition and the MGE Acquisition as soon as reasonably practicable and substantially in accordance with the Timetable including, taking each of the following steps:

- (a) **(Busy Bees Information)** prepare and promptly provide to Think Group, in a form appropriate for inclusion in the Explanatory Booklet, all Busy Bees Information that is required by all applicable laws, the Listing Rules, ASIC Regulatory Guides and Takeovers Panel policy and guidance notes and for inclusion in the Explanatory Booklet, which information must without limiting the above:
 - (i) contain all information relating to Busy Bees necessary to enable Think Group to ensure that the Explanatory Booklet complies with the requirements of RG 60 and RG 76;
 - (ii) not be misleading or deceptive in any material respect (whether by omission or otherwise) including in the form and context in which it appears in the Explanatory Booklet; and
 - (iii) be updated by all such further or new material information which may arise and of which Busy Bees becomes aware of after the Explanatory Booklet has been dispatched until the date of the Scheme Meetings and the General Meetings which is necessary to ensure that it is not misleading or deceptive in any material respect (whether by omission or otherwise),

and consent to the inclusion of that information in the Explanatory Booklet.

- (b) **(Regulatory notifications)** in relation to the Regulatory Approvals, lodge with any regulatory authority within the relevant time periods all documentation and filings required by law to be so lodged by Busy Bees in relation to the Schemes, the MGE Share Acquisition and the MGE Acquisition;
- (c) **(Independent Expert)** subject to the Independent Expert agreeing to reasonable confidentiality restrictions, promptly provide all assistance and information reasonably requested by Think Group or by the Independent Expert to enable it to prepare the Independent Expert's Report;
- (d) **(review of Explanatory Booklet)** as soon as reasonably practicable after delivery, review the drafts of the Explanatory Booklet prepared by Think Group and provide comments on those drafts in good faith;
- (e) **(approval of draft for ASIC)** as soon as reasonably practicable after the preparation of an advanced draft of the Explanatory Booklet suitable for review by ASIC, procure that a meeting of the appropriate representatives of Busy Bees is held to consider approving the Busy Bees Information as being in a form appropriate for provision to ASIC for review;
- (f) **(approval of Explanatory Booklet)** as soon as reasonably practicable after the conclusion of the review by ASIC of the Explanatory Booklet, procure that a meeting of the

appropriate representatives of Busy Bees is held to consider approving Busy Bees Information as being in a form appropriate for dispatch to Think Group Securityholders, subject to approval of the Court;

- (g) **(Representation)** procure that Busy Bees is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act;
- (h) **(Think Group Information)** without the prior written consent of Think Group, not use Think Group Information for any purposes other than those contemplated by this agreement, the Schemes, the MGE Share Acquisition or the MGE Acquisition; and
- (i) **(Compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this agreement, the MGE Share Acquisition Agreement and the MGE Agreements are effected in accordance with all applicable laws and regulations.

7.3 Explanatory Booklet - preparation principles

- (a) As soon as reasonably practicable after the date of this agreement and substantially in accordance with the Timetable, Think Group must prepare the Explanatory Booklet in compliance with:
 - (i) all applicable laws, the Listing Rules, ASIC Regulatory Guides and Takeovers Panel policy and guidance notes which without limitation must:
 - (A) contain all information necessary to ensure that the Explanatory Booklet complies with the requirements of RG 60 and RG 76;
 - (B) not be misleading or deceptive in any material respect (whether by omission or otherwise) including in the form and context in which it appears in the Explanatory Booklet; and
 - (C) be updated by all such further or new material information which may arise and of which Think Group becomes aware of after the Explanatory Booklet has been dispatched until the date of the Scheme Meetings and the General Meetings which is necessary to ensure that it is not misleading or deceptive in any material respect (whether by omission or otherwise); and
 - (ii) this clause 7.3,provided that Think Group will not be liable for a failure to comply with clause 7.3(a)(i), to the extent caused by a failure of Busy Bees to comply with its obligations under clause 7.2(a).
- (b) The Explanatory Booklet will include:
 - (i) the terms of each Scheme;
 - (ii) the notice of TNK Scheme Meeting, the notice of TND Scheme Meeting, the notices of General Meetings and any other notice of meeting in respect of any resolution that is necessary, expedient or incidental to give effect to the Schemes, together with a proxy form for the TNK Scheme Meeting, the TND Scheme Meeting, the General Meetings and for any ancillary meeting;
 - (iii) the Think Group Information;
 - (iv) the Busy Bees Information;
 - (v) a copy of this agreement (without the schedules or annexures) or a summary of this agreement;
 - (vi) a summary of the MGE Share Acquisition Agreement;
 - (vii) a summary of the MGE Agreements;
 - (viii) a copy of the executed TNK Deed Poll;
 - (ix) a copy of the executed TND Deed Poll; and

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- (x) a copy of the Independent's Expert Report.
 - (c) The Explanatory Booklet must include a statement that:
 - (i) Busy Bees is responsible for the Busy Bees Information (other than any information provided by Think Group to Busy Bees or obtained from Think Group's public filings on ASX regarding the Think Group contained in, or used in the preparation of, the information regarding Think Group following the implementation of the Schemes, completion of the MGE Share Acquisition and completion of the MGE Acquisition) contained in the Explanatory Booklet; and
 - (ii) Think Group is responsible for the Think Group Information and is also responsible for the information contained in the Explanatory Booklet provided by Think Group to Busy Bees or obtained from Think Group's public filings on ASX regarding Think Group contained in, or used in the preparation of, the information regarding Think Group following the implementation of the Schemes and completion of the MGE Share Acquisition contained in the Explanatory Booklet.
 - (d) Think Group must make available to Busy Bees drafts of the Explanatory Booklet, consult with Busy Bees in relation to the content of those drafts (other than the Busy Bees Information), and consider in good faith, for the purpose of amending those drafts, comments from Busy Bees on those drafts. Busy Bees acknowledges and agrees that Think Group has ultimate discretion with respect to the preparation, form and content of the Explanatory Booklet, other than as provided in this agreement with respect to the Busy Bees Information.
 - (e) Think Group must seek written approval from Busy Bees for the form and context in which the Busy Bees Information appears in the Explanatory Booklet, which approval Busy Bees must not unreasonably withhold or delay, and Think Group must not lodge the Explanatory Booklet with ASIC until such approval is obtained from Busy Bees.
 - (f) If Think Group and Busy Bees disagree on the form or content of the Explanatory Booklet, they must consult in good faith to try to settle an agreed form of the Explanatory Booklet. If agreement is not reached after reasonable consultation, then:
 - (i) if the disagreement relates to the form or content of any information appearing in the Explanatory Booklet other than the Busy Bees Information, the Think Group Boards will, acting in good faith, decide the final form or content of the disputed part of the Explanatory Booklet; and
 - (ii) if the disagreement relates to the form or content of the Busy Bees Information, Think Group will make such amendments to the form or content of the disputed part of the Busy Bees Information as Busy Bees reasonably requires.
 - (g) Think Group must take all reasonable steps to ensure that the Explanatory Booklet (other than the Busy Bees Information) is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date it is dispatched to Think Group Securityholders, including undertaking customary verification processes.
 - (h) Busy Bees must take all reasonable steps to ensure that the Busy Bees Information is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date on which the Explanatory Booklet is dispatched to Think Group Securityholders.
 - (i) Think Group must provide to Busy Bees all such further or new information of which Think Group becomes aware that arises after the Explanatory Booklet has been dispatched until the date of the Scheme Meetings and the General Meetings where this is necessary to disclose to Think Group Securityholders to ensure that the Explanatory Booklet continues to comply with the Corporations Act, RG 60, RG 76 and the Listing Rules.
 - (j) Busy Bees must provide to Think Group all such further or new information of which Busy Bees becomes aware that arises after the Explanatory Booklet has been dispatched until the date of the Scheme Meetings where this is necessary to disclose to Think Group Securityholders to ensure that the Busy Bees Information continues to comply with the Corporations Act, RG 60, RG 76 and the Listing Rules.

- (k) Think Group and Busy Bees each agree that the efficient preparation of the Explanatory Booklet and the implementation of the Schemes and the completion of the MGE Share Acquisition and the MGE Acquisition are in the interests of Independent Securityholders and that they will use all reasonable endeavours and utilise all necessary resources (including management resources and the resources of external Advisers) to comply with their respective obligations under this clause 7.3 and to implement the Schemes and to complete the MGE Share Acquisition and the MGE Acquisition as soon as reasonably practicable and substantially in accordance with the Timetable.

7.4 Payment of Permitted Dividend, Interim Dividend and internal payments

- (a) Despite any other provision of this agreement, TNK may in, its sole discretion, declare and pay the Permitted Dividend or the Interim Dividend (or both) to TNK Shareholders, provided that:
- (i) the Permitted Dividend is declared (subject to the Schemes becoming Effective and there being sufficient franking credits available) on or prior to the Effective Date, and in any event by no later than the last date permitted by the Listing Rules to declare that dividend such that the record date for that dividend is at least 2 clear days before the Scheme Record Date;
 - (ii) the payment date for the Permitted Dividend will be the Implementation Date;
 - (iii) the Permitted Dividend and the Interim Dividend must be fully franked, and the franking account of Think Group must not be in deficit after the payment of the Permitted Dividend and the Interim Dividend;
 - (iv) TNK does not make any variation to the PAYG instalment rate of the TNK Group without the prior written approval of Busy Bees. Such a request for approval by TNK must include the calculations (and supporting workpapers) of TNK's instalment income, and varied instalment rate (if applicable);
 - (v) the Permitted Dividend and the Interim Dividend must be paid from accumulated profits, retained earnings or distributable reserves (or a combination of all or some of them) of the Think Group existing immediately prior to the declaration of that dividend; and
 - (vi) payment of the Permitted Dividend and the Interim Dividend must comply with the Corporations Act.
- (b) Despite any other provision of this agreement, TNK Group may make any intra group distributions and payments between members of the TNK Group, in order to be able to declare and pay the Permitted Dividend and the Interim Dividend in accordance with clause 7.4(a), provided that TNK prepares and provides to Busy Bees a forecast income statement and balance sheet for each relevant entity from which dividends will be paid to fund the Permitted Dividend (being Think Childcare Limited, TCS and Baker Street Childcare Education Pty Ltd) prior to the meeting at which the TNK Board approves the declaration of the Permitted Dividend which confirm that sufficient retained profits exist out of which to pay the Permitted Dividend.
- (c) The parties acknowledge and agree that if the Permitted Dividend is declared in accordance with clause 7.4(a), the TNK Scheme Consideration will be reduced by the amount of the Permitted Dividend (disregarding any franking credits).
- (d) The parties acknowledge and agree that if the Interim Dividend is declared in accordance with clause 7.4(a), the TNK Scheme Consideration will not be reduced by the amount of the Interim Dividend.
- (e) The provisions of this clause 7.4 do not prevent the determination or payment of a dividend by Think Group if this agreement is terminated.

7.5 Funding of Permitted Dividend

- (a) Busy Bees agrees that, if TNK declares a Permitted Dividend in accordance with clause 7.4(a) and the Scheme becomes Effective, Busy Bees (or a member of the Busy Bees Group) will provide a loan to TNK in an amount equal to the aggregate cash amount of the Permitted Dividend, if requested in writing to do so by Think Group no later than 5 Business Days prior to the day the Scheme Meetings are held, pursuant to a loan agreement on terms agreed between the parties.
- (b) The loan provided under clause 7.5(a) must be paid by Busy Bees to TNK at least 1 Business Day prior to the payment date for the Permitted Dividend.
- (c) Busy Bees' obligation to make the payment referred to in clause 7.5(b) will be satisfied by the payment of the relevant amount in immediately available funds to the account nominated by TNK for the purposes of this clause.

7.6 MGE Acquisition

In relation to the MGE Agreements, TNK and TND must, and must procure that their relevant Subsidiaries:

- (a) consult Busy Bees and keep Busy Bees fully informed about the completion process for each of the MGE Agreements including by:
 - (i) promptly providing drafts of all documents required under the MGE Agreements and prepared in connection with completion to Busy Bees for its approval (not to be unreasonably withheld) and making such amendments to those documents as Busy Bees may reasonably request;
 - (ii) complying with the reasonable instructions and requests of Busy Bees in relation to the completion process;
 - (iii) promptly providing Busy Bees with copies of all material communications and such other information as Busy Bees may from time to time reasonably request in relation to the MGE Agreements and their completion; and
 - (iv) allowing Busy Bees to attend completion;
- (b) take all action necessary to complete the MGE Agreements in accordance with their terms; and
- (c) comply with the provisions of the MGE Agreements, and not amend or waive any rights arising under the MGE Agreements without the prior written consent of Busy Bees.

8. Conduct of business before the Implementation Date

8.1 Conduct of Think Group business

- (a) Subject to clause 8.2, from the date of this agreement up to and including the Implementation Date, Think Group must conduct and must cause each of its Subsidiaries to conduct their Business in the ordinary and usual course of business and:
 - (i) in compliance with the Approved Budgets, including by not incurring expenditure in excess of the amounts contemplated in the Approved Budgets;
 - (ii) operate it consistent with past practice, in substantially the same manner as previously conducted, as altered by measures taken as a result of the impact of the COVID-19 virus in accordance with the Approved COVID-19 Response Plan, and in accordance with all applicable laws;
 - (iii) use reasonable endeavours to preserve their relationships with customers, suppliers, joint venture parties, landlords, licensors, licensees and others having material business dealings with them, and to retain the services of all key employees;

- (iv) use reasonable endeavours to ensure that all assets are maintained in the normal course consistent with past practice;
- (v) maintain (and not close or dispose, or agree to close or dispose, of the whole, or a part, of) any Centre operated by a Think Consolidated Group Member as at the date of this agreement;
- (vi) to comply in all material respects with all material contracts to which a Think Consolidated Group Member is a party, and with laws, authorisations and licences applicable to each Think Consolidated Group Member;
- (vii) to maintain at least the level of insurances of the Think Consolidated Group as in place as at the date of this agreement;
- (viii) not take or fail to take any action that constitutes a Think Group Prescribed Occurrence or that could reasonably be expected to result in a Think Group Prescribed Occurrence, or authorise or agree to do any such thing;
- (ix) keep Busy Bees reasonably and promptly informed of, and consult Busy Bees in good faith in respect of, material developments in the business of the Think Consolidated Group, including any decision to cease (temporarily or permanently) any material part of the business of the Think Consolidated Group;
- (x) promptly notify Busy Bees in writing of any of the following matters of which Think Consolidated Group becomes aware, and such written notification must include a reasonable summary of the relevant matter:
 - (A) events, facts, matters or circumstances which would or would be reasonably be expected to either constitute a Material Adverse Change or have a material adverse effect on the financial or operational performance, or the reputation, of the Think Consolidated Group or the Think Consolidated Group's relationships with Governmental Agencies, financiers or key business partners (including joint venture parties); and
 - (B) any breach of, or default under, any law, contract, arrangement, permit, licence or authorisation that is binding on any Think Consolidated Group Member and which is reasonably likely to result in a material liability for any Think Consolidated Group Member or any breach, default, event of default, cancellation event or review event under an Existing Financing Agreement; and
- (xi) ensure that except as may arise under the MGE Agreements, upon unstapling occurring in accordance with the Unstapling Resolutions, there will be no obligations or liabilities between members of the TNK Group and members of the TND Group.
- (b) Subject to clause 8.2, Think Group must not, and must procure that its Subsidiaries do not, from the date of this agreement up to and including the Implementation Date, do any of the following (or agree or offer or announce an intention to do any of the following):
 - (i) allow any Think Consolidated Group Member to incur any additional Financial Indebtedness (except for draw-downs approved in writing by Busy Bees on existing banking facilities or between the component entities of the TNK Group, or as is permitted in the Approved Budgets) or guarantee or indemnify the obligations of any person other than a member of the TNK Group, other than incurring trade creditors in the usual and ordinary course of business and consistent with past practice;
 - (ii) other than as approved in writing by Busy Bees (not to be unreasonably withheld or delayed), amend or take any action that:
 - (A) seeks or causes a financier (or person acting on its behalf) to consent to or waive (whether or not such consent or waiver is conditioned) any provision under; or

- (B) would be reasonably likely to give rise to a financier (or person acting on its behalf) being capable of exercising a right that would pose a risk to the continuity of,

any Financial Indebtedness arrangements (including the Existing Financing Agreements) to which one or more members of the Think Consolidated Group are a party;

- (iii) make any change to the Constitutions or the Stapling Deed;
- (iv) (except as required by law or in the Approved Budgets) engage any new employee or enter into or make any material change to the terms of employment of any person, including an officer, director, executive or other employee, whose total employment cost (relating to rights or entitlements in effect on the date of this agreement) exceeds A\$120,000 (**Key Person**), or engage new employees whose total employment costs exceed the amount in the Approved Budgets by more than A\$200,000 per annum in aggregate (other than to replace employees on substantially similar terms), in each case other than relating to rights or entitlements which are Fairly Disclosed in the Due Diligence Materials;
- (v) amend the terms of any option, performance right, incentive or share plan;
- (vi) accelerate the rights of any of their employees to compensation or benefits of any kind (including under any option, performance right, incentive or share plan);
- (vii) terminate or encourage the resignation of a Key Person, except with prior written consent from Busy Bees (acting reasonably), in accordance with current personnel practices;
- (viii) pay or agree to pay any of its officers, directors, executives or other employees a bonus, severance, termination or retention payment, other than pursuant to existing contractual arrangements in effect on the date of this agreement and which are Fairly Disclosed in the Due Diligence Materials prior to 5:00pm on 15 June 2021, including the special exertion fees for the members of the IBC and retention bonus arrangements for employees of Think Consolidated Group;
- (ix) make any concession or acknowledgment in respect of, or vary any pattern of work of, any employee or group of employees that is reasonably expected to give rise to a future potential claim, dispute or liability for the Think Consolidated Group that may reasonably give rise to potential costs or liability of more than \$250,000 in aggregate for all such potential costs or liabilities;
- (x) settle or compromise any dispute, audit or inquiry in relation to Tax or Duty or amend any tax return, other than in the ordinary course of its business;
- (xi) commence, threaten in writing, settle or offer to settle any legal proceedings, claim, dispute, investigation, arbitration or other like proceeding that relates to potential costs or liability of more than \$250,000 (after allowing for insurance recoveries), other than pursuing debts in the ordinary course of business;
- (xii) (except under contractual arrangements in effect on the date of this agreement and which are Fairly Disclosed in the Due Diligence Materials) enter into any enterprise bargaining agreement or similar collective employment agreement;
- (xiii) in respect of any single transaction or series of related or similar transactions, acquire or dispose of (or agree or commit to or grant a right which would lead to the acquisition or disposal of) any interest in any equity securities, business, real property, entity or undertaking, other than with the prior written approved of Busy Bees;
- (xiv) waiving any third party default where the financial impact on the Think Consolidated Group will be more than \$250,000 individually or in aggregate;
- (xv) incur, agree to, enter into commitments involving, bring forward the time for incurring or committing to or grant to another person any right the exercise of

which could be reasonably expected to involve or result in any Think Consolidated Group Member incurring capital expenditure which is not contemplated by the Approved Budgets;

- (xvi) agree to, or make, any variation to the terms on which an Adviser is engaged in relation to the Proposed Transaction or pay, incur, agree to or enter into commitments to external Advisers of Think Consolidated Group in relation to the Proposed Transaction other than in accordance with the Approved Budgets and terms and conditions included in the Data Room;
 - (xvii) creating, granting or agreeing to any Encumbrance over any of the assets of any Think Consolidated Group Member, other than a lien that arises by operation of law, legislation or in the usual and ordinary course of business;
 - (xviii) entering into a contract or commitment restraining a Think Consolidated Group Member from competing with any person or conducting activities in any market;
 - (xix) change any accounting policy applied by it to report its financial position other than any change in policy required by a change in Accounting Standards or law; or
 - (xx) apply to ASX to be removed from the official list of ASX and must maintain the admission of TNK and TND to the official list of ASX and the quotation of the Stapled Securities on the ASX.
- (c) Notwithstanding anything permitted to be done under any provision of this agreement (including clauses 8.1 and 8.2), other than under the Restructure, the MGE Agreements, the MGE Share Acquisition Agreement, or any undertaking which Busy Bees or any of its Affiliates has previously expressly approved in writing, from the date of this agreement TNK must not, and no member of the TNK Group may:
- (i) transfer, sell or otherwise dispose of assets or rights to;
 - (ii) incur or agree to incur or make any liability, obligation or expenditure to, or in respect or on behalf of;
 - (iii) provide or agree to provide any Financial Indebtedness to, or for or on behalf of; or
 - (iv) guarantee or indemnify the obligations of,
- any member of the TND Group.

8.2 Permitted activities

The obligations of Think Group under clause 8.1 do not apply in respect of any matter:

- (a) required to be done or procured by Think Group or permitted to be done by Think Group under this agreement, the Schemes, the Restructure, the MGE Agreements or the MGE Share Acquisition Agreement;
- (b) required by law or by an order of a court or Governmental Agency;
- (c) required in order to comply with any Tax Law, including to pay any Tax or Duty that has been Fairly Disclosed in the Due Diligence Material when due;
- (d) Fairly Disclosed in the Approved Budgets; or
- (e) the undertaking of which Busy Bees has approved prior to the date of this agreement or otherwise approved in writing (which approval must not be unreasonably withheld or delayed).

8.3 Access

- (a) In the period from the date of this agreement to the Implementation Date and for so long as the majority of the Independent Directors maintains their Recommendation and Voting Intention, Think Group must:
- (i) procure that at least two members of Think Group's executive management team meet with representatives of Busy Bees on a weekly basis to assist with, among other things:
 - (A) keeping Busy Bees fully informed of the matters contemplated by clause 8.3(a)(ii) below; and
 - (B) providing Busy Bees with access to information and people it has requested under clause 8.3(a)(ii) below;
 - (ii) promptly following a reasonable request by Busy Bees, provide Busy Bees (and its Authorised Persons) with access to:
 - (A) documents and information relating to, and the premises of, the Think Consolidated Group; and
 - (B) executives and Senior Managers of the Think Consolidated Group, for the purpose of or in connection with:
 - (C) planning the transition of the Think Consolidated Group and other matters relating to the conduct of the Think Consolidated Group on and from the Implementation Date (including the repayment and replacement of the Financial Indebtedness provided under, and release of all Encumbrances in respect, of the Existing Financing Agreements on the Implementation Date);
 - (D) keeping Busy Bees informed of material developments relating to the Think Consolidated Group;
 - (E) facilitating the Schemes, the MGE Share Acquisition or the MGE Acquisition; and
 - (F) any other purpose agreed between Busy Bees and Think Group (each acting reasonably);
 - (iii) provide Busy Bees with copies of the following materials, promptly following the relevant meeting at which the relevant materials are considered:
 - (A) the minutes of the Think Group Boards meetings held between the date of this document and the Implementation Date; and
 - (B) any reports of Senior Managers, Think Group's chief executive officer or chief financial officer, provided to the Think Group Boards or the IBC, except that Think Group has no obligation under this clause 8.3(a)(iii) to provide Busy Bees with, and may redact or withhold in its entirety, any information about, or otherwise in connection with, the IBC's or the Think Group Boards' consideration of the Proposed Transaction, any advice provided to the IBC or the Think Group Boards in connection with the Proposed Transaction and information in connection with any Competing Proposal;
 - (iv) provide any refresh or update of information contained in the Due Diligence Material that is reasonably requested by Busy Bees; and
 - (v) provide a copy of all material correspondence received from, or provided or proposed to be provided to, a Governmental Agency.
- (b) Nothing in this clause 8.3 obliges Think Group to provide Busy Bees or its Authorised Persons any information:
- (i) concerning the IBC's consideration of the Proposed Transaction; or

- (ii) which would breach any applicable law (including privacy laws) or regulation or any obligations of confidentiality owed to any person or result in the loss of legal privilege.
- (c) Think Group will provide reasonable assistance to Busy Bees for the purpose of satisfying Think Group's obligations under this clause 8.3 but nothing in this clause 8.3 requires Think Group to provide access to its people or documentation or to take any other action which would unreasonably disrupt the usual and ordinary course of Think Group's Business and operations.

8.4 Change of control provisions

- (a) In respect of the Material Contracts:
 - (i) the parties will agree a proposed course of action, adopting the reasonable requests of Busy Bees, and then Think Group will initiate contact, including joint discussions if required, with the relevant counterparties and request that they provide any consents or confirmations required or appropriate, including confirmation that the counterparties will not terminate those contracts because of a change in control in Think Group or as a result of the implementation of the Proposed Transaction;
 - (ii) Think Group must take all reasonable action necessary to obtain such consents or confirmations as expeditiously as possible, including by promptly providing any information reasonably required by counterparties. Think Group must use reasonable endeavours to resist any requirements of landlords or contract counterparties that new or increased bank guarantees or security deposits be provided and ensure that no directors or other personal guarantees are offered or agreed to; and
 - (iii) Busy Bees must cooperate with, and provide all reasonable assistance to, Think Group to obtain such consents or confirmations, including by promptly providing any information reasonably required by counterparties,

provided nothing in this clause 8.4(a) or any other provision of this agreement requires Busy Bees to agree to any new conditions or to provide any new guarantees or security to a contract or lease counterparty which are not reasonably acceptable to Busy Bees.

8.5 Financing arrangements

From the date of this agreement up to and including the Implementation Date, Think Group must provide, and procure that each other Think Consolidated Group Member provides such assistance as may reasonably be requested by Busy Bees for the purpose of Busy Bees refinancing or otherwise repaying the Financial Indebtedness under the Existing Financing Agreements on or after the Implementation Date, including by providing access to the financiers under the Existing Financing Agreements and such information in respect of the Existing Financing Agreements as may reasonably be requested by Busy Bees for that purpose.

9. Actions on and following implementation

9.1 Reconstitution of the board of each member of the Think Consolidated Group

- (a) On the Implementation Date, but subject to payment of the Scheme Consideration by Busy Bees and the TND Purchaser in accordance with the Schemes and receipt by Think Group of signed consents to act, Think Group must take all actions necessary (and in accordance with the constitution of each relevant Think Consolidated Group Member, the Corporations Act and the Listing Rules and the sequence of events at clause 9.2) to appoint each:
 - (i) New Think Group Director as a director of Think Group; and
 - (ii) New Think Group Director as a director of each Subsidiary of Think Group.

- (b) Without limiting clause 9.1(a), on the Implementation Date, Think Group must procure that each Outgoing Director resigns as a Think Group Director or as a director of Think Group Subsidiary (as applicable) and unconditionally and irrevocably releases each member of the Think Consolidated Group from any claims they may have against the Think Consolidated Group in their capacity as a director (without prejudice to any rights they may have under any deed of indemnity, access and insurance or policy of directors and officers insurance).

9.2 Sequence of actions on implementation

The transactions which form part of the Schemes will be implemented in the following sequence:

- (a) by no later than the Business Day before the Implementation Date, Busy Bees will deposit (or procure the deposit of) the TNK Scheme Consideration into the specified Think Group trust account (**TNK Consideration Account**), and will procure that the TND Purchaser deposits (or procures the deposit of) the TND Scheme Consideration into the specified Think Group trust account (which must be a separate trust account to the TNK Consideration Account) (**TND Consideration Account**) in accordance with the Schemes; and
- (b) on the Implementation Date the following steps will occur in the sequence set forth below:
- (i) Think Group will disperse the Scheme Consideration to Scheme Securityholders in accordance with the Schemes;
 - (ii) the unstapling of the TNK Shares and the TND Shares, in accordance with the Unstapling Resolutions, will take effect;
 - (iii) the appointor structure in respect of TNK, in accordance with the Appointor Structure Approval Resolutions, will take effect;
 - (iv) the Think Group Boards and the board of each Subsidiary of Think Group will be reconstituted in accordance with clause 9.1;
 - (v) Busy Bees and the MGE Entities will subscribe for the Convertible Notes;
 - (vi) TNK will register the transfer of all of the TNK Scheme Shares to Busy Bees in accordance with the TNK Scheme (which, for greater certainty, will only occur after the appointor structure has been implemented by TNK);
 - (vii) TND will register the transfer of all of the TND Shares to the TND Purchaser in accordance with the TND Scheme;
 - (viii) completion will occur under the MGE Share Acquisition Agreement; and
 - (ix) completion will occur under the MGE Agreements.
- (c) If the Schemes lapse:
- (i) after some or all of the TNK Scheme Consideration has been paid into the TNK Consideration Account but prior to Busy Bees being registered as the holder of the TNK Scheme Shares; or
 - (ii) after some or all of the TND Scheme Consideration has been paid into the TND Consideration Account, but prior to the TND Purchaser being registered as the holder of the TND Scheme Shares,

then Think Group must refund (or procure the refund) to Busy Bees of the amount which was been paid into the TNK Consideration Account and to TND Purchaser of the amount which was paid into the TND Consideration Account, together with any interest thereon (less bank fees and charges), within 5 Business Days.

10. Representations and warranties

10.1 Busy Bees representations

- (a) Busy Bees represents and warrants to Think Group each of the matters set out in clause 10.1(b) as at the date of this agreement and on each subsequent day until the Delivery Time (except that where any statement is expressed to be made only at a particular date it is given only at that date).
- (b) Busy Bees represents and warrants that:
- (i) Busy Bees is a validly existing company limited by shares under the Corporations Act and registered under the laws of its place of incorporation;
 - (ii) the execution and delivery of this agreement has been properly authorised by all necessary corporate action and Busy Bees has full corporate power and lawful authority to execute and deliver this agreement and to perform or cause to be performed its obligations under this agreement;
 - (iii) this agreement constitutes legal, valid and binding obligations, enforceable against it in accordance with its terms and this agreement does not result in a breach of or default under any deed or any writ, order or injunction, rule or regulation to which Busy Bees is a party or is bound;
 - (iv) the Busy Bees Information provided to Think Group in accordance with clause 7.2 for inclusion in the Explanatory Booklet will:
 - (A) comply in all material respects with all applicable laws, the Listing Rules, ASIC regulatory guides and Takeovers Panel policy and guidance notes; and
 - (B) be provided on the understanding that each of the Think Group Parties will rely on that information for the purposes of preparing the Explanatory Booklet and proposing and implementing the Schemes in accordance with the requirements of the Corporations Act;
 - (v) all information provided by, or on behalf of, Busy Bees to the Independent Expert to enable the Independent Expert's Report to be included in the Explanatory Booklet to be prepared and completed 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;
 - (vi) as at the First Court Date, the date the Explanatory Booklet is dispatched to Think Group Securityholders, the date of the Scheme Meetings and the Delivery Time, the Busy Bees Information, in the form and context in which that information appears in the Explanatory Booklet, as updated by Busy Bees Information in any supplemental disclosure to Think Group Securityholders will not be misleading or deceptive in any material respect (whether by omission or otherwise);
 - (vii) Busy Bees will, as a continuing obligation, provide to Think Group all such further or new information which may arise and of which Busy Bees become aware after the Explanatory Booklet has been dispatched until the date of the Scheme Meetings which is necessary to ensure that the Busy Bees Information, in the form and context in which that information appears in the version of the Explanatory Booklet registered by ASIC under section 412(6) of the Corporations Act, is not misleading or deceptive in any material respect (whether by omission or otherwise);
 - (viii) no Busy Bees Prescribed Occurrence has occurred;
 - (ix) as at the date of this agreement, Busy Bees has a reasonable basis to expect that it will, by the Implementation Date, have available to it sufficient cash amounts (whether from internal cash resources or external funding arrangements including debt and equity financing or a combination of both) to satisfy Busy Bees' obligation

to pay the Scheme Consideration in accordance with its obligations under this agreement, the Schemes and the Deed Polls and to pay the consideration in accordance with its obligations under the MGE Share Acquisition Agreement;

- (x) by the Delivery Time, Busy Bees will have available to it on an unconditional basis (other than conditions relating to the approval of the Court and other conditions within the control of Busy Bees) sufficient cash amounts (whether from internal cash resources or external funding arrangements including debt and equity financing or a combination of both) to satisfy Busy Bees' obligation to pay the Scheme Consideration in accordance with its obligations under this agreement, the Schemes and the Deed Polls and to pay the consideration in accordance with its obligations under the MGE Share Acquisition Agreement; and
- (xi) Busy Bees 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 Busy Bees' obligation to pay the Scheme Consideration in accordance with its obligations under this agreement, the Schemes and the Deed Polls and to pay the consideration in accordance with its obligations under the MGE Share Acquisition Agreement.

10.2 Busy Bees' indemnity

Busy Bees agrees with Think Group to indemnify and keep indemnified the Think Consolidated Group 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 any of Think Consolidated Group Member may suffer or incur by reason of any breach of any of the representations and warranties in clause 10.1(b).

10.3 Think Group representations – Think Group Warranties

- (a) Think Group represents and warrants to Busy Bees each of the matters set out in clause 10.3(b) as at the date of this agreement and on each subsequent day until the Delivery Time (except that where any statement is expressed to be made only at a particular date it is given only at that date).
- (b) Think Group represents and warrants that:
 - (i) each of TNK and TND are validly existing companies limited by shares under the Corporations Act and registered under the laws of their place of incorporation;
 - (ii) the execution and delivery of this agreement by Think Group has been properly authorised by all necessary corporate action and Think Group has full corporate power and lawful authority to execute and deliver this agreement and to perform or cause to be performed their respective obligations under this agreement;
 - (iii) this agreement constitutes legal, valid and binding obligations, enforceable against Think Group in accordance with its terms and the execution of this agreement 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 Think Group or any of its Subsidiaries is a party or to which they are bound;
 - (iv) Think Group is not entering into this agreement as trustee of any trust or settlement or otherwise in a representative capacity;
 - (v) the Think Group Information contained in the Explanatory Booklet will comply in all material respects with all applicable laws, the Listing Rules, ASIC regulatory guides and Takeovers Panel policy and guidance notes;
 - (vi) as at the First Court Date, the date the Explanatory Booklet is dispatched to Think Group Securityholders, the date of the Scheme Meeting and the Delivery Time, the Think Group Information contained in the Explanatory Booklet, as updated by Think Group Information in any supplementary disclosure to Think Group

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

- (vii) all information provided by, or on behalf of, Think Group to the Independent Expert to enable the Independent Expert's Report to be included in the Explanatory Booklet to be prepared and completed 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;
- (viii) Think Group will, as a continuing obligation (but in respect of Busy Bees Information, only to the extent that Busy Bees provides Think Group with updates to the Busy Bees Information, as applicable), ensure that the Explanatory Booklet is updated or supplemented to include all further or new information which arises and Think Group becomes aware of after the Explanatory Booklet has been despatched to Think Group Securityholders until the date of the Scheme Meetings which is necessary to ensure that the Explanatory Booklet is not misleading or deceptive (including by way of omission or otherwise);
- (ix) no document or announcement which Think Group or any Think Consolidated Group Member has lodged or filed with, or otherwise given to, any Governmental Agency (or which has been so lodged, filed or given on its behalf or on behalf of any of its related bodies corporate) since the date 3 years prior to the date of this agreement, was misleading or deceptive in any material respect (whether by omission or otherwise) as at the date that document or announcement was lodged or filed with or given to the Governmental Agency;
- (x) as at the date of this agreement, the total issued capital of Think Group is:
 - (A) 61,557,633 Think Group Securities; and
 - (B) 478,638 Performance Rights,and there are no other Think Group options, performance rights, shares, convertible notes or other securities and Think Group is not under any actual or contingent obligation to issue, convert or cancel any securities;
- (xi) all Subsidiaries of TNK are wholly owned;
- (xii) Think Group is not in breach of its continuous disclosure obligations under Listing Rule 3.1 and except in relation to the Proposed Transaction, it is not relying on the carve-out in Listing Rule 3.1A to withhold any material information from public disclosure;
- (xiii) the Due Diligence Materials have been collated and prepared in good faith and with reasonable skill, care and diligence, and Think Group is not aware after reasonable enquiry of any information contained in the Due Diligence Materials that is false or misleading in any material respect (including by omission) as at the date it was included in the Data Room;
- (xiv) as at the date of this agreement, no Insolvency Event has occurred or is reasonably likely to occur in the near term in relation to Think Group or another Think Consolidated Group Member, nor has any regulatory action of any nature of which it is aware been taken that would reasonably be likely to prevent or restrict its ability to fulfil its obligations under this agreement or under the Schemes;
- (xv) each Think Consolidated Group Member has complied in all material respects with all Australian laws and regulations applicable to them and orders of Australian Governmental Agencies having jurisdiction over them, and have complied in all material respects with the requirements of, all material licences, authorisations and permits necessary for them to conduct the business of the Think Group as presently being conducted;
- (xvi) neither Think Group nor any of its Subsidiaries is in default under any document or agreement binding on it, and nothing has occurred, which would, with the giving of

notice or lapse of time (or otherwise), result in a liability, acceleration of an obligation or diminution in value of an asset, of \$500,000 or more;

- (xvii) neither Think Group nor any of its Subsidiaries is a party to any litigation, arbitration, mediation, conciliation or administrative proceedings which are taking place, pending or, to its knowledge, threatened which, if adversely decided, could reasonably be expected to result in a liability, acceleration of an obligation or diminution in value of an asset, of \$500,000 or more;
- (xviii) there are no existing or potential disputes or breaches in relation to any Material Contracts, which could reasonably be expected to result in a Material Contract being terminated, performance of the Material Contract being suspended, or in a liability, acceleration of an obligation or diminution in value of an asset of \$500,000 or more, and no such consequence has been threatened in respect of a Material Contract;
- (xix) there are no:
 - (A) outstanding amounts under any loan given by a member of TNK Group to a member of TND Group, or under any loan given by a member of TND Group to a member of TND Group;
 - (B) amounts which TNK and TND have agreed in accordance with the Stapling Deed, that it is the responsibility of TNK or TND to repay;
 - (C) guarantees, indemnities or Encumbrances given by:
 - (I) a member of TNK Group, as security for obligations of a member of the TND Group; or
 - (II) a member of TND Group, as security for obligations of member of TNK Group; or
 - (D) agreements between a member of TNK Group and a member of TND Group; and
- (xx) Think Group is not aware of any information relating to the Think Group or its respective businesses or operations (having made reasonable enquiries) as at the date of this agreement that has or could reasonably be expected to give rise to a Material Adverse Change that has not been Fairly Disclosed in an announcement by Think Group to ASX prior to 5:00pm (Melbourne time) on 15 June 2021 or in the Due Diligence Materials.

10.4 Think Group's indemnity – Think Group Warranties

Think Group agrees with Busy Bees to indemnify and keep indemnified Busy Bees 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 any of the Busy Bees Group may suffer or incur by reason of any breach of any of the representations and warranties in clause 10.3(b).

10.5 Qualifications on Think Group's representations, warranties and indemnities – Think Group Warranties

The representations and warranties in clause 10.3 and the indemnity in clause 10.4 are each subject to matters which:

- (a) are expressly provided for in this agreement;
- (b) have been Fairly Disclosed in:
 - (i) the Due Diligence Materials; or
 - (ii) Think Group's announcements to ASX in the 24 month period prior to 5:00pm (Melbourne time) on 15 June 2021; and

- (c) would have been Fairly Disclosed to Busy Bees had Busy Bees conducted searches in respect of the Think Consolidated Group Members of:
- (i) the register of companies maintained by ASIC on 29 March 2021;
 - (ii) the register established under the PPSA on 30 March 2021;
 - (iii) public records maintained by the registries of the:
 - (A) High Court of Australia on 22 December 2020;
 - (B) Federal Court of Australia and Federal Circuit Court on 21 December 2020;
 - (C) New South Wales Supreme Court on 24 December 2020;
 - (D) Australia Capital Territory Supreme Court on 22 December 2020;
 - (E) Queensland Supreme and District Court on 21 December 2020;
 - (F) South Australia Supreme Court on 22 December 2020;
 - (G) Tasmanian Supreme Court on 22 December 2020;
 - (H) Victorian Supreme Court on 22 December 2020; and
 - (I) Western Australia Supreme Court on 29 December 2020;
 - (iv) public records maintained by IP Australia on 29 March 2021.

10.6 Notifications

Each party will promptly advise the others in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach by it of this agreement, including a breach of any of the representations or warranties given by it under this clause 10.

10.7 Survival of representations

Each representation and warranty in clauses 10.1 and 10.3:

- (a) is severable;
- (b) will survive the termination of this agreement; 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 agreement.

10.8 Survival of indemnities

Each indemnity in this agreement (including those in clauses 10.2 and 10.4) 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 agreement; and
- (d) survive the termination of this agreement.

11. Releases

11.1 Think Group – Released Persons

- (a) Without limiting Busy Bees' rights under clause 10, Busy Bees (for itself and as agent of every member of the Busy Bees Group) releases all rights against and agrees with Think Group that it will not make a Claim against, any director, officer or employee of the Think Consolidated Group Members (**Think Released Persons**) in connection with:
 - (i) Think Group's execution or delivery of this agreement;

- (ii) any breach of any representation or warranty of Think Group in this agreement;
- (iii) the implementation of the Schemes or either of them;
- (iv) the completion of the MGE Share Acquisition Agreement, except the MGE Entities;
- (v) the MGE Acquisition, except the MGE Entities; or
- (vi) any disclosure made by any Think Group Party including in the Due Diligence Material that contains any statement which is false or misleading whether in content or by omission,

except to the extent the relevant Think Released Person has not acted in good faith or has engaged in wilful misconduct or fraud.

- (b) Clause 11.1(a) is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. Think Group receives and holds the benefit of this clause as trustee for each Think Released Person.

11.2 Busy Bees – Released Persons

- (a) Without limiting Think Group's rights under clause 10, Think Group releases its rights against, and agrees with Busy Bees that it will not make a Claim against any director, officer or employee of the Busy Bees Group (**Busy Bees Released Person**) in connection with:

- (i) Busy Bees' execution or delivery of this agreement;
- (ii) any breach of any representation or warranty of Busy Bees in this agreement;
- (iii) the implementation of the Schemes;
- (iv) the completion of the MGE Share Acquisition Agreement;
- (v) the MGE Acquisition; or
- (vi) any disclosure made by any Busy Bees Party that contains any statement which is false or misleading whether in content or by omission,

except to the extent that the relevant Busy Bees Released Person has not acted in good faith or has engaged in wilful misconduct or fraud.

- (b) This clause is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. Busy Bees receives and holds the benefit of this clause as trustee for each Busy Bees Released Person.

11.3 Deeds of indemnity

- (a) Subject to the Schemes becoming Effective and completion of the MGE Share Acquisition, Busy Bees undertakes in favour of Think Group and each director and officer (including those who are employees) of a Think Consolidated Group Member that it will:
 - (i) subject to clause 11.3(d), for 7 years from the Implementation Date, ensure that the constitutions of Think Group and each other Think Consolidated Group Member continue to contain such rules as are contained in those constitutions at the date of this agreement that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a Think Consolidated Group Member; and
 - (ii) procure that Think Group and each other Think Consolidated 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.

- (b) The undertakings contained in clause 11.3(a) 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.
- (c) Think Group receives and holds for the benefit of clause 11.3(a), to the extent it relates to the directors, officers or employees of Think Consolidated Group Members, as trustee for them.
- (d) The undertakings contained in clause 11.3(a) are given:
- (i) in the case of clause 11.3(a)(i), until the earlier of 7 years from the Implementation Date and the relevant member of the Think Consolidated Group ceasing to be an Affiliate of Busy Bees; or
 - (ii) in the case of clause 11.3(a)(ii), until the earlier of 7 years from the retirement of each director and officer and the relevant member of the Think Consolidated Group ceasing to be an Affiliate of Busy Bees.

11.4 Directors' and officers' insurance

Busy Bees acknowledges and agrees that Think Group may in respect of Think Group and all other members of the Think Consolidated Group:

- (a) prior to the Effective Date, arrange for the cover currently provided under the directors' and officers' insurance policy for Think Group and all other members of the Think Consolidated Group to be extended for a further period of up to 12 months, provided the premium is no more than the amount contemplated in the Approved Budgets;
- (b) prior to the Effective Date, engage Think Group's insurance broker to run a process for the directors' and officers' run-off insurance policy, in respect of the directors and officers of any Think Consolidated Group Member that applies for no more than a 7 year period following the Implementation Date (**Run-off Policy**), seeking proposals from reputable insurers that have a rating that is the same as, or better than, the rating of the insurers for the directors' and officers' insurance policy in place for the current financial year to provide the Run-off Policy on the following basis:
 - (i) the same amount of coverage;
 - (ii) the same deductible or excess; and
 - (iii) otherwise on terms that are no less favourable to the current directors or officers of Think Group for the current financial year but which for the avoidance of doubt may be at a higher premium than the current directors' and officers' insurance policy;
- (c) keep Busy Bees reasonably informed of all material developments in the process and provide a copy of the proposals received under the process; and
- (d) prior to the Implementation Date enter into the Run-off Policy which is the lowest cost (inclusive of the costs of brokerage, stamp duty and any other transaction costs in relation thereto) of the proposals received under the process in clause 11.4(b), provided such policy satisfies the requirements in clauses 11.4(b)(i) to 11.4(b)(iii) inclusive), and pay all premiums required so as to ensure that insurance cover is provided under the Policy on those terms until that date.

11.5 Obligations in relation to directors' and officers' insurance

From the Implementation Date, Think Group must not:

- (a) vary or cancel the Policy or Run-off Policy; or
- (b) unless required under the Policy or Run-off Policy, commit any act or omission that may prejudice any claim by a director or officer of Think Group under the Policy or Run-off Policy.

12. Confidentiality and public announcement

12.1 Confidentiality

Busy Bees and Think Group acknowledge and agree that the terms of this agreement will prevail over the Confidentiality Deed to the extent of any inconsistency.

12.2 Announcements

- (a) Immediately after the execution of this agreement, Think Group must issue the Announcement to the ASX.
- (b) Subject to clause 12.2(c), any further public announcements by Think Group in relation to, or in connection with, the Proposed Transaction or any other transaction related to this agreement or the Schemes or the MGE Acquisition, may only be made in a form approved by each of Think Group and Busy Bees in writing (acting reasonably).
- (c) Where a party is required by law or the Listing Rules to make any announcement or to make any disclosure in relation to, or in connection with the Proposed Transaction or any other transaction related to this agreement or the Schemes or the MGE Acquisition, it may do so to the extent legally required and only then after it has given the other party as much notice as possible and has consulted in good faith to the fullest extent possible in the circumstances with the other party.

12.3 Statements on termination

The parties must use all reasonable endeavours to issue agreed statements in respect of any termination of this agreement and, to that end but without limitation, clause 12.2 applies to any such statements or disclosures.

13. Termination

13.1 Termination by notice

- (a) Busy Bees or Think Group may, by notice in writing to the other, terminate this agreement at any time prior to the Delivery Time:
 - (i) if the other party is in material breach of any of its obligations under this agreement (other than the breaching of a party's respective representations and warranties which are regulated by clause 13.2) and the other party has failed to remedy that breach within 10 Business Days (or by the Delivery Time, if earlier) of receipt by it of a notice in writing from the terminating party setting out details of the relevant circumstance and requesting the other party to remedy the breach;
 - (ii) in accordance with clause 3.7(b);
 - (iii) if the Court refuses to make any order directing Think Group to convene both Scheme Meetings, provided that both Think Group and Busy Bees have met and consulted in good faith and agreed that they do not wish to proceed with the Schemes; or
 - (iv) if the Effective Date for the Schemes has not occurred on or before the End Date.
- (b) Think Group may, by notice in writing to Busy Bees, terminate this agreement at any time prior to the Delivery Time if at any time before then a majority of the Independent Directors publicly changes, withdraws or modifies his or her Recommendation or Voting Intention as permitted by clause 6.
- (c) Busy Bees may, by notice in writing to Think Group, terminate this agreement at any time prior to the Delivery Time if at any time before then:
 - (i) any Independent Director:

- (A) fails to provide their Recommendation or Voting Intention in accordance with the requirements of clause 6.1(a);
- (B) withdraws, adversely changes, modifies or qualifies their Recommendation or Voting Intention; or
- (C) makes a public statement indicating that they no longer recommend the Schemes, the MGE Agreements Approval Resolutions or the Appointor Structure Approval Resolutions or no longer intend to vote in favour of the Schemes, the MGE Agreements Approval Resolutions or the Appointor Structure Approval Resolutions,

even if permitted under this agreement, but other than a withdrawal of Recommendation permitted by clause 6.2, which for the avoidance of doubt will not extend to any Independent Director adversely revising or adversely modifying his or her Recommendation or Voting Intention or making a public statement indicating that they recommend, endorse or support a Competing Proposal.

- (ii) any Think Group Director recommends, endorses or supports a Competing Proposal (including support by way of accepting or voting in favour of a Competing Proposal) or any member of the Think Consolidated Group accepts or enters into or offers to accept or enter into, any agreement, arrangement or understanding to give effect to or implement a Competing Proposal (even if permitted under this agreement);
- (iii) any Think Consolidated Group Member acts in a manner which is materially inconsistent with obtaining approval for the Schemes and implementing the Proposed Transactions;
- (iv) Think Group breaches clause 8.1 and, the breach is either incapable of being remedied, or if the breach is capable of remedy, Think Group has failed to remedy that breach within 10 Business Days (or by the Delivery Time, if earlier) of receipt by it of a notice in writing from Busy Bees setting out details of the relevant circumstance and requesting Think Group to remedy the breach; or
- (v) Think Group breaches clause 16.

13.2 Termination for breach of representations and warranties

- (a) Busy Bees may, by notice in writing to Think Group, terminate this agreement at any time prior to the Delivery Time if:
 - (i) Think Group is in material breach of a Think Group Warranty; or
 - (ii) Think Group is in breach of the Think Group Warranty in clause 10.3(b)(x), and Think Group has failed to remedy that breach within 10 Business Days (or by the Delivery Time, if earlier) of receipt by it of a notice in writing from Busy Bees setting out details of the relevant circumstance and requesting Think Group to remedy the breach.
- (b) Think Group may, by notice in writing to Busy Bees, terminate this agreement at any time prior to the Delivery Time on the Second Court Date if:
 - (i) Busy Bees is in material breach of a Busy Bees Warranty; or
 - (ii) Busy Bees is in breach of clauses 10.1(b)(ix) to 10.1(b)(xi) (inclusive), and Busy Bees has failed to remedy that breach within 10 Business Days (or by the Delivery Time on the Second Court Date if earlier) of receipt by it of a notice in writing from Think Group setting out details of the relevant circumstance and requesting Busy Bees to remedy the breach.

13.3 Effect of termination

- (a) In the event of termination of this agreement under clause 3.7(b), 13.1 or 13.2, this agreement will be void and have no effect, except that the provisions of clauses 1, 10.7, 10.8, 11, 12, 13, 14 and 19.3 to 19.15 (inclusive) survive termination.
- (b) Termination of this agreement does not affect any accrued rights of a party in respect of a breach of this agreement prior to termination.

14. Think Group Break Fee

14.1 Background

- (a) Think Group and Busy Bees acknowledge and agree that, if they enter into this agreement and the Schemes are subsequently not implemented, Busy Bees will incur significant costs including those described in clause 14.2 and that while Busy Bees is prepared to absorb those costs if the Schemes are implemented because Busy Bees will benefit in that scenario, it will not benefit if the Schemes are not implemented.
- (b) In the circumstances referred to in clause 14.1(a), Busy Bees has requested that provision be made for the payments outlined in clause 14.3, without which Busy Bees would not have entered into this agreement.
- (c) The IBC believes that the Schemes will provide benefit to Think Group and Independent Securityholders and that it is appropriate for Think Group to agree to the payments referred to in this clause 14 in order to secure Busy Bees' participation in the Proposed Transaction.
- (d) Think Group acknowledges that it has received external legal advice on this agreement and the operation of this clause 14.

14.2 Costs incurred by Busy Bees

- (a) The fee payable under clause 14.3 has been calculated to reimburse Busy Bees for the following:
 - (i) fees for legal, taxation and financial advice in planning and implementing the Schemes;
 - (ii) reasonable opportunity costs incurred in engaging in the Schemes or in not engaging in other alternative acquisitions or strategic initiatives;
 - (iii) costs of management and directors' time in planning and implementing the Schemes;
 - (iv) out of pocket expenses incurred in planning and implementing the Schemes;
 - (v) costs associated with the financing arrangements in respect of the Schemes; and
 - (vi) any damage to Busy Bees' reputation associated with a failed transaction and the implications of those damages if Busy Bees seeks to execute alternative acquisitions in the future,in each case, incurred by Busy Bees directly or indirectly as a result of having entered into this agreement and pursuing the Schemes.
- (b) The parties acknowledge that:
 - (i) the amount of fees, costs and losses referred to in this clause 14.2 is inherently unascertainable and that, even after termination of this agreement, the costs will not be able to be accurately ascertained; and
 - (ii) the amount of the costs payable under clause 14.3 is a genuine and reasonable pre-estimate of those fees, costs and losses and is not a penalty.

14.3 Think Group Break Fee

- (a) Think Group agrees to pay to Busy Bees \$1.95 million (inclusive of GST) (**Think Group Break Fee**) in any of the following circumstances:
- (i) (**Competing Proposal Succeeds**) both of the following occur:
 - (A) a Competing Proposal is made or publicly announced by any party, during the period commencing on the date of this agreement and ending on the End Date (or a Competing Proposal made or announced prior to the date of this agreement is varied); and
 - (B) within 9 months from the date of the public announcement of such Competing Proposal (or variation):
 - (I) subject to clause 14.3(b), the Competing Proposal is implemented or completed; or
 - (II) the proponent of that Competing Proposal acquires a relevant interest in, an economic interest in or voting power of at least 50% of the Think Group Securities or otherwise acquires Control of Think Group and the Competing Proposal is (or becomes) free of any defeating condition; or
 - (ii) (**Recommendation**) at any time prior to the Second Court Date:
 - (A) any Independent Director:
 - (I) fails to provide their Recommendation or Voting Intention in accordance with the requirements of clause 6.1(a); or
 - (II) withdraws, adversely changes, modifies or qualifies their Recommendation or Voting Intention; or
 - (III) makes a public statement indicating that they no longer recommend the Schemes, the MGE Agreements Approval Resolutions or the Appointor Structure Approval Resolutions or no longer intend to vote in favour of the Schemes, the MGE Agreements Approval Resolutions or the Appointor Structure Approval Resolutions; or
 - (B) any Think Group Director recommends, endorses or supports a Competing Proposal (including support by way of accepting or voting in favour of a Competing Proposal) or any Think Consolidated Group Member accepts or enters into or offers to accept or enter into, any agreement, arrangement or understanding to give effect to or implement a Competing Proposal (even if permitted under this agreement); or
 - (C) any Think Consolidated Group Member acts in a manner which is materially inconsistent with obtaining approval for the Schemes and implementing the Proposed Transactions,
(even if permitted under this agreement) except where that act is:
 - (D) as a result of the circumstances set out in the clause 6.2, which for the avoidance of doubt will not extend to any Independent Director adversely revising or adversely modifying his or her Recommendation or Voting Intention or making a public statement indicating that they recommend, endorse or support a Competing Proposal;
 - (E) as a result of the Independent Expert (either in its initial report or any updated, revised or supplemental report) opining that the Schemes are not in the best interest of Independent Securityholders or the MGE Acquisition

is not fair and not reasonable (other than where the reason for that opinion is a Competing Proposal); or

- (F) in circumstances where Think Group is entitled to terminate this agreement under clause 13.1(a)(i) or 13.2(b);
- (iii) **(material breach)** Busy Bees terminates this agreement in accordance with clause 13.1(a)(i) or 13.2(a);
- (iv) **(other breach)** Busy Bees terminates this agreement in accordance with clause 13.1(c)(iv) or 13.1(c)(v);
- (v) **(failure of Conditions)** the Conditions set out in clauses 3.1(c) (No Think Group Prescribed Occurrences), 3.1(k) (Performance Rights) or 3.1(n) (Restructure) have not been satisfied prior to the End Date; or
- (vi) **(breach of MGE Agreements)** a Think Consolidated Group Member is in breach of an MGE Agreement which results in the MGE Agreement being terminated.
- (b) Think Group is not liable to pay Busy Bees the Think Group Break Fee under clause 14.3(a)(i)(B)(I) in circumstances where:
 - (i) an event of the kind described in paragraph (a) of the definition of Competing Proposal has occurred; and
 - (ii) that Competing Proposal does not result in an event of the kind described in paragraphs (b) to (d) inclusive of the definition of Competing Proposal occurring.
- (c) Think Group must pay Busy Bees the Think Group Break Fee within 10 Business Days of receipt by Think Group of a demand for payment from Busy Bees made after the occurrence of the event referred to in clause 14.3, and in any event before a change of Control of Think Group.
- (d) For the avoidance of doubt, the Think Group Break Fee is not payable merely because a resolution submitted to a Scheme Meeting in respect of a Scheme is not approved by the majorities required under section 411(4)(a)(ii) of the Corporations Act or any of the MGE Agreement Approval Resolutions or the Appointor Structure Approval Resolutions is not passed.
- (e) The Think Group Break Fee is not payable by Think Group if Think Group validly terminates this agreement in accordance with clause 13.1(a)(i) or 13.2(b), unless the obligation to pay arises prior to the right to terminate.
- (f) The Think Group Break Fee is only payable once and the maximum amount payable by Think Group under this clause 14.3 is \$1.95 million (inclusive of GST).
- (g) Where the Think Group Break Fee becomes payable to Busy Bees under this clause 14.3 and is actually paid to Busy Bees, Busy Bees:
 - (i) releases all rights against and agrees with Think Group that Busy Bees will not make a Claim against Think Group (other than a claim under this clause 14.3) in connection with:
 - (A) the event that gave rise to the right to demand the payment of the Think Group Break Fee; nor
 - (B) any other event, matter or circumstance that may give rise to a separate right to the Think Group Break Fee or that constitutes or may constitute a breach of this agreement; and
 - (ii) indemnifies and undertakes to keep indemnified Think Group against a Claim that is made contrary to the release under clause 14.3(g)(i),

with the effect that the payment of the Think Group Break Fee represents the sole and exclusive remedy of any Busy Bees Group Member for the circumstances set forth in this clause 14.3.

- (h) Despite any other provision of this agreement but subject to clause 17:
- (i) the maximum liability of Think Group to Busy Bees under or in connection with this agreement including in respect of any breach of this agreement will be the Think Group Break Fee; and
 - (ii) a payment by Think Group in accordance with this clause 14.3 represents the sole and absolute liability of Think Group under or in connection with this agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by Think Group in connection with this agreement.
- (i) The Think Group Break Fee is not payable if the Schemes becomes Effective, despite the occurrence of any event in clause 14.3.

15. Busy Bees Break Fee

15.1 Busy Bees Break Fee

- (a) Busy Bees agrees to pay to Think Group \$1.95 million (inclusive of GST) (**Busy Bees Break Fee**) if:
 - (i) the Schemes become Effective but Busy Bees does not provide the Scheme Consideration in accordance with the terms and conditions of this agreement, the Schemes and the Deed Poll; or
 - (ii) Think Group terminates this agreement in accordance with either:
 - (A) clause 13.1(a)(i) as a result of a material breach of Busy Bees' obligations under this agreement which have not been remedied within the time period set out clause 13.1(a)(i); or
 - (B) clause 13.2(b) as a result of a material breach by Busy Bees of a Busy Bees Warranty that has not been remedied within the time period set out in clause 13.2(b).
- (b) Busy Bees must pay Think Group the Busy Bees Break Fee within 10 Business Days of receipt by Think Group of a demand for payment from Think Group made after the occurrence of the event referred to in clause 15.1(a).
- (c) The Busy Bees Break Fee is not payable by Busy Bees if Busy Bees validly terminates this agreement in accordance with clause 13.1(a)(i), 13.1(c) or 13.2(a).
- (d) The Busy Bees Break Fee is only payable once and the maximum amount payable by Busy Bees under this clause 15.1 is \$1.95 million (inclusive of GST).
- (e) Where the Busy Bees Break Fee becomes payable to Think Group under this clause 15.1 and is actually paid to Think Group, Think Group (for itself and as agent of every member of the Think Consolidated Group and each Think Group Party):
 - (i) releases all rights against and agrees with Busy Bees that Think Group will not make a Claim against any Busy Bees Party (other than a claim under this clause 15.1) in connection with:
 - (A) the event that gave rise to the right to demand the payment of the Busy Bees Break Fee; nor
 - (B) any other event, matter or circumstance that may give rise to a separate right to the Busy Bees Break Fee or that constitutes or may constitute a breach of this agreement; and
 - (ii) indemnifies any Busy Bees Party against a Claim that is made contrary to the release under clause 15.1(e)(i),

with the effect that the payment of the Busy Bees Break Fee represents the sole and exclusive remedy of any Think Consolidated Group Member for the circumstances set forth in this clause 15.1.

- (f) Despite any other provision of this agreement but subject to clause 17:
 - (i) the maximum liability of Busy Bees to Think Group under or in connection with this agreement including in respect of any breach of this agreement will be the Busy Bees Break Fee; and
 - (ii) a payment by Busy Bees in accordance with this clause 15.1 represents the sole and absolute liability of Busy Bees under or in connection with this agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by Busy Bees in connection with this agreement.
- (g) For the avoidance of doubt, if the Think Group Break Fee is paid or payable by Think Group to Busy Bees pursuant to clause 14.3, no Busy Bees Break Fee will be payable under this clause 15.1.

16. Exclusivity

16.1 Existing discussions

Think Group represents and warrants to Busy Bees that, as at the date of this agreement:

- (a) none of the Think Group Parties is party to any agreement or arrangement with any third party entered into for the purposes of facilitating a Competing Proposal;
- (b) none of the Think Group Parties is, directly or indirectly, participating in any discussions or negotiations with a third party that concern, or that could be reasonably expected to lead to, a Competing Proposal;
- (c) any due diligence access granted to any third party for the purposes of such third party making, formulating, developing or finalising, or assisting in the making, formulation, development or finalisation of, a Competing Proposal has been terminated; and
- (d) any third party to whom non-public information in relation to the Think Group has been provided or made available in the previous 24 months for the purposes of such third party making, formulating, developing or finalising, or assisting in the making, formulation, development or finalisation of, a Competing Proposal, has been requested to immediately return or destroy that non-public information in accordance with the provisions of any confidentiality agreement with such third party.

16.2 No shop restriction

During the Exclusivity Period, except with the prior written consent of Busy Bees, Think Group must not, and must ensure that none of its Related Bodies Corporate nor any of their Authorised Persons, directly or indirectly:

- (a) solicit, invite, encourage, continue or initiate any Competing Proposal or any enquiries, negotiations or discussions with any person (other than any of the Busy Bees Parties) in relation to, or that may reasonably be expected to encourage or lead to, an actual, proposed or potential Competing Proposal; or
- (b) solicit, invite, encourage or initiate approaches, enquiries, discussions or proposals with a view to obtaining any offer, proposal or expression of interest from any person in relation to, or which may reasonably be expected to lead to, an actual, proposed or potential Competing Proposal,

or communicate any intention to do any of those things.

16.3 No talk restriction

Subject to clause 16.5, during the Exclusivity Period, Think Group must not, and must ensure that none of its Related Bodies Corporate nor any of their Authorised Persons, directly or indirectly:

- (a) negotiate, accept or enter into, approve or recommend or enter into or participate in or continue any negotiations or discussions with, or enter into any agreement, arrangement or understanding with any person (other than any of the Busy Bees Parties); or
- (b) communicate any intention to do any of these things,

in relation to, or that may reasonably be expected to encourage or lead to, an actual or potential Competing Proposal even if:

- (c) the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Think Group or any of its Related Bodies Corporate or any of their Authorised Persons; or
- (d) that person has publicly announced the Competing Proposal.

16.4 No due diligence

- (a) During the Exclusivity Period, except with the prior written consent of Busy Bees, Think Group must not, and must ensure that its Related Bodies Corporate and their respective Authorised Persons do not, directly or indirectly:
 - (i) solicit, invite, initiate, or encourage, or (subject to clause 16.5) facilitate or permit, any person (other than Busy Bees) to undertake due diligence investigations in respect of Think Group, its Related Bodies Corporate, or any of their businesses and operations, in connection with or with a view to obtaining or which would reasonably be expected to lead to such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal; or
 - (ii) subject to clause 16.5, make available to any person (other than Busy Bees) or permit any such person to receive any non-public information relating to Think Group, its Related Bodies Corporate, or any of their businesses and operations, in connection with or with a view to obtaining or which would reasonably be expected to lead to such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.
- (b) If Think Group proposes that any non-public information be provided to a third party while validly relying on the exception in clause 16.5, then:
 - (i) before Think Group provides such information, the third party must enter into Acceptable Confidentiality Agreement; and
 - (ii) any non-public information provided to that third party must also be provided to Busy Bees (unless the information has already been provided to Busy Bees or a Busy Bees Authorised Person).

16.5 Exceptions

Clauses 16.3, 16.4(a)(i) and 16.4(a)(ii) do not apply to the extent that they restrict Think Group or the Independent Directors from taking or refusing to take any action with respect to a genuine Competing Proposal (in relation to which there has been no contravention of this clause 16) where:

- (a) the Competing Proposal is bona fide and is made in writing by or on behalf of a person that the Independent Directors consider is of sufficient commercial standing; and
- (b) the Independent Directors, acting in good faith, determine:
 - (i) after consultation with its financial advisors, that the Competing Proposal is a Superior Proposal or the steps which the Independent Directors propose to take

may reasonably be expected to lead to a Competing Proposal which is a Superior Proposal; and

- (ii) after receiving written legal advice from Think Group's external legal Advisers experienced in transactions of this nature, that failing to respond to the Competing Proposal would be likely to constitute a breach of the fiduciary or statutory duties of any member of the Think Group Boards to Think Group.

16.6 Notice of Competing Proposal

- (a) During the Exclusivity Period, Think Group must promptly (and in any event, within 48 hours) notify Busy Bees in writing of the receipt of:
 - (i) any proposal made by any person to Think Group, any of its Related Bodies Corporate or any of their respective Authorised Persons, that is, or could reasonably be expected to lead to a Competing Proposal; or
 - (ii) an approach by a person in relation to engaging in activities that would if implemented constitute a breach of clause 16.2, 16.3 or 16.4, or would breach those clauses if not for clause 16.5,

(Competing Proposal Notice).
- (b) A Competing Proposal Notice must be accompanied by all material details of the relevant event, including:
 - (i) the material terms and conditions (including price, conditions precedent, timetable and any break fee) of any Competing Proposal or any proposed Competing Proposal (to the extent known); and
 - (ii) the identity of the person who made the relevant approach or proposal referred to in clause 16.6(a), except that Think Group may withhold the name (of the person who has made the Competing Proposal or approach) and other details which would otherwise be reasonably expected to identify that person if the Independent Directors, acting in good faith and on the basis of written advice from its external legal Advisers, determines that giving those details to Busy Bees would be likely to constitute a breach of the fiduciary duties or statutory obligations of any member of the Think Group Boards to Think Group.
- (c) If Think Group is entitled under clause 16.6(b)(ii) to withhold the identity of the person who has made the Competing Proposal or approach, Think Group must use reasonable endeavours to obtain the consent of that person to disclose to Busy Bees on a confidential basis that person's identity.
- (d) If Think Group gives Busy Bees a Competing Proposal Notice, Busy Bees agrees that the notice will be Confidential Information of Think Group (as defined in the Confidentiality Deed).

16.7 Think Group's response to Competing Proposal and right to respond

- (a) If Think Group receives a Competing Proposal and as a result, any Independent Director proposes to either:
 - (i) change, withdraw or modify their Recommendation or Voting Intention; or
 - (ii) recommend, endorse or support the Competing Proposal, or approve or recommend entry into any agreement, commitment, arrangement or understanding relating to the Competing Proposal (other than an Acceptable Confidentiality Agreement),

Think Group must ensure that no Independent Director does so:

- (iii) unless the Competing Proposal is bona fide, in writing and constitutes a Superior Proposal; and

- (iv) until each of the following has occurred:
 - (A) Think Group has given Busy Bees written notice (**Relevant Notice**) of the Independent Director's proposal to take the action referred to in clause 16.7(a)(i) or 16.7(a)(ii) (subject to Busy Bees' rights under clause 16.7(b)), including details of the grounds on which the Independent Director proposes to take such action and whether the Independent Directors have determined the Competing Proposal is a Superior Proposal;
 - (B) Think Group has given Busy Bees all information that would be required by clause 16.6(b); and
 - (C) either:
 - (I) Busy Bees has not announced or provided to Think Group a Counter Proposal before the Cut Off Date; or
 - (II) Busy Bees has announced or provided to Think Group a Counter Proposal before the Cut Off Date and the Independent Directors have determined, in good faith, that the Counter Proposal would not provide an equivalent or superior outcome to Think Group Securityholders as a whole compared with the Competing Proposal and Busy Bees has been given an opportunity to amend the Counter Proposal in accordance with clause 16.7(e).
- (b) If Think Group gives a Relevant Notice to Busy Bees under clause 16.7(a)(iv)(A), Busy Bees will have the right, but not the obligation, at any time during the 5 Business Days following the receipt of the Relevant Notice (**Cut Off Date**), to provide a written proposal to amend the terms of the Proposed Transaction including increasing the amount of consideration offered under the Proposed Transaction or proposing another form of transaction (**Counter Proposal**), and if it does so then the Independent Directors must review the Counter Proposal and determine whether, in good faith, the Counter Proposal would provide an equivalent or superior outcome to Think Group Securityholders as a whole compared with the Competing Proposal.
- (c) Think Group must procure that the Independent Directors promptly, and in any event within 2 Business Days, notify Busy Bees of the determination in writing, stating reasons for that determination.
- (d) If the Independent Directors determine in good faith that the Counter Proposal would provide an equivalent or superior outcome to Think Group Securityholders as a whole compared with the Competing Proposal, then Think Group and Busy Bees must use their respective best endeavours to agree the amendments to this agreement 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 Think Group must use its best endeavours to procure that the Independent Directors recommend the Counter Proposal to the Think Group Securityholders and do not recommend the applicable Competing Proposal.
- (e) If the determination is that the Counter Proposal would not provide an equivalent or superior outcome to Think Group Securityholders as a whole compared with the Competing Proposal, then Busy Bees may take steps to amend the Counter Proposal to address the reasons given within a further period of 5 Business Days. If Busy Bees does so to Think Group's satisfaction, then the process in clause 16.7(d) applies to that amended Counter Proposal with the exception of the operation of this clause 16.7(e).
- (f) For the purposes of clause 16.6 and this clause 16.7, 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.

16.8 Normal provision of information

Nothing in this clause 16 prevents Think Group from:

- (a) providing information required to be provided by law, any court of competent jurisdiction, any Governmental Agency or the Listing Rules;
- (b) making presentations to and responding to bona fide enquires from stockbrokers, portfolio investors and equity market analysts in relation to the Schemes,

subject to Think Group complying with its obligations under the Confidentiality Deed and clause 12.

17. Modification of Think Group Break Fee, Busy Bees Break Fee or exclusivity arrangements

17.1 Modifications following regulatory intervention

If any of the following occurs:

- (a) a Governmental Agency finds that all or any part of the payment required to be made under clause 14 or 15 or an exclusivity arrangement under clause 16 is unacceptable or unenforceable; or
- (b) as a result of an application to the Takeovers Panel, the Takeovers Panel indicates that, in the absence of a written undertaking under section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) to modify the amount of the Think Group Break Fee or the circumstances in which it is to be paid or the circumstances in relation to an exclusivity arrangement under clause 16, it will make a declaration of unacceptable circumstances,

then, subject to clause 17.3:

- (c) the parties must amend clauses 14, 15 and 16 to the extent required to give effect to the requirements of the Governmental Agency or the Takeovers Panel (as the case may be); and (in circumstances referred to in clause 17.1(b)) must give the required undertaking(s); and
- (d) neither the occurrence of any of the events referred to in clause 17.1(a) or 17.1(b) nor any amendment of clauses 14, 15 and 16 under this clause 17.1 will be taken to be a breach of, or permit any party to terminate, this agreement.

17.2 Conduct during proceedings

- (a) During the course of any Takeovers Panel or court proceedings (including any appeal or review thereof) referred to in clause 17.1, the parties must take all reasonable steps to ensure that any such declaration or determination has the minimum effect possible.
- (b) The parties must not make or cause or permit to be made any application to a court of the Takeovers Panel for or in relation to a determination referred to in clause 17.1.

17.3 No requirement to act unless decision final

The parties are only required to take steps under 17.1(c) in relation to any requirement of a Governmental Agency or the Takeovers Panel if:

- (a) no appeal or review proceeding is available from the decision to impose that requirement or the period for lodging an appeal or commencing review proceedings has expired without an appeal having been lodged or review proceedings commenced; or
- (b) Busy Bees and Think Group agree in writing not to appeal or seek review of the decision to impose that requirement.

17.4 Appeals and review of regulatory decisions

Nothing in this agreement requires either party to appeal or seek review of any decision of a Governmental Agency or the Takeovers Panel referred to in clause 17.1(a) or 17.1(b). If Busy Bees or Think Group wishes to appeal or seek review of any such decision then the others must make submissions in the course of those proceedings supporting the review made by the first party.

17.5 Determination by Governmental Agency

If a Governmental Agency or the Takeovers Panel determines that payment of all or any part of the Think Group Break Fee is unacceptable, unlawful or involves a breach of the fiduciary or statutory duties of the members of the Think Group Boards (**Impugned Amount**) and either no appeal from that determination is available or the period for lodging an appeal has expired without having an appeal having been lodged then:

- (a) the obligation of Think Group to pay the Think Group Break Fee does not apply to the extent of the Impugned Amount, and the Busy Bees Break Fee is reduced by the Impugned Amount; and
- (b) if Busy Bees has received any part of the Impugned Amount, it must refund it within 5 Business Days after that determination is made or the period for lodging has expired, whichever is later.

18. Notices

Any communication under or in connection with this agreement:

- (a) must be in writing;
- (b) must be sent to the address for service of the addressee specified in the Details;
- (c) must be signed by the party making the communication or by a person duly authorised by that party;
- (d) must be delivered to the address, or sent by email to the email address, of the addressee, in accordance with the Details; and
- (e) will be deemed to be received by the addressee, unless the time for delivery required by this agreement is before 9.00am or after 5.00pm on a Business Day:
 - (i) **(in the case of delivery by hand)** on delivery at the address of the addressee as provided in the Details, unless that delivery is not made on a Business Day, or after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day; and
 - (ii) **(in the case of email)** immediately 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, unless that local time is not a Business Day, or is after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day.

19. General

19.1 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 agreement.

19.2 Timetable

The parties agree that the Timetable is indicative only and is not binding on the parties.

19.3 Payments

Unless otherwise provided in this agreement, where an amount is required to be paid to a party (**Receiving Party**) by another party under this agreement, 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 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.

19.4 Interest

- (a) If a party fails to pay any amount payable under this agreement on the due date for payment, that party must pay interest on the amount unpaid at the higher of the Interest Rate plus 3% per annum or the rate (if any) fixed or payable under any judgment or other thing into which the liability to pay the amount becomes merged.
- (b) The interest payable under clause 19.4(a):
 - (i) accrues from day to day from and including the due date for payment up to the actual date of payment, before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the amount becomes merged; and
 - (ii) may be capitalised by the person to whom it is payable at monthly intervals.

19.5 GST

- (a) Any reference in this clause 19.5 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 stated otherwise, any consideration or amount payable, including non-monetary consideration, for any supply made under or in connection with this agreement does not include GST.
- (c) To the extent that any supply made by a party (**Supplier**) to another party (**Recipient**) under or in connection with this agreement is a taxable supply, the Recipient must pay to the Supplier, in addition to the consideration to be provided under this agreement but for the application of this clause 19.5(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 (**Additional Amount**) except where the recipient of the supply is liable under the GST law to pay GST on the supply. This clause 19.5(c) does not apply to any taxable supply under or in connection with this agreement that is stated to include GST.
- (d) The Additional Amount payable in accordance with this clause 19.5 will be paid at the same time and in the same manner as the GST Exclusive Consideration otherwise payable for the supply. However, the Additional Amount (or the GST component of any consideration expressed to be inclusive of GST) is only payable on receipt of a valid tax invoice.
- (e) If an adjustment event arises for a supply made in connection with this agreement, the Additional Amount (or the GST component of any consideration expressed to be inclusive of GST) must be recalculated to reflect that adjustment within 21 days after the end of the tax period in which the adjustment is attributable. The Supplier or the party providing the consideration for the supply (as the case may be) agrees to make any payments necessary to reflect the adjustment and the Supplier agrees to issue an adjustment note reflecting the adjustment within 21 days after the end of the tax period in which the adjustment is attributable.
- (f) 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.

- (g) If the consideration for a supply under this agreement is calculated by reference to the consideration for other supplies, in making that calculation, the consideration for those other supplies excludes any amount in respect of GST payable on those supplies.

19.6 Stamp duty

Busy Bees must pay all Duty in respect of the execution, delivery and performance of this agreement, the Schemes or the steps to be taken under this agreement to implement the Schemes (including the acquisition or transfer of TNK Scheme Shares under the TNK Scheme or the transfer of TND Scheme Shares under the TND Scheme).

19.7 Expenses

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

19.8 Amendments

- (a) This agreement may only be varied by a document signed by or on behalf of each of the parties.
- (b) On and after the Implementation Date, clauses 11.1, 11.3 and 11.4 may only be varied by a document signed by or on behalf of each of the parties and each of the Think Group Parties.
- (c) Think Group holds the benefit of clause 19.8(b) for itself and on behalf of the Think Group Parties.

19.9 Assignment

- (a) Subject to clause 19.9(b) below, a party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of each other party, which consent that other party may give or withhold in its absolute discretion.
- (b) Notwithstanding any other provisions of this agreement, Busy Bees may grant Encumbrances (whether by charge, mortgage or otherwise) over its rights under this agreement in favour of providers of debt financing from time to time to its or its Related Bodies Corporate (including any agent or trustee acting on those financiers' behalf), and any such Encumbrance may be enforced or released.

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

19.11 Counterparts

- (a) This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. Each counterpart is an original but the counterparts together are one and the same agreement.
- (b) This agreement is binding on the parties on the exchange of duly executed counterparts.
- (c) The parties agree that a copy of an original executed counterpart sent by email to the other party, instead of the original, is sufficient evidence of the execution of the original and may be produced in evidence for all purposes in place of the original.

19.12 Entire agreement

- (a) This agreement:
 - (i) embodies the entire understanding of the parties and constitutes the entire terms agreed on between the parties; and
 - (ii) supersedes any prior agreement (whether or not in writing) between the parties.
- (b) Despite clause 19.12(a), the Confidentiality Deed continues to apply to the parties in accordance with its terms, except to the extent of any express inconsistency, in which case this agreement prevails.
- (c) The parties acknowledge and agree that upon the execution of this agreement:
 - (i) the Exclusivity Deed between the parties dated 6 April 2021 is terminated; and
 - (ii) each party is released from any further rights and obligations under that Exclusivity Deed.

19.13 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 agreement, except for representations or inducements set out in this agreement.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement set out in this agreement.

19.14 No merger

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

19.15 Governing law

- (a) This agreement 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.

Schedule 1 – Indicative timetable

[Not reproduced here. Refer to ASX announcement dated 17 June 2021 for indicative timing. Await Explanatory Booklet for updated indicative timing]

Schedule 2 – TNK Scheme

[Not reproduced here. Await Explanatory Booklet]

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Schedule 3 - TND Scheme

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Schedule 4 – TNK Deed Poll

[Not reproduced here. Await Explanatory Booklet]

Schedule 5 - TND Deed Poll

[Not reproduced here. Await Explanatory Booklet]

Signing page

EXECUTED as an agreement.

Executed by **Think Childcare Limited** in accordance with Section 127 of the *Corporations Act 2001*



Signature of director

Mathew Graeme Edwards

Name of director (print)



Signature of ~~director~~/company secretary
(Please delete as applicable)

Trinh Tuyet Bui

Name of ~~director~~/company secretary (print)

Executed by **Think Childcare Development Limited** in accordance with Section 127 of the *Corporations Act 2001*



Signature of director

Mathew Graeme Edwards

Name of director (print)



Signature of ~~director~~/company secretary
(Please delete as applicable)


Trinh Tuyet Bui

Name of ~~director~~/company secretary (print)

Executed by Busy Bees Early Learning
Australia Pty Ltd in accordance with Section 127
of the Corporations Act 2001


Signature of director

ROBERT ANTHONY HUGHES
Name of director (print)


Signature of ~~director~~/company secretary
(Please delete as applicable)

ANN CAULTON
Name of ~~director~~/company secretary (print)