

# VGI PARTNERS

**VGI Partners Limited**  
ABN 33 129 188 450  
39 Phillip Street  
Sydney NSW 2000 Australia  
T. +61 2 9237 8900  
[www.vgipartners.com](http://www.vgipartners.com)

AFSL No. 321789 | SEC Registered

30 March 2022

ASX Market Announcements Office  
ASX Limited  
Exchange Centre  
20 Bridge Street  
Sydney NSW 2000

## **VGI Partners and Regal Funds Management Announce Binding Merger Terms**

VGI Partners Limited (ASX:VGI, "VGI"), Regal Funds Management Pty Limited ("Regal") and the Regal shareholders have entered into a Merger Implementation Deed in relation to the proposed merger of VGI and Regal. Please find attached the full release from VGI and Regal.

### **Authorised for release by:**

Ian Cameron, Company Secretary

### **Investor contact information:**

Ingrid Groer, CFA  
Head of Investor Relations  
VGI Partners Limited  
Phone: 1800 571 917 (inside Australia)  
+61 2 9237 8923 (outside Australia)  
Email: [investor.relations@vgipartners.com](mailto:investor.relations@vgipartners.com)

### **Media contact information:**

Max Hewett  
GRACosway  
Phone: +61 432 332 215  
Email: [mhewett@gracosway.com.au](mailto:mhewett@gracosway.com.au)

30 March 2022

ASX Market Announcements Office  
ASX Limited  
Exchange Centre  
20 Bridge Street  
Sydney NSW 2000

## **VGI Partners and Regal Funds Management Announce Binding Merger Terms**

VGI Partners Limited (ASX:VGI, "VGI"), Regal Funds Management Pty Limited ("Regal") and the Regal shareholders have entered into a Merger Implementation Deed ("Merger Deed") in relation to the proposed merger of VGI and Regal (the "Merger"). The Merger Deed is set out in full below.

On implementation of the Merger, which is subject to VGI shareholder approval, VGI will acquire 100% of the issued share capital in Regal in consideration for the issue of new VGI ordinary shares to existing Regal shareholders to create a merged business (the "Merged Entity"). It is expected that immediately following implementation of the Merger existing VGI shareholders will represent approximately 33.3% and existing Regal shareholders approximately 66.7% of the Merged Entity (the "Merger Ratio").

The Merger will combine two of Australia's most recognised and successful hedge fund managers and is expected to create a market-leading provider of alternative investment strategies with total funds under management of approximately A\$5.6 billion.<sup>1</sup> It is intended that VGI will be renamed and will remain listed on the ASX after implementation of the Merger with a new ASX ticker.

The VGI Board of Directors intends to unanimously recommend that VGI shareholders vote in favour of the Merger and each VGI Director intends to vote all the shares they hold or control in VGI in favour of the Merger (in the absence of a superior proposal and subject to an independent expert concluding that the Merger is reasonable for VGI shareholders).

The VGI Board of Directors also intends to approve and declare a fully franked dividend of up to 40 cents per VGI ordinary share following VGI shareholder approval of the Merger but prior to Merger implementation.<sup>2</sup>

In establishing the Merger Ratio, the VGI board has had regard to various factors, including:

- As set out below, the strategic rationale for the Merger, and its potential to deliver several attractive benefits for VGI shareholders;
- Fee earning funds under management to be contributed by VGI and Regal to the Merged Entity;
- Current and near-term stand-alone management and performance fee earnings potential, and normalised earnings contributions of VGI and Regal to the Merged Entity;

<sup>1</sup> Pro forma funds under management as at 28 February 2022, including institutional investors, family offices, charities, private investors and employees.

<sup>2</sup> The dividend will be payable to VGI shareholders on a record date prior to implementation of the Merger and not to all shareholders of the Merged Entity.

- Net cash, liquid assets and other liabilities to be contributed by VGI and Regal to the Merged Entity; and
- An expectation the Merger will be earnings accretive, on a normalised basis, to VGI shareholders.

## Strategic Rationale for the Merger

The VGI Board of Directors believes that the Merger has the potential to deliver several attractive benefits to VGI shareholders, including:

- exposure to a diversified and growing platform of hedge fund, private market and real asset investment strategies for institutional, high net worth and retail investors in Australia and offshore with significant capacity to deliver the benefits of the expertise, experience and resources of a larger group to clients and VGI shareholders;
- combines the deep industry experience, networks, and established investment track records of two industry leaders – Robert Luciano and Philip King – and their respective investment and management teams, and their history in creating innovative and well-regarded alternative investment products;
- leveraging complementary client profiles and relationships across the merged group, including existing long-term relationships with high net worth individuals and family offices alongside a combined retail investor base of over 19,000 investors across VGI Partners Global Investments Limited (ASX:VG1), VGI Partners Asian Investments Limited (ASX:VG8) and the Regal Investment Fund (ASX:RF1);
- accessing Regal's highly developed corporate platform and business support network, including a well-established marketing and distribution capability, to provide a refreshed approach to sales, marketing and communication activities across the merged group and reduce non-investment related activities undertaken by Robert Luciano and the VGI team; and
- providing an opportunity for Robert Luciano and the VGI investment team to leverage additional resources from the merged group, including Regal's extensive investment capability and track record investing in Asian equity markets and private unlisted investments.

Robert Luciano, Founder and Chief Investment Officer of VGI, stated: "This is an exciting development for both VGI clients and our shareholders, combining two well-established businesses and leveraging the significant expertise, experience and resources of the larger group. Regal's long track record in hedge fund, private market and real asset investments really complements VGI's extensive capabilities in global long/short investing, with both businesses able to benefit from a centralised corporate platform, operational infrastructure and sales and marketing capability.

For VGI shareholders, the transaction provides an attractive opportunity to gain access to a scalable, growing and well-diversified investment management business and really represents a new chapter of growth for shareholders of the merged group. Both VGI and Regal share very similar philosophies around alignment with our investors, with key investment staff retaining meaningful shareholdings in the merged entity and substantial personal investments in the underlying funds. We're delighted to be moving forward with the transaction and look forward to the future opportunities ahead for the combined group."

Philip King, Co-Founder and Chief Investment Officer of Regal, said “This is a transformative transaction, with the potential to create significant positive outcomes for clients of both Regal and VGI. Robert Luciano has built an outstanding business at VGI over the last 14 years and we look forward to leveraging the significant investment experience, client relationships and industry networks that he and the VGI team have established over that time. The combination of two of Australia’s leading alternative investment managers will provide shareholders of the merged group with exposure to a large, diversified and growing provider of hedge fund, private market and real asset investment strategies, servicing institutional, family office, wholesale and retail investors in Australia and offshore.

We look forward to working with VGI clients, staff and shareholders as part of the merged group, and are excited about the attractive benefits that this unique combination could provide both businesses.”

## Key Terms

The Merger Deed set out below contains the terms on which VGI and Regal have agreed to implement the Merger. Key conditions of the Merger include:

- Approval being obtained from VGI shareholders in relation to the Merger for the purposes of section 611 item 7 of the Corporations Act 2001 (Cth) and in relation to the change of name and ASX ticker of VGI;
- The Independent Expert concluding that the Merger is reasonable for VGI shareholders, and not adversely changing that conclusion or withdrawing its report;
- No material adverse change or prescribed occurrences (each as defined in the Merger Deed) occurring and being exercised in relation to either VGI or Regal;
- Regal Funds Management Asia Pte Ltd.'s Singaporean regulatory authority, the Monetary Authority of Singapore, approving the proposed change of control of Regal Funds Management Asia Pte Ltd. arising from the Merger; and
- Other conditions customary for a transaction of this nature.

The Merger Deed includes exclusivity arrangements in favour of Regal (including 'no shop', 'no talk' and 'no due diligence' restrictions (each subject to a fiduciary exception) and notification obligations) on market standard terms.

## Board and Management

The Merger Deed contemplates that following implementation of the Merger, the Merged Entity will have a Board consisting of six directors, with two nominated by each of VGI and Regal in addition to the appointment of two external independent directors. Neither Robert Luciano nor Philip King will be on the Board of the Merged Entity given their investment-focussed roles.

Accordingly, following implementation of the Merger, the Board is expected to consist of:

- **Michael Cole AM, Independent Chairman** – Michael has over 40 years' experience in investment banking and portfolio management. Michael has held the following roles over his extensive career: Executive Director and Executive Vice-President of Bankers Trust Australia, Chairman of Challenger Listed Investments Limited, Chairman of IMB Bank Limited, Director of NSW Treasury Corporation, Chairman, SAS Trustee Corporation (State Super Board), Chairman of Ironbark Capital Ltd (IBC), an ASX-listed LIC and Chairman of Platinum Asset Management Limited.
- **Sarah Dulhunty, Independent Non-Executive Director** – Sarah has over 30 years' experience in equity capital markets, M&A, Corporate Governance, and Corporate and Securities Law. Sarah was previously a partner with Ashurst for 24 years, including 4 years as a Board member. She has also served as a member and then Acting President of the Australian Takeovers Panel over a period of 9 years and sat on the AICD Law Committee for 13 years. She is currently on the Board of Governors of Winnifred West Schools and is currently a Deputy Chair of the Corporations Committee of the Business Law Section of the Law Council of Australia.
- **Jaye Gardner, Independent Non-Executive Director** – Jaye has more than 30 years' experience in corporate finance. She is a Managing Director of Grant Samuel, where she is responsible for many of its independent expert's reports, primarily for S&P/ASX 200 companies. She also advises on mergers, acquisitions and asset sales with a focus on the financial services, property, health and media industries. Jaye was a Director of VGI Partners Global Investments Limited from its listing in July 2017 until May 2019 and is currently a Director of VGI Partners Limited.
- **Ian Gibson, Executive Director** – Ian has over 25 years' experience in financial markets, spending the last 15 years acting as Director, investment adviser and consultant to a range of financial groups and organisations. Currently, he is a Director of Regal, Director of Kilter Pty Ltd, Director of Attunga Capital Pty Ltd, Director of Gresham Royalties Management Pty Ltd, adviser to RPG Management Pty Ltd, a Director and member of the Investment Committee for Realside Financial Group Pty Ltd and an independent member of the Investment Committee for Atrium Investment Management Pty Ltd.
- **David Jones AM, Non-Executive Director** – David has more than 30 years' experience in investment markets, the majority as a general partner in private equity firms, and prior to that in general management and management consulting. David has been a board member of numerous private and public businesses, including a number in the wealth management sector. David is a non-executive member of the investment committee of EMR Capital Pty Ltd, Chairman of DTS Capital Partners Pty Ltd and an advisor to Aviron Investment Management Pty Ltd. He is also Chairman of VGI Partners Global Investments Limited, a Director of VGI Partners Asian Investments Limited and a Director of VGI Partners Limited.
- **Brendan O'Connor, CEO and Managing Director** – Brendan has over 25 years' experience in financial markets and asset management and is currently CEO of Regal. In addition, he is a Director of Kilter Pty Ltd, Director of Attunga Capital Pty Ltd and a Director of Gresham Royalties Management Pty Ltd. Previously, Brendan was CFO of Challenger's Asset Management and then Funds Management business and served as a director on the Board of several listed investment trusts and several of Fidante Partners' boutique asset managers.

It is expected that on implementation of the Merger, Brendan O'Connor (the current Chief Executive Officer of Regal) will be appointed as Chief Executive Officer of the Merged Entity and Ian Cameron (the current Chief Financial Officer of VGI) will be appointed as Chief Financial Officer of the Merged Entity. The balance of the Merged Entity executive management team will be drawn from both VGI and Regal.

## Key Shareholdings

The share capital of the Merged Entity immediately following implementation of the Merger will be represented as follows:

- Philip King (through entities in which he has a beneficial interest) will hold approximately 43% and other existing Regal shareholders will hold approximately 24% of the Merged Entity; and
- Robert Luciano (through entities in which he has a beneficial interest) will hold approximately 20% and other existing VGI shareholders will hold approximately 14% of the Merged Entity.

## Next Steps

VGI will in due course provide an explanatory memorandum and notice of the general meeting at which VGI shareholders will be invited to vote to approve the Merger. The explanatory memorandum will include details of next steps and will outline the expected date of implementation of the Merger. No immediate action needs to be taken in connection with the proposed Merger.

## Advisers

Jefferies Australia are acting as financial adviser and Allens are acting as legal adviser to VGI. Barrenjoey Capital Partners are acting as financial adviser and King & Wood Mallesons are acting as legal adviser to Regal.

## Investor Briefing at 2:30pm (AEDT) Today – 30 March 2022

We are pleased to invite VGI shareholders, advisers and other interested parties to a webinar/call to provide greater detail on the Merger. The presentation will commence at 2:30pm (AEDT) today, Wednesday 30 March 2022, and will be followed by a Q&A session. The briefing will give investors an opportunity to hear from Robert Luciano, Philip King and Brendan O'Connor.

Please use the link below for the webinar or pre-register for the call to avoid delays.

**Webinar link:** <https://services.choruscall.com.au/webcast/VGI-2rMfLaJh.html>

Please input your name, email and company to register. We also encourage attendees to submit questions in advance to allow the team to respond to as many queries as time permits. Please pre-submit any questions for the team, or queries about the briefing, to [events@vgipartners.com](mailto:events@vgipartners.com). Questions are also able to be submitted online during the event using the "Ask a Question" box.

A recording will be available on the VGI website at [www.vgipartners.com/company](http://www.vgipartners.com/company) shortly after the event.

## Pre-register for the listen-only conference call:

<https://s1.c-conf.com/diamondpass/10021024-sdmd33.html>

**Participant listen-only dial-in numbers (conference ID 10021024) if no pre-registration:**

|             |  |           |                             |
|-------------|--|-----------|-----------------------------|
| Australia   | 1800 809 971 or<br>1800 558 698 (Toll Free)<br>+61 2 9007 3187 (Local) | Hong Kong | 800 966 806 (Toll Free)     |
|             |  | Japan     | 005 3116 1281 (Toll Free)   |
| New Zealand | 0800 453 055 (Toll Free)   | China     | 4001 200 659 (Toll Free)    |
| US/Canada   | 1 855 881 1339 (Toll Free)   | India     | 0008 0010 08443 (Toll Free) |
| UK          | 0800 051 8245 (Toll Free)  | Malaysia  | 1800 816 294 (Toll Free)    |
| Singapore   | 800 101 2785 (Toll Free)   | Other     | +61 7 3145 4010 (Metered)   |

**Authorised for release by:**

Ian Cameron, VGI Company Secretary

**VGI investor contact information:**

Ingrid Groer, CFA  
Head of Investor Relations  
VGI Partners Limited  
Phone: 1800 571 917 (inside Australia)  
+61 2 9237 8923 (outside Australia)  
Email: investor.relations@vgipartners.com

**Regal investor contact information:**

Rebecca Fesq  
Global Head of Distribution and Marketing  
Regal Funds Management Pty Limited  
Phone: +61 2 8197 4399  
+61 414 152 755  
Email: investorrelations@regalfm.com

**Media contact information:**

Max Hewett  
GRACosway  
Phone: +61 432 332 215  
Email: mhewett@gracosway.com.au

**About VGI:** VGI Partners Limited is a high conviction global equity manager that was founded in 2008 to invest capital for high net worth individuals and family offices. Today, VGI is also the Manager for two Listed Investment Companies: VGI Partners Global Investments Limited (ASX:VG1) and VGI Partners Asian Investments Limited (ASX:VG8). Listed on the Australian Securities Exchange since 2019, VGI has offices in Sydney, New York and Tokyo.

**About Regal:** Regal Funds Management is a specialist alternatives investment manager, with a heritage built on long / short fundamental investing. Founded in 2004, the business has grown to become one of Australia's most recognised alternative investment managers, offering investors access to multi-award winning hedge fund, private market and real asset investment strategies. With offices located in Sydney and Singapore, Regal manages in excess of A\$3 billion in capital on behalf of institutional investors, family offices, charities and private investors across Australia, Asia, Europe and the Americas.



## Merger Implementation Deed

in relation to the proposed merger of  
VGI Partners Limited and Regal Funds Management Pty Limited

Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000  
Tel +61 2 9230 4000  
Fax +61 2 9230 5333  
[www.allens.com.au](http://www.allens.com.au)



**Contents**

|          |   |           |
|----------|---|-----------|
| <b>1</b> | <b>Definitions and interpretation</b>               | <b>5</b>  |
| 1.1      | Definitions   | 5         |
| 1.2      | Interpretation                                      | 18        |
| 1.3      | Business Day  | 19        |
| 1.4      | Best and reasonable endeavours                      | 19        |
| 1.5      | Consents or approvals                               | 20        |
| 1.6      | Awareness   | 20        |
| 1.7      | Tax warranties                                      | 20        |
| <b>2</b> | <b>Agreement to implement the Merger</b>            | <b>20</b> |
| 2.1      | Agreement to implement the Merger                   | 20        |
| 2.2      | Assistance  | 20        |
| 2.3      | Sale and purchase of Sale Shares                    | 21        |
| <b>3</b> | <b>Conditions Precedent</b>                         | <b>21</b> |
| 3.1      | Conditions Precedent                                | 21        |
| 3.2      | Best endeavours and co-operation                    | 22        |
| 3.3      | Benefit and waiver of Conditions Precedent          | 22        |
| 3.4      | Failure of Conditions Precedent                     | 23        |
| 3.5      | Certain notices                                     | 23        |
| <b>4</b> | <b>Steps to Completion</b>                          | <b>24</b> |
| 4.1      | VGI's obligations                                   | 24        |
| 4.2      | Regal's obligations                                 | 27        |
| 4.3      | Taxation matters                                    | 28        |
| 4.4      | Regal escrow arrangements                           | 29        |
| 4.5      | Appointment of Listed Entity directors              | 30        |
| 4.6      | Change of ASX ticker                                | 31        |
| 4.7      | Integration planning                                | 31        |
| 4.8      | Access to information and co-operation              | 32        |
| 4.9      | Change of control consents                          | 33        |
| 4.10     | VGI Options   | 34        |
| 4.11     | Regal ESOP Shareholder loans                        | 34        |
| 4.12     | Conduct of business                                 | 34        |
| 4.13     | Permitted Dividends                                 | 36        |
| <b>5</b> | <b>Completion</b>                                   | <b>37</b> |
| 5.1      | Time and manner                                     | 37        |
| 5.2      | Obligations at Completion                           | 37        |
| 5.3      | Occurrence of actions at Completion simultaneous    | 38        |
| <b>6</b> | <b>VGI Board recommendation</b>                     | <b>38</b> |
| 6.1      | Recommendation and Voting Statement                 | 38        |
| 6.2      | Withdrawal of Recommendation or Voting Statement    | 38        |
| 6.3      | Qualification of Recommendation or Voting Statement | 39        |
| 6.4      | No liability for permitted change                   | 39        |
| <b>7</b> | <b>Warranties</b>                                   | <b>39</b> |
| 7.1      | VGI Warranties                                      | 39        |
| 7.2      | Regal Warranties                                    | 40        |
| 7.3      | Independent warranties                              | 40        |
| 7.4      | Survival of warranties                              | 40        |

|           |       |   |           |
|-----------|-------|---|-----------|
|           | 7.5   | Timing of representation and warranties               | 41        |
|           | 7.6   | Claims  | 41        |
| <b>8</b>  |       | <b>Releases</b>                                       | <b>42</b> |
|           | 8.1   | VGI directors and officers                            | 42        |
|           | 8.2   | Regal directors and officers                          | 42        |
| <b>9</b>  |       | <b>Public announcements</b>                           | <b>42</b> |
|           | 9.1   | Announcement of entry into this Deed                  | 42        |
|           | 9.2   | Other public announcements                            | 42        |
| <b>10</b> |       | <b>Exclusivity</b>                                    | <b>43</b> |
|           | 10.1  | No current discussions regarding a Competing Proposal | 43        |
|           | 10.2  | Termination and replacement of term sheet exclusivity | 43        |
|           | 10.3  | No-shop, no talk and no due diligence                 | 43        |
|           | 10.4  | Limitation to no-talk and no-due diligence            | 43        |
|           | 10.5  | Notification by VGI                                   | 43        |
|           | 10.6  | Compliance with law                                   | 44        |
|           | 10.7  | Normal provision of information                       | 44        |
| <b>11</b> |       | <b>Merged Group matters after Completion</b>          | <b>44</b> |
| <b>12</b> |       | <b>Termination</b>                                    | <b>45</b> |
|           | 12.1  | Termination by VGI                                    | 45        |
|           | 12.2  | Termination by Regal                                  | 46        |
|           | 12.3  | Automatic termination                                 | 47        |
|           | 12.4  | Termination by written agreement                      | 47        |
|           | 12.5  | Effect of termination                                 | 47        |
|           | 12.6  | Termination   | 47        |
| <b>13</b> |       | <b>Confidentiality</b>                                | <b>47</b> |
| <b>14</b> |       | <b>GST</b>  | <b>47</b> |
|           | 14.1  | Recovery of GST                                       | 47        |
|           | 14.2  | Liability net of GST                                  | 47        |
|           | 14.3  | Adjustment events                                     | 48        |
|           | 14.4  | Survival  | 48        |
|           | 14.5  | Definitions   | 48        |
| <b>15</b> |       | <b>Notices</b>  | <b>48</b> |
| <b>16</b> |       | <b>General</b>  | <b>49</b> |
|           | 16.1  | Amendment   | 49        |
|           | 16.2  | Assignment  | 49        |
|           | 16.3  | Consents  | 49        |
|           | 16.4  | Costs and duty  | 49        |
|           | 16.5  | Counterparts  | 50        |
|           | 16.6  | Entire agreement                                      | 50        |
|           | 16.7  | Further assurances                                    | 50        |
|           | 16.8  | Governing law and jurisdiction                        | 50        |
|           | 16.9  | No merger   | 50        |
|           | 16.10 | No agency or partnership                              | 50        |
|           | 16.11 | No representation or reliance                         | 50        |
|           | 16.12 | No waiver   | 51        |
|           | 16.13 | Severability of provisions                            | 51        |
|           | 16.14 | Third party beneficiary                               | 51        |

|  |           |
|--|-----------|
| 16.15 Capacity                             | 51        |
| <b>Schedule 1</b>                          | <b>52</b> |
| Regal Shareholders                         | 52        |
| <b>Schedule 2</b>                          | <b>53</b> |
| VGI Warranties                             | 53        |
| <b>Schedule 3</b>                          | <b>61</b> |
| Regal Warranties                           | 61        |
| <b>Schedule 4</b>                          | <b>70</b> |
| VGI Prescribed Occurrences                 | 70        |
| <b>Schedule 5</b>                          | <b>71</b> |
| Regal Prescribed Occurrences               | 71        |
| <b>Schedule 6</b>                          | <b>72</b> |
| Timetable                                  | 72        |
| <b>Schedule 7</b>                          | <b>73</b> |
| Form of NH Voluntary Escrow Deed           | 73        |
| <b>Schedule 8</b>                          | <b>74</b> |
| Form of Regal ESOP Shareholder Escrow Deed | 74        |
| <b>Schedule 9</b>                          | <b>75</b> |
| Form of Stroud Escrow Deed                 | 75        |
| <b>Schedule 10</b>                         | <b>76</b> |
| Form of Foundation Escrow Deed             | 76        |

**This Deed is made on 30 March 2022**

## Parties

- 1 **VGI Partners Limited** (ABN 33 129 188 450) of 39 Phillip Street, Sydney NSW 2000 (**VGI**).
- 2 **Regal Funds Management Pty Limited** (ABN 30 107 576 821) of 'Gateway' Level 47, 1 Macquarie Place Sydney NSW 2000 (**Regal**).
- 3 **New Highland Pty Limited** of 'A4' 15 Narabang Way, Belrose NSW 2085 (ACN 121 604 500) (**New Highland**), as trustee of the King Family Trust.
- 4 **The parties** named in Schedule 1.

## Recitals

- A VGI and Regal have agreed to combine in a scrip merger, pursuant to which VGI will acquire all of the issued shares in Regal in consideration for the issue of New VGI Shares to Regal Shareholders (the **Merger**).
- B VGI has agreed to propose the Merger to VGI Shareholders and to issue the Explanatory Memorandum to VGI Shareholders, and VGI and Regal have agreed to implement the Merger on and subject to the terms and conditions of this Deed.

**It is agreed** as follows.

## 1 Definitions and interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**Accounting Standards** means:

- (a) the accounting standards required under the Corporations Act, including the Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board; and
- (b) the requirements of that law about the preparation and content of accounts, and in relation to a company incorporated outside Australia, the equivalent accounting standards, principles and practices in the jurisdiction of incorporation.

**Adviser** means, in relation to an entity, a professional adviser engaged (directly or indirectly) by the entity for the purposes of the Merger.

**AFSL** means Australian Financial Services Licence.

**Anti-Corruption Laws** means laws, rules, regulations, industry codes or orders of all jurisdictions relating to anti-bribery, anti-corruption, fraud or other similar activities which apply to business and dealings, including without limitation the *Criminal Code Act 1995* (Cth), the *Anti-Money Laundering and Counter- Terrorism Financing Act 2006* (Cth) and the *Crimes (Secret Commissions) Amendment Act 1987* (NSW).

**Anti-Money Laundering Laws** means anti-money laundering and anti-terrorist financing statutes, rules and regulations of all jurisdictions applicable to the VGI Group Members and, as applicable, Regal Group Members, including the *Anti-Money Laundering and Counter-Terrorism*

*Financing Act 2006 (Cth).*

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

**ASIC Regulatory Guide 74** means *ASIC Regulatory Guide 74 Acquisitions approved by members*, as amended from time to time.

**Associate** has the meaning set out in section 12(2) of the Corporations Act, where for the purposes of section 12, the 'designated body' is the Third Party.

**ASX** means ASX Limited (ABN 98 008 624 691) or, as the context requires, the financial market known as 'ASX' operated by ASX Limited.

**ASX Listing Rules** means the official listing rules of the ASX.

**Business Day** means any day that is each of the following:

- (a) a Business Day within the meaning given in the ASX Listing Rules; and
- (b) a day that banks are open for business in Sydney, Australia.

**Change of Control Contracts** means:

- (a) the investment management agreement between NBINV AP9, LLC and Kilter Pty Ltd dated 12 October 2021;
- (b) the lease between RFM Capital Pty Ltd and Perpetual Trustee Company Limited, acting in its capacity as custodian of the Gateway Trust and as agent for Dexu Wholesale Property Limited in relation to Suite 4701, Level 47, Gateway, 1 Macquarie; and
- (c) the lease between Kilter Pty Ltd and Stephen Mark Robertson as trustee for the Triad Property Trust in relation to 41 Breen Street, Quarry Hill, Victoria 3550.

**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 proposal, agreement, arrangement or transaction, which, if entered into or completed, would result in a Third Party (either alone or together with any Associate):

- (a) directly or indirectly acquiring a Relevant Interest in, or having a right to acquire a legal, beneficial or economic interest in, or control of, 20% or more of the issued securities in VGI;
- (b) directly or indirectly acquiring control of VGI within the meaning of section 50AA of the Corporations Act;
- (c) directly or indirectly acquiring or becoming the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or control of, all or a substantial part of VGI's business or assets or the business or assets of the VGI Group; or
- (d) otherwise directly or indirectly acquiring or merging with VGI, whether by way of a takeover bid, members' or creditors' scheme of arrangement, reverse takeover, shareholder approved acquisition, capital reduction or buy back, sale or purchase of shares or assets, joint venture, dual listed company (or other synthetic merger) or other

transaction or arrangement.

**Completion** means completion of the sale and purchase of the Sale Shares under this Deed.

**Completion Date** means:

- (a) the date that is 5 Business Days after the date on which all of the Conditions Precedent are satisfied or waived; or
- (b) such other date as VGI and Regal may agree in writing.

**Conditions Precedent** has the meaning given in clause 3.1.

**Confidentiality Deed** means the confidentiality deed between VGI and Regal dated 17 January 2022.

**Consolidated Group** means a "Consolidated Group" or a "MEC group" as those terms are defined in section 995-1 of the ITAA 1997.

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

**Corporations Regulations** means the *Corporations Regulations 2001* (Cth) as amended from time to time.

**Duty** means any stamp, landholder, transaction or registration duty or similar charge which is imposed by any Government Agency and includes any interest, fine, penalty, charge or other amount imposed by any Government Agency or in respect of any of the above.

**Employee Share** means a fully paid "employee share" in Regal issued in connection with the Regal ESOP.

**Encumbrance** means any third party rights or interests including a mortgage, bill of sale, registration, charge, lien, pledge, trust, encumbrance, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements or any arrangement having a similar effect, and includes any agreement to create any of them or allow any of them to exist.

**End Date** means:

- (a) the date that is six months after the date of this Deed; or
- (b) such later date as VGI and Regal may agree in writing.

**Escrow Deeds** means the NH Voluntary Escrow Deed, the Regal ESOP Shareholder Escrow Deed, the Stroud Escrow Deed and the Foundation Escrow Deed.

**Exclusivity Period** means the period from and including the date of this Deed to the earlier of:

- (a) the termination of this Deed in accordance with its terms; or
- (b) the End Date.

**Explanatory Memorandum** means the explanatory memorandum to be prepared in respect of the Merger in accordance with the terms of this Deed and despatched by VGI to VGI Shareholders, which must include or be accompanied by:

- (a) an explanatory statement complying with the requirements of the Corporations Act, the Corporations Act, Corporations Regulations and ASIC Regulatory Guide 74;
- (b) the Independent Expert's Report;
- (c) the Notice of Meeting; and
- (d) proxy forms.

**Fairly Disclosed** means, in relation to the Regal Due Diligence Materials or the VGI Due Diligence Materials, disclosed in sufficient detail to enable a reasonable recipient of the relevant information, who is experienced in an industry similar to the industry in which the businesses conducted by VGI and Regal operate or transactions similar to the Merger to identify the nature and scope of the relevant matter, event or circumstance.

**Foundation Escrow Deed** means the voluntary escrow deed to be entered into by the trustees of the Regal Foundation (in their capacity as trustees of the Regal Foundation) and VGI on or before the Completion Date in the form set out in Schedule 10.

**Government Agency** means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister (including, for the avoidance of doubt, the Commonwealth Treasurer), ASIC, the ACCC, the ATO, ASX, the Takeovers Panel and any regulatory organisation established under statute or any stock exchange, whether foreign, federal, state, territorial or local.

**GST** means 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 Group** has the meaning given in section 195-1 of the GST Act.

**GST Law** has the same meaning as in the GST Act.

**Independent Expert** means an independent expert to be engaged by VGI to prepare a report and express an opinion on whether or not the Merger is reasonable for VGI Shareholders.

**Independent Expert's Report** means the report prepared by the Independent Expert commissioned by VGI for inclusion in the Explanatory Memorandum, and any update to such report that the Independent Expert issues prior to the VGI Shareholder Meeting.

**Indirect Tax Sharing Agreement** means an agreement between members of a GST Group which takes effect as an indirect tax sharing agreement under section 444-90 of Schedule 1 of the *Taxation Administration Act 1953*.

**Insolvency Event** means, in the case of any entity:

- (a) it ceases, suspends, or threatens to cease or suspend the conduct of all or a substantial part of its business or disposes of or threatens to dispose of all or a substantial part of its assets;
- (b) it stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts;
- (c) it is, or under legislation is presumed or taken to be, insolvent (other than as the result of a failure to pay a debt or Claim the subject of a good faith dispute);
- (d) it has an administrator, controller or similar officer appointed, or any step preliminary to the appointment of such an officer is taken;
- (e) an application or an order is made, proceedings are commenced, or a resolution is passed (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days) for:
  - (i) its winding up, dissolution or administration; or
  - (ii) it entering into an arrangement, compromise or composition with, or assignment



for, the benefit of its creditors or a class of them;

- (f) a:
- (i) receiver, receiver and manager, administrative receiver or similar officer is appointed to;
  - (ii) security interest becomes enforceable or is enforced over; or
  - (iii) distress, attachment or other execution is levied or enforced or applied for over, all or a substantial part of its assets; or
- (g) anything analogous to anything referred to in the above paragraphs, or which has substantially similar effect, occurs with respect to it, including under any foreign law.

**Intellectual Property Rights** means all intellectual property rights, including all current and future registered and unregistered rights in respect of copyright, trademarks, designs, trade secrets, know-how, confidential information, patents, inventions, business names and domain names and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

**ITAA 1936** means the Income Tax Assessment Act 1936 (Cth).

**ITAA 1997** means the Income Tax Assessment Act 1997 (Cth).

**Kilter** means Kilter Pty Limited (ACN 111 305 349).

**Kilter ESOP** means the Kilter Employee Share Trust adopted by Kilter and as disclosed in the Regal Due Diligence Materials.

**King Family Trust** means the King Family Trust (ABN 33 662 537 529).

**Letter Agreement** means the letter to be entered into by the parties which sets out matters specific to the Regal Shareholders.

**Limited Recourse Loan** means a loan from RFM Capital Pty Limited or another Regal Group Member (as lender) to a Regal ESOP Shareholder (as borrower) to fund the issue price of that Regal ESOP Shareholder's Employee Shares.

**Listed Entity** means VGI on and from Completion.

**Management Accounts** means the unaudited historical financial information of Regal Group, consisting of:

- (a) the balance sheet as at 31 December 2021; and
- (b) the profit and loss statements for each month end from 31 July 2021 to 31 January 2022.

**Merged Group** means the Listed Entity and its Related Bodies Corporate on and from Completion.

**Merger** has the meaning given to it in Recital A.

**New VGI Share** means a VGI Share to be issued to Regal Shareholders under this Deed at Completion.

**NH Voluntary Escrow Deed** means the voluntary escrow deed to be entered into by New Highland as trustee of the King Family Trust and VGI on or before the Completion Date in the form set out in Schedule 7.

**Notice of Meeting** means the notice convening the VGI Shareholder Meeting, together with the proxy form for the VGI Shareholder Meeting.

**NPAT** means net profit after tax, excluding the impact of all costs incurred in relation to the

negotiation and implementation of the matters contemplated by this Deed and any other non-recurring significant items.

**Officer** means, in relation to an entity, any of its directors, officers and employees.

**party** means a party to this deed, except in clauses 2.2, 3, 4.7, 4.8, 4.12, 9.2 and 12 where “party” means VGI and Regal only.

**Permitted Regal Dividend** means dividends declared or determined by Regal which satisfy the requirements of clause 4.13(a).

**Permitted VGI Dividend** means dividends declared or determined by VGI which satisfy the requirements of clause 4.13(b).

**Personal Information** has the meaning given in the *Privacy Act 1988* (Cth).

**Philip King Family Trust** means the Philip King Family Trust (ABN 15 674 722 306).

**Proposed Resolutions** means the resolutions of VGI Shareholders required to approve the Merger, including, without limitation:

- (a) an ordinary resolution of VGI Shareholders to approve the Merger under section 611 item 7 of the Corporations Act;
- (b) an ordinary resolution of VGI Shareholders to approve the Escrow Deeds under section 611 item 7 of the Corporations Act, other than to the extent that VGI has obtained specific relief from ASIC with the effect that such a resolution is not required;
- (c) a special resolution under section 157 of the Corporations Act to change the company name of VGI Partners Limited to a name nominated by Regal in consultation with VGI; and
- (d) a special resolution under section 136 of the Corporations Act to change the VGI constitution.

**Reference FuM** means all funds under management in funds managed under any form of management arrangement by all Regal Group Members or all VGI Group Members (as applicable), including all actual or anticipated inflows disclosed in commitment or equivalent notices received by Regal (or, as applicable, VGI) and disclosed to VGI (or, as applicable, Regal) prior to the date of this Deed. It does not include:

- (a) performance and management fees;
- (b) funds in respect of which no Regal Group Member or no VGI Group Member (as applicable) receives fees in connection with that management arrangement;
- (c) all actual or anticipated outflows disclosed in redemption notices received by Regal (or, as applicable, VGI) and disclosed to VGI (or, as applicable, Regal) prior to the date of this Deed); or
- (d) in respect of VGI, any dividends declared by VG1 and VG8 prior to the date of this Deed.

**Regal Accounts** means:

- (a) the audited consolidated financial statements of Regal Group for the years ended 30 June 2020 and 30 June 2021; and
- (b) the audited financial statements of each Regal Group Member for the years ended 30

June 2020 and 30 June 2021.

**Regal Asia** means Regal Funds Management Asia Pte Ltd.

**Regal Board** means the board of directors of Regal.

**Regal Business Confidential Information** means all non-public information relating to the business affairs of the Regal Group.

**Regal Business IP** means all Intellectual Property Rights owned by or licensed to a Regal Group Member.

**Regal Business Personal Information** means Personal Information which:

- (a) is in the possession or under the control of a Regal Group Member; or
- (b) is or has been collected, used or disclosed by a Regal Group Member in connection with the business of the Regal Group.

**Regal Data Room** means the electronic data room maintained by Intralinks on behalf of Regal through which VGI and its Representatives have accessed information relating to the Regal Group.

**Regal Due Diligence Materials** means the information (including written responses from Regal and its Representatives to requests for further information made by Regal and its Representatives) contained in the Regal Data Room at 7.00pm on 25 March 2022, as included on a USB delivered to Allens (acting on behalf of VGI) as soon as practicable after the execution of this Deed.

**Regal ESOP** means the Regal Employee Share Opportunity Plan adopted by the Regal Board on 28 March 2018 and amended on 20 February 2019.

**Regal ESOP Shareholder** means a person who holds Employee Shares from time to time.

**Regal ESOP Shareholder Escrow Deed** means the escrow deed to be entered into by each Regal ESOP Shareholder and New Highland (as trustee of the King Family Trust) on or before the Completion Date in the form set out in Schedule 8 (omitting the schedules set out therein).

**Regal Group** means Regal and its Subsidiaries and, for the avoidance of doubt, includes Kilter and Attunga Capital Pty Ltd (ACN 117 683 093) and excludes Wedgetail Food & Fibre Pty Ltd.

**Regal Group Member** means a member of the Regal Group.

**Regal GST Group** means the GST Group of which Regal and any Regal Group Member are members.

**Regal Indemnified Parties** means:

- (a) each Regal Group Member;
- (b) the Officers and Advisers of each Regal Group Member; and
- (c) each Regal Shareholder.

**Regal Information** means all information regarding the Regal Group that is provided by or on behalf of Regal or any of its Representatives to enable the Explanatory Memorandum to be prepared and completed in accordance with clause 4.1(a).

**Regal Insurance Policy** means an insurance policy procured for the benefit of a Regal Group Member, either alone or together with one or more other Regal Group Members prior to Completion and **Regal Insurance Policies** has a corresponding meaning.

**Regal IT Systems** means information technology systems, software, hardware (including

peripherals and storage media), networks and communication links, owned by or licensed or leased to a Regal Group Member.

**Regal Material Adverse Change** means:

- (a) an aggregate of actual or anticipated outflows of Reference FuM from funds managed under any form of management arrangement by all Regal Group Members exceeding \$400 million as specified in redemption notices received by Regal Group Members; or
- (b) termination of the investment management agreements relating to either The Regal Investment Fund (RF1); conversion of The Regal Investment Fund (RF1) to an ETF or unlisted fund; a return of capital by The Regal Investment Fund (RF1) (other than a buyback of securities); any material change in the structure of The Regal Investment Fund (RF1); Regal or The Regal Investment Fund (RF1) agreeing or making a recommendation to do any of those things; or the shareholders of Regal, The Regal Investment Fund (RF1) or the Regal Long Short Australian Equity Fund (by any person) approving a resolution to do any of those things; or
- (c) Philip King ceases to have any active management or investment management role for Regal; or
- (d) a member of the Regal Group loses its AFSL, has restrictive conditions imposed on its AFSL, or is the subject of a regulatory investigation or other administrative action for a material breach of financial services law and regulation; or
- (e) bona fide proceedings are commenced against a member of the Regal Group for a criminal offence or for damages exceeding \$50 million; or
- (f) any event, occurrence or matter (whether occurring before, on or after the date of this Deed) which has resulted in, or is reasonably likely to result in, either individually or when aggregated with all such events, occurrences or matters, the consolidated annual NPAT of the Regal Group being reduced (on a recurring basis) by an amount more than \$15 million (calculated after taking into account any event, occurrence or matter after the date of this Deed that has or could reasonably be expected to have a positive effect on the consolidated annual NPAT of the Regal Group), as compared to what the consolidated annual NPAT of the Regal Group could reasonably be expected to have been but for the relevant event, occurrence or matter, other than an event, occurrence or matter:
  - (i) required or expressly permitted by this Deed or the Merger;
  - (ii) which VGI has previously approved or requested in writing, including any consequences reasonably foreseeable as a result of such matters;
  - (iii) to the extent that it was Fairly Disclosed in the Regal Due Diligence Material;
  - (iv) disclosed in a document lodged with ASIC that is publicly available by or on behalf of Regal within 12 months prior to the date of this Deed;
  - (v) that is within the actual knowledge of VGI on or before the date of this Deed;
  - (vi) arising from any actual or proposed change in any law, regulation, generally accepted accounting standards or principles or the interpretation of any such standards or principles or other change in accounting standards;
  - (vii) arising from general economic, political or business conditions or changes in those conditions (including financial market fluctuations, changes in interest rates, foreign currency exchange rates, commodity prices or markets (including

- domestic or international financial markets));
- (viii) arising from an act of terrorism, war (whether or not declared), natural disaster or adverse weather conditions, or the like;
  - (ix) arising from the Coronavirus or COVID-19 pandemic (or any mutation, variation or derivative) including the outbreak, escalation or any impact of or recovery from the Coronavirus or COVID-19 pandemic (or any mutation, variation or derivative) including as a result of lockdowns, travel restrictions, social distancing and restrictions of and on activities, venues and gatherings;
  - (x) that is the effect of any applicable laws, orders, rules or regulations of any Government Agency, including the effect of any Australian government directions in respect of the COVID-19 virus (or any mutation, variation or derivative);
  - (xi) relating to Third Party costs and expenses incurred by Regal associated with the Merger, including any fees payable to external Advisers of Regal; or
  - (xii) arising from the announcement of, or entry into, or performance of obligations under, this Deed and consummation of the transactions contemplated hereby (including, to the extent it arises out of the entry into or performance of those obligations, any loss of or adverse change in the relationship of Regal and any Regal Group Member with their respective employees, customers, partners (including joint venture partners), creditors, suppliers, contractors or other contractual counterparties as at the date of this Deed, including the loss of any contract).

**Regal Prescribed Occurrence** means any of the occurrences set out in Schedule 5, other than an occurrence:

- (a) required to be undertaken or procured by the Regal Group under, or otherwise as contemplated by, the Transaction Documents; or
- (b) consented to in writing by VGI.

**Regal Share** means a fully paid ordinary share in the capital of Regal or an Employee Share.

**Regal Shareholders** means New Highland (as trustee of the King Family Trust), Stroud Agricultural Company Pty Ltd (as trustee of the Vernon Trust), the trustees of the Regal Foundation (in their capacity as trustees of the Regal Foundation) and the Regal ESOP Shareholders.

**Regal Tax Consolidated Group** means the Consolidated Group of which Regal and any Regal Group Member are members.

**Regal Warranties** means the warranties set out in Schedule 3 and **Regal Warranty** means any one of them.

**Regulator's Draft** means the draft of the Explanatory Memorandum in a form acceptable to Regal and VGI which is provided by VGI to ASIC for review for the purposes of ASIC Regulatory Guide 74.

**Related Body Corporate** has the meaning given in the Corporations Act.

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

**Representative** means, in relation to a party:

- (a) a Subsidiary of that party;

- (b) an Officer of the person or any of the person's Subsidiaries; or
- (c) an Adviser to the person or any of the person's Subsidiaries.

**Sale Shares** means all of the issued shares in Regal.

**Specified Employee** means a current or former officer, executive or employee of a member of the Regal Group as agreed between VGI and Regal in writing.

**Specified VGI Insurance Policies** means the insurance policies procured for the benefit of a VGI Group Member, either alone or together with one or more other VGI Group Members prior to Completion, relating to Director's & Officers Liability and Investment Managers Liability (PI & Crime).

**Stroud Escrow Deed** means the voluntary escrow deed to be entered into by Stroud Agricultural Company Pty Ltd (in its capacity as trustee of the Vernon Trust) and VGI on or before the Completion Date in the form set out in Schedule 9.

**Subsidiary** has the meaning given in the Corporations Act.

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

- (a) is capable of being valued and completed, taking into account all aspects of the Competing Proposal, including its conditions; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to the VGI Shareholders than the Merger, taking into account all the terms and conditions of the Competing Proposal,

after taking into account a qualitative assessment of the identity, reputation and financial standing of the party making the Competing Proposal.

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

**Tax** means any tax, tax-related liability (within the meaning of Part 4-15 of Schedule 1 of the *Taxation Administration Act 1953*), levy, charge, excise, good and services tax, pay-as-you-go, fringe benefits tax, payroll tax, superannuation guarantee, impost, rates, Duty, fee, deduction, compulsory loan, penalty, fine, withholding or foreign government equivalent which is assessed, levied, imposed or collected by any fiscal Government Agency (including any of the foregoing amounts for which an entity is jointly and severally liable under a Tax Law) or any payment made to a Government Agency to settle an amount of tax and includes any interest, fine, penalty, charge or other amount imposed by any fiscal Government Agency on or in respect of any of the above.

**Tax Act** means the ITAA 1936, the ITAA 1997, or the *Taxation Administration Act 1953* (Cth), as context requires.

**Tax Authority** means any Government Agency responsible for the imposition or collection of tax.

**Tax Funding Agreement** means any agreement where an entity may be required to pay an amount or be entitled to receive an amount calculated by reference to Tax.

**Tax Law** means a law with respect to or imposing any Tax.

**Tax Return** means any return relating to Tax including any document which must be lodged with a Government Agency or which a taxpayer must prepare and retain under a Tax Law (such as an



activity statement, amended return, schedule or election).

**Tax Sharing Agreement** means a tax sharing agreement entered into in accordance with section 721-25 of the ITAA 1997.

**Third Party** means:

- (a) in relation to VGI, any of the following:
  - (i) a person other than any VGI Group Member or Regal Group Member; or
  - (ii) a consortium, partnership, limited partnership, syndicate or other group in which no Regal Group Member has agreed in writing to be a participant; and
- (b) in relation to Regal, any of the following:
  - (i) a person other than any Regal Group Member or VGI Group Member; or
  - (ii) a consortium, partnership, limited partnership, syndicate or other group in which no VGI Group Member has agreed in writing to be a participant.

**Timetable** means the indicative timetable in relation to the Merger set out in Schedule 6, or such other indicative timetable as VGI and Regal may agree in writing or as may be required by the ASX.

**Transaction Documents** means:

- (a) this Deed;
- (b) the Letter Agreement;
- (c) the Escrow Deeds;
- (d) any documents required to be executed by the parties under or relating to the Escrow Deeds; and
- (e) any other document designated as such by the parties.

**VG1** means VGI Partners Global Investments Ltd.

**VG8** means VGI Partners Asian Investments Ltd.

**VGI Accounts** means:

- (a) the audited consolidated financial statements of VGI Group for the years ended 31 December 2020 and 31 December 2021; and
- (b) the audited financial statements of each VGI Group Member for the years ended 31 December 2020 and 31 December 2021.

**VGI Board** means the board of directors of VGI.

**VGI Business Confidential Information** means all non-public information relating to the business affairs of the VGI Group.

**VGI Business IP** means all Intellectual Property Rights owned by or licensed to a Regal Group Member.

**VGI Business Personal Information** means Personal Information which:

- (a) is in the possession or under the control of a VGI Group Member; or
- (b) is or has been collected, used or disclosed by a VGI Group Member in connection with the business of the VGI Group.

**VGI Data Room** means the electronic data room maintained by Ansarada on behalf of VGI through which Regal and its Representatives have accessed information relating to the VGI



Group.

**VGI Due Diligence Materials** means the information (including written responses from VGI and its Representatives to requests for further information made by Regal and its Representatives) contained in the VGI Data Room at 7.00pm on 25 March 2022, as included on a USB delivered to King & Wood Mallesons (acting on behalf of Regal) as soon as practicable after the execution of this Deed.

**VGI ESOP** means the VGI Employee Incentive Plan adopted by the VGI Board on 12 May 2019.

**VGI Group** means VGI and its Related Bodies Corporate.

**VGI Group Member** means a member of the VGI Group.

**VGI GST Group** means the GST Group of which VGI and any VGI Group Member are members.

**VGI Indemnified Parties** means:

- (a) each VGI Group Member;
- (b) the Officers and Advisers of each VGI Group Member; and
- (c) each VGI Shareholder.

**VGI Information** means all information regarding the VGI Group provided by VGI for inclusion in the Explanatory Memorandum (which, for the avoidance of doubt, does not include the Regal Information or the Independent Expert's Report or any other similar third party report).

**VGI Insurance Policy** means the insurance policies procured for the benefit of a VGI Group Member, either alone or together with one or more other VGI Group Members prior to Completion.

**VGI IT Systems** means information technology systems, software, hardware (including peripherals and storage media), networks and communication links, owned by or licensed or leased to a VGI Group Member.

**VGI Material Adverse Change** means:

- (a) an aggregate of actual or anticipated outflows of Reference FuM from funds managed under any form of management arrangement by all VGI Group Members exceeding \$305 million as specified in redemption notices received by VGI Group Members; or
- (b) termination of the VG1 IMA or the VG8 IMA; conversion of VG1 or VG8 to an ETF or unlisted fund; a return of capital by VG1 or VG8 (other than an on-market buyback of securities); any material change in the structure of VG1 or VG8; VGI, VG1 or VG8 agreeing or making a recommendation to do any of those things; or the shareholders of VG1 or VG8 (by any person) approving a resolution to do any of those things; or
- (c) Robert Luciano ceases to have any active management or investment management role for VGI; or
- (d) a VGI Group Member loses its AFSL, has restrictive conditions imposed on its AFSL, or is the subject of a regulatory investigation or other administrative action for a material breach of financial services law and regulation; or
- (e) bona fide proceedings are commenced against VGI, VG1 or VG8 for a criminal offence or for damages exceeding \$50 million; or
- (f) either:
  - (i) the VGI Group receives a written notice of a Claim from a Government Agency threatening the commencement of any material litigation, prosecution, regulatory

investigation or other proceedings concerning alleged breaches of VGI's continuous disclosure obligations under the ASX Listing Rules; or

- (ii) ASIC or ASX (as applicable) makes a determination against VGI that it has breached its continuous disclosure obligations under the Corporations Act or the ASX Listing Rules or any rules, regulations or regulatory guides under the Corporations Act or the ASX Listing Rules,

provided that all ordinary course correspondence and enquiries between VGI and ASIC or (as applicable) ASX, and any price or volume queries received by VGI from ASX, are excluded from this paragraph (f); or

- (g) any event, occurrence or matter (whether occurring before, on or after the date of this Deed) which has resulted in, or is reasonably likely to result in, either individually or when aggregated with all such events, occurrences or matters, the consolidated annual NPAT of the VGI Group being reduced (on a recurring basis) by an amount more than \$5 million (calculated after taking into account any event, occurrence or matter after the date of this Deed that has or could reasonably be expected to have a positive effect on the consolidated annual NPAT of the VGI Group), as compared to what the consolidated annual NPAT of the VGI Group could reasonably be expected to have been but for the relevant event, occurrence or matter, other than an event, occurrence or matter:
  - (i) required or expressly permitted by this Deed or the Merger;
  - (ii) which Regal has previously approved or requested in writing, including any consequences reasonably foreseeable as a result of such matters;
  - (iii) to the extent that it was Fairly Disclosed in the VGI Due Diligence Material;
  - (iv) disclosed to ASX within five years prior to the date of this Deed or disclosed in a document lodged with ASIC that is publicly available by or on behalf of VGI within 12 months prior to the date of this Deed;
  - (v) that is within the actual knowledge of Regal on or before the date of this Deed;
  - (vi) arising from any actual or proposed change in any law, regulation, generally accepted accounting standards or principles or the interpretation of any such standards or principles or other change in accounting standards;
  - (vii) arising from general economic, political or business conditions or changes in those conditions (including financial market fluctuations, changes in interest rates, foreign currency exchange rates, commodity prices or markets (including domestic or international financial markets));
  - (viii) arising from an act of terrorism, war (whether or not declared), natural disaster or adverse weather conditions, or the like;
  - (ix) arising from the Coronavirus or COVID-19 pandemic (or any mutation, variation or derivative) including the outbreak, escalation or any impact of or recovery from the Coronavirus or COVID-19 pandemic (or any mutation, variation or derivative) including as a result of lockdowns, travel restrictions, social distancing and restrictions of and on activities, venues and gatherings;
  - (x) that is the effect of any applicable laws, orders, rules or regulations of any Government Agency, including the effect of any Australian government directions in respect of the COVID-19 virus (or any mutation, variation or derivative);
  - (xi) relating to Third Party costs and expenses incurred by VGI associated with the

- Merger, including any fees payable to external Advisers of VGI; or
- (xii) arising from the announcement of, or entry into, or performance of obligations under, this Deed and consummation of the transactions contemplated hereby (including, to the extent it arises out of the entry into or performance of those obligations, any loss of or adverse change in the relationship of VGI and any VGI Group Member with their respective employees, customers, partners (including joint venture partners), creditors, suppliers, contractors or other contractual counterparties as at the date of this Deed, including the loss of any contract).

**VGI Option** means an option to subscribe for a VGI Share (by issue or transfer) issued by VGI to a VGI employee, officer, director, or a member of the VGI Advisory Council or a nominee of a VGI employee, officer, director, or member of the VGI Advisory Council.

**VGI Prescribed Occurrence** means any of the occurrences set out in Schedule 4, other than an occurrence:

- (a) required to be undertaken or procured by the VGI Group under, or otherwise as contemplated by, the Transaction Documents;
- (b) Fairly Disclosed to ASX within the three year period prior to the date of this Deed; or
- (c) consented to in writing by Regal.

**VGI Restructure** means the reorganisation of the VGI Group to establish a new direct operational subsidiary under VGI to operate the VGI Group's management business.

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

**VGI Shareholder Meeting** means the meeting of VGI Shareholders to consider and, if thought fit, approve the Proposed Resolutions.

**VGI Shareholder** means a person who is registered as the holder of one or more VGI Shares from time to time.

**VGI Tax Consolidated Group** means the Consolidated Group of which VGI and any VGI Group Member are members.

**VGI Warranties** means the warranties set out in Schedule 2 and **VGI Warranty** means any one of them.

## 1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (c) Nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or a relevant part of it.
- (d) The following rules apply unless the context requires otherwise.
  - (i) The singular includes the plural, and the converse also applies.
  - (ii) A gender includes all genders.
  - (iii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
  - (iv) A reference to a person includes a corporation, trust, partnership, unincorporated

body or other entity, whether or not it comprises a separate legal entity.

- (v) A reference to a clause or Schedule or Annexure is a reference to a clause of, or Schedule or Annexure to, this Deed.
- (vi) A reference to an agreement or document (including a reference to this Deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document.
- (vii) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
- (viii) A reference to a party to this Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (ix) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (x) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (xi) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (xii) A reference to *dollars* or \$ is to Australian dollars.
- (xiii) A reference to time is to the time in Sydney, Australia.
- (xiv) A reference to a term defined in or for the purposes of the Corporations Act has the same meaning when used in this Deed.
- (xv) A reference to the ASX Listing Rules includes any variation, consolidation or replacement of those rules and is to be taken to be subject to any waiver or exemption granted by the ASX to the compliance of those rules.

### 1.3 Business Day

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

### 1.4 Best and reasonable endeavours

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

- (a) pay money:
  - (i) in the form of an inducement or consideration to a third party to procure something (other than the payment of immaterial expenses or costs, including costs of Advisers and costs associated with relevant regulatory applications, to procure the relevant thing); or
  - (ii) in circumstances that are commercially onerous or unreasonable in the context of

this Deed;

- (b) provide other valuable consideration to or for the benefit of any person; or
- (c) agree to commercially onerous or unreasonable conditions.

## 1.5 Consents or approvals

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

## 1.6 Awareness

- (a) Certain statements made in this Deed (including certain VGI Warranties) are given and made by VGI only on the basis of its knowledge, belief or awareness. For the purposes of this Deed, VGI's knowledge, belief or awareness is limited to the actual knowledge, belief or awareness of each of Robert Luciano, Adam Philippe, Elizabeth Bruce, Ian Cameron, and David Jones.
- (b) Certain statements made in this Deed (including certain Regal Warranties) are given and made by Regal only on the basis of its knowledge, belief or awareness. For the purposes of this Deed, Regal's knowledge, belief or awareness is limited to the actual knowledge, belief or awareness of each of Philip King, Brendan O'Connor, Kathleen Liu and Kenny Ho.
- (c) Certain statements made in this deed (including certain Regal Warranties) are given and made by New Highland (as trustee of the King Family Trust) only on the basis of its knowledge, belief or awareness. For the purposes of this deed, the knowledge, belief or awareness of New Highland (as trustee of the King Family Trust) is limited to the actual knowledge, belief or awareness of each of Philip King, Brendan O'Connor, Kathleen Liu and Kenny Ho.

## 1.7 Tax warranties

References in clause 7, the VGI Warranties and the Regal Warranties concerning tax matters in relation to the VGI Group Members or the Regal Group Members are to the VGI Group Members or the Regal Group Members in their personal capacity and in their capacity as responsible entity, trustee, general partner, manager or other fiduciary capacity of any trust, company or partnership for which a VGI Group Member or a Regal Group Member is liable for any Tax or Duty in respect of such capacity.

## 2 Agreement to implement the Merger

### 2.1 Agreement to implement the Merger

The parties agree to implement the Merger on and subject to the terms and conditions of this Deed, and must use reasonable endeavours to do so substantially in accordance with the Timetable.

### 2.2 Assistance

Each party agrees to provide reasonable assistance to the other parties to implement the Merger on and subject to the terms and conditions of this Deed, and must use reasonable endeavours to

do so substantially in accordance with the Timetable.

## 2.3 Sale and purchase of Sale Shares

- (a) Subject to clause 3, at Completion each Regal Shareholder must sell the Sale Shares free and clear of all Encumbrances and VGI must purchase the Sale Shares.
- (b) The total consideration payable by VGI for purchase of the Sale Shares will be the issue of 139,612,338 New VGI Shares to Regal Shareholders in accordance with the Letter Agreement.
- (c) Title to and risk in the Sale Shares passes to VGI at Completion and, for the avoidance of doubt and despite any other provision of this Deed, transfer of beneficial ownership in those Sale Shares to VGI does not occur until that time.

## 3 Conditions Precedent

### 3.1 Conditions Precedent

Subject to this clause 3, clauses 2.3 and 5 will not bind the parties and Completion will not occur unless each of the following conditions (the **Conditions Precedent**) is satisfied or waived in accordance with clause 3.3:

#### **Conditions Precedent for the benefit of VGI and Regal**

- (a) **(VGI Shareholder Approval)** VGI Shareholders have approved the Proposed Resolutions at the VGI Shareholders Meeting by the majorities required by the Corporations Act and the ASX Listing Rules, as applicable.
- (b) **(No restraints)** At 11.59pm on the day immediately prior to the Completion Date, there is no applicable law enacted, and there is not in effect any decree, judgment, injunction, direction, writ or other order, whether temporary, preliminary or permanent, made or given by a court of competent jurisdiction or by another Government Agency that prevents, makes illegal or prohibits Completion of the Merger.
- (c) **(Quotation approval for New VGI Shares)** The New VGI Shares which are to be issued pursuant to the Merger have been and remain approved for official quotation by ASX on the Completion Date (provided that any such approval may be subject to customary conditions).
- (d) **(Independent Expert's Report)** The Independent Expert has delivered the Independent Expert's Report to VGI stating its opinion that the Merger is reasonable for VGI Shareholders, and the Independent Expert has not changed adversely or withdrawn its conclusion by notice in writing by the Completion Date.
- (e) **(MAS approval)** The Monetary Authority of Singapore approves: (i) a change in the shareholding of Regal Asia's members, exceeding a 20% threshold under Regal Asia's licence conditions; and (ii) VGI obtaining effective control of Regal Asia, the holder of a capital markets services licence, under section 97A(2) of the Securities and Futures Act (Cap. 289).

#### **Conditions Precedent for the benefit of Regal**

- (f) **(No VGI Prescribed Occurrence)** No VGI Prescribed Occurrence has occurred between the date of this Deed and the Completion Date.
- (g) **(No VGI Material Adverse Change)** No VGI Material Adverse Change has occurred



between the date of this Deed and the Completion Date.

***Conditions Precedent for the benefit of VGI***

- (h) **(No Regal Prescribed Occurrence)** No Regal Prescribed Occurrence has occurred between the date of this Deed and the Completion Date.
- (i) **(No Regal Material Adverse Change)** No Regal Material Adverse Change has occurred between the date of this Deed and the Completion Date.

**3.2 Best endeavours and co-operation**

Without prejudice to any other obligations of the parties under this Deed:

- (a) Regal must use its best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(h) and 3.1(i)
- (b) VGI must use its best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(f) and 3.1(g);
- (c) each party must, to the extent that it is within its control, use its best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(a) to 3.1(e) (inclusive); and
- (d) no party will take any action that will or is likely to hinder or prevent the satisfaction of any Condition Precedent, except to the extent that such action is required to be done or procured under, or is otherwise permitted by, the Transaction Documents, or is required by law.

**3.3 Benefit and waiver of Conditions Precedent**

- (a) The Conditions Precedent in clauses 3.1(a) to 3.1(e) (inclusive) are for the benefit of Regal and VGI, and (except in the case of the Condition Precedent in clause 3.1(a), which cannot be waived) any breach or non-fulfilment of any of those Conditions Precedent may only be waived with the written consent of both parties.
- (b) The Conditions Precedent in clauses 3.1(f) and 3.1(g) are for the sole benefit of Regal, and any breach or non-fulfilment of any of those Conditions Precedent may only be waived by Regal giving its written consent.
- (c) The Conditions Precedent in clauses 3.1(h) and 3.1(i) are for the sole benefit of VGI, and any breach or non-fulfilment of any of those Conditions Precedent may only be waived by VGI giving its written consent.
- (d) A party entitled to waive the breach or non-fulfilment of a Condition Precedent under this clause 3.3 may do so in its absolute discretion.
- (e) If a waiver by a party of a Condition Precedent is itself expressed to be conditional and the other party accepts the conditions, the terms of the conditions apply accordingly. If the other party does not accept the conditions, the relevant Condition Precedent has not been waived.
- (f) If a party waives the breach or non-fulfilment of a Condition Precedent, that waiver will not preclude it from suing the other party for any breach of this Deed constituted by the same event that gave rise to the breach or non-fulfilment of the Condition Precedent.
- (g) Waiver of a breach or non-fulfilment in respect of one Condition Precedent does not constitute:
  - (i) a waiver of breach or non-fulfilment of any other Condition Precedent resulting



from the same events or circumstances; or

- (ii) a waiver of breach or non-fulfilment of that Condition Precedent resulting from any other event or circumstance.

### 3.4 Failure of Conditions Precedent

- (a) If:
  - (i) there is a breach or non-fulfilment of a Condition Precedent that is not waived in accordance with clause 3.3 by the time or date specified in this Deed for the satisfaction of the Condition Precedent;
  - (ii) there is an act, failure to act or occurrence which will prevent a Condition Precedent being satisfied by the time or date specified in this Deed for the satisfaction of the Condition Precedent and such Conditions Precedent is not waived; or
  - (iii) it becomes more likely than not that a Condition Precedent will not be satisfied or waived by the End Date,

then the parties must promptly consult in good faith with a view to determining whether:

  - (iv) the Merger may proceed by way of alternative means or methods;
  - (v) to extend the relevant time or date for satisfaction of the Condition Precedent;
  - (vi) to extend the End Date; or
  - (vii) do any combination of the matters listed in clauses 3.4(a)(iv) to 3.4(a)(vi) (inclusive).
- (b) If the parties are unable to reach agreement under clauses 3.4(a)(iv), 3.4(a)(v) or 3.4(a)(vi) within five Business Days of becoming aware of the relevant occurrence or by the End Date, then a party that has the benefit of the relevant Condition Precedent may terminate this Deed by notice in writing to the other party without liability to the other party because of that termination, unless the relevant occurrence or the failure of the Condition Precedent to be satisfied arises out of a breach by the terminating party of this Deed (for the avoidance of doubt, in such circumstances, the party which is not the terminating party of this Deed may still terminate this Deed).
- (c) Subject to any rights or obligations arising under or pursuant to clauses that are expressed to survive termination, on termination of this Deed, no party shall have any rights against or obligations to any other party under this Deed except for those rights and obligations which accrued prior to termination, including rights arising from a breach by the other party.

### 3.5 Certain notices

- (a) If a party becomes aware that any Condition Precedent has been satisfied, it must promptly notify the other party in writing of that fact.
- (b) If a party becomes aware of a breach or non-fulfilment of a Condition Precedent, or that an event has occurred that will or would be reasonably likely to prevent a Condition Precedent from being satisfied prior to the End Date, it must immediately notify the other party in writing of that fact.
- (c) Each party must promptly advise each other orally and in writing of any change or event causing, or which, so far as can reasonably be foreseen, would cause a breach or non-

fulfilment of any of the Conditions Precedent.

## 4 Steps to Completion

### 4.1 VGI's obligations

VGI must take all steps reasonably necessary to implement the Merger as soon as reasonably practicable after the date of this Deed and must use reasonable endeavours to ensure that each step in the Timetable is met by the date set out beside that step, including by doing any acts it is authorised and able to do on behalf of VGI Shareholders and each of the following:

- (a) **(Preparation of Explanatory Memorandum)** Subject to clauses 4.2(a), 4.2(b) and 4.2(e), prepare the Explanatory Memorandum so that it complies with the Corporations Act, ASIC Regulatory Guide 74 and the ASX Listing Rules. The Explanatory Memorandum must include statements that:
  - (i) other than the Regal Information and the Independent Expert's Report, the Explanatory Memorandum has been prepared by VGI and is the responsibility of VGI, and that no Regal Group Member assumes any responsibility for the accuracy or completeness of the Explanatory Memorandum (other than the Regal Information);
  - (ii) the Regal Information has been provided by Regal and is the responsibility of Regal, and that no VGI Group Member assumes any responsibility for the accuracy or completeness of the Regal Information;
  - (iii) the Regal ESOP Shareholders and New Highland (as trustee of the King Family Trust) will each enter into the Regal ESOP Shareholder Escrow Deed on or before Completion, subject to the receipt of VGI Shareholder approval or ASIC relief permitting the same;
  - (iv) New Highland (in its capacity as trustee of the King Family Trust), and Phil King will enter into the NH Voluntary Escrow Deed on or before Completion, subject to the receipt of VGI Shareholder approval or ASIC relief permitting the same;
  - (v) Stroud Agricultural Company Pty Ltd (in its capacity as trustee of the Vernon Trust) will enter into the Stroud Escrow Deed on or before Completion, subject to the receipt of VGI Shareholder approval or ASIC relief permitting the same;
  - (vi) the trustees of the Regal Foundation (in their capacity as trustees of the Regal Foundation) will enter into the Foundation Escrow Deed on or before Completion, subject to the receipt of VGI Shareholder approval or ASIC relief permitting the same; and
  - (vii) each of New Highland (in its capacity as trustee of the King Family Trust), Stroud Agricultural Company Pty Ltd (in its capacity as trustee of the Vernon Trust), and the trustees of the Regal Foundation (in their capacity as trustees of the Regal Foundation) have conveyed their intention to VGI that they do not intend to sell or otherwise transfer or deal in any ordinary shares in VGI that are issued to them on Completion but are not the subject of the NH Voluntary Escrow Deed, Stroud Escrow Deed, or Foundation Escrow Deed (as applicable) other than on the same terms as would be permitted as if those shares were also the subject of the NH Voluntary Escrow Deed, Stroud Escrow Deed, or Foundation Escrow Deed (as applicable) or where proceeds of the sale of ordinary shares in VGI are able to be used to participate in capital raisings for new funds or products that VGI may choose to establish in the future, or other initiatives that may assist VGI's

growth or otherwise benefit VGI.

- (b) **(Independent Expert)** Promptly appoint the Independent Expert (if the Independent Expert has not been appointed prior to the date of this Deed), and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report.
- (c) **(Consultation with Regal)** Consult with Regal as to the content and presentation of the Explanatory Memorandum, such consultation to include allowing Regal a reasonable opportunity to review and make comments on successive drafts of the Explanatory Memorandum a reasonable time before its lodgement with ASIC and obtaining Regal's written consent to the inclusion of the Regal Information (including in respect of the form and context in which the Regal Information appears in the Explanatory Memorandum) prior to lodgement of the Explanatory Memorandum with ASIC. VGI must consider in good faith any comments on drafts of the Explanatory Memorandum provided by or on behalf of Regal.
- (d) **(VGI Information)** Provide all assistance and information reasonably requested by Regal in connection with the review by Regal of information for inclusion in the Explanatory Memorandum.
- (e) **(Due diligence and verification)** Undertake appropriate due diligence and verification processes in relation to the VGI Information.
- (f) **(Notifications under insurance)** Prior to Completion, request written confirmation from the insurers under the VGI Insurance Policies (other than the Specified VGI Insurance Policies) that such policies will remain in force after Completion, on the same terms as before Completion, and that such policies will not be cancelled or go into run-off as a result of the transactions contemplated by this Deed.
- (g) **(New insurance and run-off cover)** To the extent that any VGI Insurance Policies:
  - (i) will be cancelled on Completion;
  - (ii) will go into run-off on Completion; or
  - (iii) will not, from Completion, cover Regal, Regal Asia or any other Regal Group Member for which Regal requires coverage,

VGI must, in consultation with Regal, take reasonable steps to procure replacement insurance cover and/or 7 years' run-off cover, as applicable, on terms mutually acceptable to VGI and Regal, acting reasonably.
- (h) **(Maintain Insurance)** From the date of this Deed until Completion, maintain (and if necessary, renew) all insurance policies on substantially the same terms as the policies in place as at the date of this Deed and promptly notify Regal if any renewal proposal is not accepted by the insurer.
- (i) **(Investment Manager Insurance Policy)** Consult with the insurer to update the named insured under the Investment Managers Insurance policy issued to VGI Partners Pty Limited by Newline Australia Insurance Pty Limited on behalf of Lloyds (Newline Syndicate NWL1218) for the period 7 May 2021 to 7 May 2022 and bearing policy number AUS21937994A/B/C from "VGI Partners Pty Limited" to "VGI Partners Limited".
- (j) **(Liaison with ASIC)** As soon as reasonably practicable after the date of this Deed, and following Regal giving confirmation or providing changes as contemplated by clause 4.2, provide the Regulator's Draft to ASIC for its review and approval for the purposes of ASIC Regulatory Guide 74, and to Regal, and keep Regal reasonably informed of any matters

raised by ASIC in relation to the Explanatory Memorandum (and of any resolution of those matters), and use reasonable endeavours, in consultation with Regal, to resolve any such matters (provided that VGI may not resolve any such matters without the prior written consent of Regal).

- (k) **(Approval of Explanatory Memorandum)** As soon as practicable after ASIC has completed its review of the Regulator's Draft, procure that a meeting of the VGI Board is convened for the purpose of approving the Explanatory Memorandum for despatch to VGI Shareholders.
- (l) **(Despatch of Explanatory Memorandum)** Send the Explanatory Memorandum to VGI Shareholders following receipt of Regal's written consent to the inclusion of the Regal Information in the form and context in which the Regal Information appears in such version of the Explanatory Memorandum.
- (m) **(Update Explanatory Memorandum)** If, after the Explanatory Memorandum has been sent to VGI Shareholders, it becomes aware of information that is:
  - (i) not included in the Explanatory Memorandum and that is:
    - (A) material for disclosure to VGI Shareholders in deciding whether to approve the Proposed Resolutions; or
    - (B) required to be disclosed to VGI Shareholders under any applicable law; or
  - (ii) included in the Explanatory Memorandum and is misleading or deceptive (whether by omission or otherwise) in a material respect in the form and context in which it appears in the Explanatory Memorandum,

inform VGI Shareholders of the information in an appropriate and timely manner, in accordance with applicable law. VGI must consult with Regal as to the form and content of any supplementary disclosure before it is made to VGI Shareholders, and, to the extent reasonably practicable, must provide Regal with a reasonable opportunity to review and comment on such disclosure before it is made and must consider in good faith any comments provided by or on behalf of Regal. To the extent that any supplementary disclosure relates to (or constitutes) Regal Information, it may only be made with Regal's prior written consent (not to be unreasonably withheld or delayed).
- (n) **(VGI Shareholder Meeting)** Convene the VGI Shareholder Meeting to approve the Proposed Resolutions.
- (o) **(ASX listing of New VGI Shares)** Maintain VGI's admission to the official list of ASX and the quotation of VGI Shares on ASX up to and including the Completion Date and apply to ASX to obtain official quotation of the New VGI Shares by ASX on the Completion Date.
- (p) **(Resignation of directors)** Procure resignation letters from all of the VGI directors other than David Jones and Jaye Gardner with effect from Completion.
- (q) **(VGI Board approval of Merger)** On or before the Completion Date, convene a meeting of the VGI Board to approve (subject to Completion occurring):
  - (i) the resignations of all of the VGI directors other than David Jones and Jaye Gardner with effect from Completion;
  - (ii) the appointment of each person notified to VGI under clause 4.2(b) as a director of the Listed Entity with effect from Completion (provided that a consent to act

- and notification of interest signed by those persons has been delivered to VGI);
- (iii) the appointment of each person notified to VGI to under clause 4.5(b) as a director of the Listed Entity with effect from Completion (provided that a consent to act and notification of interest signed by those persons has been delivered to VGI);
- (iv) the issue of New VGI Shares to Regal Shareholders in accordance with this Deed;
- (v) Completion of the Merger and any actions required to ensure Completion of the Merger in accordance with this Deed; and
- (vi) the appointment of Brendan O'Connor as Chief Executive Officer of the Merged Group and the appointment of Ian Cameron as Chief Financial Officer of the Merged Group.

## 4.2 Regal's obligations

Regal must take all steps reasonably necessary to assist VGI to implement the Merger as soon as reasonably practicable and, without limiting the foregoing, must use reasonable endeavours to ensure that each step in the Timetable is met by the date set out beside that step, including by doing each of the following:

- (a) **(Regal Information)** Prepare and provide to VGI the Regal Information for inclusion in the Explanatory Memorandum to comply with all applicable laws, including the Corporations Act, ASIC Regulatory Guide 74 and the ASX Listing Rules relevant to the Regal Information and consult with VGI as to the content and presentation of the Regal Information in the Explanatory Memorandum, such consultation to include allowing VGI a reasonable opportunity to review and make comments on successive drafts of the Regal Information before lodgement of the Regulator's Draft with ASIC. Regal must consider in good faith any comments on drafts of the Regal Information provided by or on behalf of VGI.
- (b) **(Nominate Listed Entity directors)** As soon as practicable after the date of this Deed and no later than 10 Business Days prior to the date on which VGI lodges the Explanatory Memorandum with ASIC, provide written notice of two individuals to be appointed as directors of the Listed Entity on and from Completion, which will include the Chief Executive Officer of the Merged Group.
- (c) **(Review drafts of Explanatory Memorandum)** As soon as practicable after delivery of the Explanatory Memorandum by VGI, review drafts of the Explanatory Memorandum prepared by VGI and provide any comments on those drafts.
- (d) **(Due diligence and verification)** Undertake appropriate due diligence and verification processes in relation to the Regal Information.
- (e) **(Independent Expert information)** Provide all assistance and information reasonably requested by VGI or by the Independent Expert in connection with the preparation of the Independent Expert's Report.
- (f) **(Confirmation of Regal Information)** Before the Regulator's Draft is provided to ASIC pursuant to ASIC Regulatory Guide 74, procure that a meeting of the board of directors of Regal is held to consider the Regal Information included in the Explanatory Memorandum as being in a form appropriate for provision to ASIC for review, and either:
  - (i) confirm in writing to VGI its opinion that the Regal Information in the form and

- context in which it appears in the Explanatory Memorandum is not misleading or deceptive in any material respect and does not contain any material omission; or
- (ii) provide to VGI the changes it considers are required to ensure that the Regal Information in the form and context in which it appears in the Explanatory Memorandum is not misleading or deceptive in any material respect and does not contain any material omission.
- (g) **(Approval and consent to inclusion of Regal Information)** As soon as reasonably practicable after the conclusion of the review by ASIC of the Regulator's Draft:
- (i) procure that a meeting of the board of directors of Regal is held to consider the Regal Information included in the Explanatory Memorandum as being in a form appropriate for despatch to VGI Shareholders; and
  - (ii) confirm in writing to VGI that Regal consents to the inclusion of the Regal Information in the Explanatory Memorandum, in the form and context in which the Regal Information appears.
- (h) **(Update Regal Information)** If at any time after the despatch of the Explanatory Memorandum, Regal becomes aware:
- (i) of new information which, were it known at the time of dispatch, should have been included in any Regal Information included in that version of the Explanatory Memorandum; or
  - (ii) that any part of the Regal Information included in that version of the Explanatory Memorandum is misleading or deceptive in any material respect (whether by omission or otherwise),
- it must advise VGI so that VGI can determine whether supplementary disclosure to VGI Shareholders is required in accordance with (and subject to the terms of) clause 4.1(l).
- (i) **(Notifications under insurance)** Prior to Completion, providing or procuring the relevant Regal Group Member to provide all notifications or disclosures which are required to be provided under the all Regal Insurance Policies, including any notifications with respect to the transactions contemplated by this Deed.
  - (j) **(Maintain Insurance)** From the date of this Deed until Completion, maintain (and if necessary, renew) all Regal Insurance Policies on substantially the same terms as the policies in place as at the date of this Deed and promptly notify VGI if any renewal proposal is not accepted by the insurer.
  - (k) **(Run-off insurance)** Enter into arrangements to secure directors' and officers' liability run-off insurance for a period of 7 years from the Completion Date, as well as any Regal Insurance Policies that terminate on a change of control of Regal.

#### 4.3 Taxation matters

- (a) The parties:
  - (i) acknowledge that the Regal Shareholders intend to make all necessary elections to ensure that the Regal Shareholders meet and obtain the capital gains tax rollover relief contained in Subdivision 124-M of the Tax Act on the transfer of their Sale Shares to VGI in consideration for the issue of the New VGI Shares (**CGT Rollover Relief**); and
  - (ii) agree that no Regal Shareholder is or shall be entitled to bring a Claim against VGI, the Listed Entity, or any Subsidiary of the Listed Entity in connection with



CGT Rollover Relief or otherwise in connection with the settlement of their respective interests in the Regal ESOP, other than to the extent that such Claim relates to a material failure by VGI to comply with its obligations under this clause 4.3

- (b) VGI must take all reasonable actions, and Regal must provide all necessary support to VGI, to facilitate the Regal Shareholders obtaining capital gains tax rollover relief under Subdivision 124-M of the Tax Act on the transfer of their Sale Shares to VGI in consideration for the issue of the New VGI Shares and, without limiting the foregoing, VGI agrees to:
  - (i) not, at any time, make a choice under section 124-795(4) of the Tax Act to prevent the Regal Shareholders from choosing rollover relief under subdivision 124-M of the Tax Act; and
  - (ii) if requested by a particular Regal Shareholder, execute a document prior to Completion (the form to be agreed by the parties), pursuant to which VGI and that Regal Shareholder jointly choose to obtain the roll-over in subdivision 124-M of the Tax Act for the purposes of section 124-780(3)(d) of the Tax Act, in which case the particular Regal Shareholder must also notify VGI in writing of its cost base for its Sale Shares.
- (c) Regal and/or the Regal Shareholders are permitted (at the sole cost and expense of the Regal Shareholders) to lodge applications for tax rulings from any Tax Authority with respect to Merger as it relates to their participation in the Merger. Regal agrees to keep VGI informed of any ruling applications and VGI agrees to provide Regal and/or the Regal Shareholders with any reasonable assistance to facilitate the progression of any ruling application (including the provision of any relevant information as it relates to the ruling application).
- (d) Each Regal Shareholder declares that:
  - (i) it is, and will be, an Australian resident for the purposes of the Tax Act; and
  - (ii) its Sale Shares are not, and will not be, indirect Australian real property interests for the purposes of the Tax Act,

for the period from the date of this document until and including the earlier of the Completion Date and the date that is six months after the date of this Deed (**Declaration Period**).
- (e) If Completion occurs later than the date that is six months after the date of this Deed, each Regal Shareholder will provide to VGI, before Completion, a further declaration or declarations of the kind referred to in clause 4.3(d) for the period from the last date of the Declaration Period until and including the Completion Date.
- (f) VGI agrees that having regard to the declarations made in clause 4.3(d) and provided that the Regal Shareholders comply with clause 4.3(e), if relevant, it will not withhold any amount under Subdivision 14-D of Schedule 1 to the Tax Act with respect to the transactions contemplated in this Deed.

#### 4.4 Regal escrow arrangements

- (a) On or prior to Completion, subject to the receipt of VGI Shareholder approval or ASIC relief permitting the same:
  - (i) VGI must enter into, and Regal must procure that New Highland (in its capacity



- as trustee of the King Family Trust) and Philip King enter into, the NH Voluntary Escrow Deed in the form set out in Schedule 7;
- (ii) VGI must enter into, Regal must procure that each Regal ESOP Shareholder and New Highland (as trustee of the King Family Trust) enter into, the Regal ESOP Shareholder Escrow Deed in the form set out in Schedule 8;
  - (iii) VGI must enter into, and Regal must procure that Stroud Agricultural Company Pty Ltd (in its capacity as trustee of the Vernon Trust) enters into, the Stroud Escrow Deed in the form set out in Schedule 9; and
  - (iv) VGI must enter into, and Regal must procure that the trustees of the Regal Foundation (in their capacity as trustees of the Regal Foundation) each enter into, the Foundation Escrow Deed in the form set out in Schedule 10.
- (b) New Highland (in its capacity as trustee of the King Family Trust), Stroud Agricultural Company Pty Ltd (in its capacity as trustee of the Vernon Trust) and the trustees of the Regal Foundation (in their capacity as trustees of the Regal Foundation) must each, prior to the despatch of the Explanatory Memorandum, provide written confirmation of their intentions to VGI that they do not intend to sell or otherwise transfer or deal in any ordinary shares in VGI that are issued to them on Completion but are not the subject of an Escrow Deed other than on the same terms as would be permitted as if those shares were also the subject of the NH Voluntary Escrow Deed, Stroud Escrow Deed, or Foundation Escrow Deed (as applicable) or where proceeds of the sale of ordinary shares in VGI are able to be used to participate in capital raisings for new funds or products that VGI may choose to establish in the future, or other initiatives that may assist VGI's growth or otherwise benefit VGI, and provide consent to VGI to reference such confirmation in the Explanatory Memorandum.
  - (c) Regal will procure that prior to the despatch of the Explanatory Memorandum Philip King provides written confirmation to VGI confirming that Philip King will not transfer, relinquish, charge, or otherwise deal in his rights or interest in New Highland or the King Family Trust during the period in which the NH Voluntary Escrow Deed is in force in a way which has the effect of a third party acquiring a direct or indirect interest in, or control over, the New VGI Shares held by New Highland immediately after Completion, and provide consent to VGI to reference such confirmation in the Explanatory Memorandum.

#### 4.5 Appointment of Listed Entity directors

- (a) The parties agree that the board of the Listed Entity shall, on and from Completion, be comprised of:
  - (i) two individuals who are VGI directors on the day prior to Completion, one of whom will be an independent non-executive director appointed to the Nominations and Remuneration Committee of the Listed Entity;
  - (ii) two individuals notified by Regal to VGI to under clause 4.2(b); and
  - (iii) two individuals notified jointly by Robert Luciano and Philip King to VGI under clause 4.5(b).
- (b) VGI and Regal will procure that Robert Luciano and Philip King will provide joint written notice to VGI of the two independent directors who they have nominated to the Listed Entity board no later than 15 Business Days prior to Completion, or such later date as VGI and Regal agree.
- (c) VGI and Regal will procure that Robert Luciano and Philip King are each provided with

copies of materials provided to, and the minutes of meetings of, the board of the Listed Entity for as long as Robert Luciano or, as applicable, Philip King, remain senior Listed Entity executives.

- (d) New Highland (in its capacity as trustee of the King Family Trust and in its capacity as trustee of the Philip King Family Trust) must, prior to the despatch of the Explanatory Memorandum, provide written confirmation to VGI of its intention not to take any steps towards, or to vote in favour of, any resolution to remove either of the individuals specified in clause 4.5(a)(i) from the board of the Listed Entity during the three years immediately following Completion, other than where those individuals have breached their director's duties or acted dishonestly or fraudulently, and provide consent to VGI to reference such confirmation in the Explanatory Memorandum.

#### 4.6 Change of ASX ticker

Before Completion, VGI will apply to ASX to change its ticker at Completion from "VGI" to a ticker nominated by Regal in consultation with VGI.

#### 4.7 Integration planning

- (a) On and from the date of this Deed, the parties agree to establish a committee (**Integration Committee**) comprising individuals nominated by VGI and Regal (in equal numbers from each of VGI and Regal) from time to time.
- (b) The role of the Integration Committee will be to act as a forum for discussion and planning in respect of the following:
  - (i) matters related to integration planning, including employee retention and incentivisation, stakeholder engagement and communications, business operations and functions or processes;
  - (ii) the process referred to in clause 4.8; and
  - (iii) any other matters as the parties may agree from time to time.
- (c) Each party must ensure that its representatives on the Integration Committee act in good faith in their capacity as members of the Integration Committee with a view to fulfilling the role and objectives of such committee (to the extent within their power).
- (d) The Integration Committee will meet at such times and places as agreed between the members of the Integration Committee from time to time. Meetings may be held via telephone or other forms of technology that provide representatives with an opportunity to participate.
- (e) The members of the Integration Committee may agree to invite other persons to attend meetings of the Integration Committee from time to time.
- (f) From time to time, certain members of the Integration Committee or other representatives of the parties (as agreed between the parties) will meet separately to meetings of the Integration Committee to discuss and progress matters considered or plans developed by the Integration Committee.
- (g) The parties acknowledge and agree that:
  - (i) the Integration Committee is a discussion and planning forum only, and the members of the Integration Committee do not have power to bind the other party

- or to give any consent, approval or waiver on behalf of such other party;
- (ii) nothing in this clause 4.7 or elsewhere in this Deed requires a party to:
    - (A) act at the direction of the other party or is intended to create a relationship of partnership, joint venture or similar between the parties; or
    - (B) take any action that would reasonably be expected to conflict with or violate the party's constituent documents or any law;
  - (iii) nothing in this clause 4.7 or elsewhere in this Deed gives a party a right to undertake further due diligence;
  - (iv) the respective businesses of the VGI Group and Regal Group are to continue to operate independently until (and subject to) implementation of the Merger; and
  - (v) nothing in this clause 4.7 requires:
    - (A) any of VGI's representatives on the Integration Committee to do anything which would unduly interfere with their responsibilities to VGI and the ongoing conduct of VGI's business; and
    - (B) any of Regal's representatives on the Integration Committee to do anything which would unduly interfere with their responsibilities to Regal and the ongoing conduct of Regal's business.

#### 4.8 Access to information and co-operation

- (a) Between the date of this Deed and Completion, each party must (and must ensure each of its Subsidiaries):
  - (i) respond to reasonable requests from the other party and their respective Representatives for information concerning its business, operations and affairs as soon as reasonably practicable after such requests have been made; and
  - (ii) provide the other party and their respective Representatives reasonable access to the information (subject to any existing confidentiality obligations owed to Third Parties, or applicable privacy laws) and senior executives of the party and its Subsidiaries,

in each case as the other party reasonably requires for the purpose of:

  - (iii) implementation of the Merger;
  - (iv) integration planning prior to implementation of the Merger which, for the avoidance of doubt, does not include ongoing due diligence;
  - (v) determining whether a Regal Material Adverse Change or a VGI Material Adverse Change has occurred; or
  - (vi) any other purpose agreed to in writing between the parties.
- (b) Each of Regal and VGI must provide the other with a schedule containing reasonable details of any redemption notices received in respect of funds or managed accounts managed by the Regal Group or, as applicable, the VGI Group on a weekly basis between the date of this Deed and Completion.
- (c) Each of Regal and VGI must provide the other with details and copies of relevant correspondence in relation to:
  - (i) staff departures, including written and verbal notices of resignation; and
  - (ii) communications with ASIC, ASX, ATO or the SEC, including breach reports and

responses to breach reports.

- (d) VGI must promptly provide Regal with:
  - (i) copies of all correspondence between VGI and VG1 and VGI and VG8 which is not in the ordinary course of business;
  - (ii) any notices received by VGI in connection with any IMA which is not in the ordinary course of business;
  - (iii) decisions made by VGI concerning its continuous disclosure obligations; and
  - (iv) copies of all correspondence to or from, or in connection with, any shareholder activist.
- (e) Prior to finalisation of the Explanatory Memorandum, each party must (and must ensure each of its Subsidiaries) provide to each other, their respective Representatives and any investigating accountant with reasonable access (at times mutually agreeable to the parties) to their respective auditors, accountants, books and records (including financial reports, audited or otherwise) for the sole purpose of preparation of the financial statements (including for the Merged Group, if any) for inclusion in the Explanatory Memorandum or any investigating accountant's report (and any updates).
- (f) The obligations in clauses 4.8(a), and 4.8(d) do not require VGI or Regal (as applicable) to:
  - (i) do anything which would cause unreasonable disruption to its business;
  - (ii) require a VGI Group Member or Regal Group Member (as applicable) to take any action that would reasonably be expected to conflict with or violate the entity's constituent documents or any law;
  - (iii) require a VGI Group Member or Regal Group Member (as applicable) to take any action that would breach an obligation to any person (including any confidentiality obligations); or
  - (iv) provide any confidential, competitively sensitive or privileged information where the provision of such information is reasonably likely to cause prejudice to the commercial or legal interests of the VGI Group or Regal Group (as applicable) taken as a whole, or would be reasonably likely to jeopardise any attorney-client, work product or other legal privilege.
- (g) Between the date of this Deed and Completion, VGI and Regal will consult with each other and where practicable take reasonable steps towards preparing an application for an Australian Financial Services Licence that permits the Listed Entity to establish and manage retail investment funds and give financial advice to retail clients.

#### 4.9 Change of control consents

As soon as practicable after the date of this Deed, VGI and Regal must seek to identify any change of control or unilateral termination rights in material contracts to which either VGI or any other VGI Group Member or Regal or any other Regal Group Member is party which may be triggered by or exercised in response to Completion of the Merger. In respect of those contracts and the Change of Control Contracts:

- (a) VGI and Regal will use reasonable endeavours to agree a proposed course of action (which, among other things, will have due regard to applicable legal restrictions) and then VGI or Regal (as applicable) will initiate contact, including joint discussions if required, with the relevant counterparties and request that they provide any consents or

confirmations required;

- (b) VGI and Regal must use reasonable endeavours to obtain, prior to the Completion Date, any required consents or confirmations. A failure by either a VGI Group Member or Regal Group Member to obtain any required consents or confirmations, or the exercise of a termination right by a relevant counterparty, will not constitute a breach of this Deed by either VGI or Regal and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this Deed;
- (c) VGI or Regal (as applicable) must not contact any counterparties of the other party without VGI or Regal (as applicable) present or without VGI's or Regal's (as applicable) prior written consent and must cooperate with, and provide reasonable assistance to, VGI or Regal (as applicable) to obtain such consents or confirmations as expeditiously as possible; and
- (d) VGI or Regal (as applicable) must take all action necessary to comply with any requirements of the counter-parties that are reasonably necessary to obtain the relevant consent or confirmation, including providing any information required and entering into parent guarantees or such other forms of guarantee or security as counter-parties may reasonably require and make its Representatives available, where necessary to meet with counterparties to deal with any issues arising in relation to the matter,

but nothing in this clause requires VGI or Regal to incur material expense.

#### 4.10 VGI Options

- (a) VGI must take such action as is necessary after the VGI Shareholder Meeting and prior to the Completion Date to ensure that, by no later than the Completion Date, there are no outstanding VGI Options.
- (b) In order to comply with its obligations under clause 4.10(a), VGI may (in its discretion):
  - (i) cause some or all of the outstanding VGI Options to vest (including by modifying or waiving any conditions for vesting) and, following such vesting, cause the relevant number of VGI Shares to be transferred or issued (as applicable) to the relevant former holders of the relevant VGI Options;
  - (ii) take such action as may be necessary to cancel any outstanding VGI Options which it does not cause to vest in accordance with clause 4.10(b)(i) (if any); and
  - (iii) refund to participants any premiums paid in respect of VGI Options.

#### 4.11 Regal ESOP Shareholder loans

Without limiting any provision of this Deed, Regal and New Highland (as trustee of the King Family Trust) must procure that all Limited Recourse Loans are repaid and discharged in full prior to Completion.

#### 4.12 Conduct of business

- (a) During the period from the date of this Deed up to and including the Completion Date, each of VGI and Regal must:
  - (i) conduct, and must ensure that each of its respective Subsidiaries conducts, its business and operations in the ordinary course and substantially consistent (subject to any applicable laws and regulations) with the manner in which each such business and operations has been conducted in the 12 month period prior to the date of this Deed (it being acknowledged by the parties that the general

- economic and market conditions and business operating environment has been, and may further be impacted by, the COVID-19 Coronavirus pandemic);
- (ii) to the extent consistent with that obligation, use its best endeavours to:
    - (A) preserve intact its current business organisation;
    - (B) keep available the services of its current directors, key officers and key employees;
    - (C) maintain and preserve its relationships with Government Agencies, financiers, customers, suppliers, licensors, licensees and others having business dealings with it;
    - (D) comply in all material respects with all material contracts to which it or its Subsidiaries are a party, and with the material laws, authorisations and licences applicable to it or its Subsidiaries; and
    - (E) not take or fail to take any action that constitutes a VGI Prescribed Occurrence or, as applicable, Regal Prescribed Occurrence or that would reasonably be expected to result in a VGI Prescribed Occurrence or, as applicable, Regal Prescribed Occurrence;
  - (iii) subject to the Confidentiality Deed, keep the other party informed of any material developments concerning the conduct of its business and the business of its Subsidiaries;
  - (iv) report any breach of a financial services law or AFSL condition of which the party becomes aware and is required by law to report, and remedy that breach;
  - (v) promptly provide the other party with copies of any material correspondence between a Government Agency and it or any of its Subsidiaries;
  - (vi) not enter into or materially alter, vary or amend any employment, consultant, severance or similar agreement or arrangement with any person, including any of its officers, directors, other executives or employees whose base remuneration exceeds (or would exceed in the case of an agreement or arrangement not on foot on the date of this Deed) \$400,000 (**Key Person**), or accelerating or otherwise materially increasing compensation, benefits or entitlements for any Key Person, in each case other than pursuant to entitlements in effect on the date of this Deed;
  - (vii) not change any accounting policy applied to report its financial position other than any change in policy required by a change in accounting standards; and
  - (viii) not authorise, commit or agree to do any of the matters set out in paragraphs (vi) and (vii) above.
- (b) Nothing in clause 4.12 restricts the ability of a party to take any action which:
- (i) is required to pay a Permitted Regal Dividend or Permitted VGI Dividend (including, for the avoidance of doubt the declaration and payment of such a dividend);
  - (ii) is necessary to implement the VGI Restructure;
  - (iii) is required or expressly permitted by this Deed;
  - (iv) is required in order to comply with any applicable law;
  - (v) has been Fairly Disclosed in any announcement by VGI to the ASX within the



- three year period prior to the date of this Deed; or
- (vi) is required to be done to reasonably and prudently respond to an emergency or disaster, including:
    - (A) a situation giving rise to a risk of personal injury or material damage to property; or
    - (B) an action required in connection with:
      - (1) shutting down or reinitiating operation of all or a portion of the business of the VGI Group or Regal Group (as relevant) to the extent affected by the response to the events referred to in paragraph (A); or
      - (2) protecting the health and safety of customers, employees and other business relationships and to ensure compliance with any law providing for business closures, sheltering-in-place or other restrictions that relate to, or arise out of, health conditions (including any public health emergency, epidemic, pandemic (including COVID-19) or disease outbreak); or
    - (C) has been agreed to in writing by the other party.
  - (c) VGI may, between the date of this Deed and the Completion Date, issue new ordinary shares in VGI to VGI employees in accordance with its obligations under the Corporations Act and ASX Listing Rules provided that it consults with Regal in advance of implementing any such issuance of shares and:
    - (i) the aggregate number of new shares issued in accordance with this clause 4.12(c) does not exceed 698,061;
    - (ii) the holders of the new shares issued in accordance with this clause 4.12(c) will be subject to a voluntary escrow expiring no earlier than 21 June 2024 in substantially the same form as the Regal ESOP Shareholder Escrow Deed; and
    - (iii) the total consideration payable under clause 2.3(b) is increased by twice the number of new shares issued in accordance with this clause 4.12(c).
  - (d) VG1 and VG8 may buyback securities in VG1 and/or VG8 respectively on market between the date of this Deed and Completion.

#### 4.13 Permitted Dividends

- (a) Any Permitted Regal Dividend:
  - (i) must not be paid in cash;
  - (ii) must not exceed \$16,925,776.02 in aggregate;
  - (iii) must be paid prior to the Completion Date;
  - (iv) must not be in breach of the 'Benchmark Franking Rule' of section 203-25 of the *Income Tax Assessment Act 1997*;
  - (v) may be franked to the maximum extent possible, subject always to no Regal Group Member having a franking deficit at any time as a result of the payment of the Permitted Regal Dividend;
  - (vi) must not put any Regal Group Member in breach of the applicable capital



- requirements set out in ASIC Regulatory Guide 166; and
- (vii) must comply with the Corporations Act.
- (b) Any Permitted VGI Dividend:
- (i) must be paid in cash;
  - (ii) must not exceed \$28,000,000 in aggregate;
  - (iii) must be made in accordance with the requirements of Appendix 6A of the ASX Listing Rules and on the basis of a timetable which currently assumes a declaration date on the date of the VGI Shareholder Meeting, a record date at least 4 Business Days after the declaration date, and a payment date on or after the Completion Date;
  - (iv) may be declared as being subject to the occurrence of Completion;
  - (v) must not be in breach of the 'Benchmark Franking Rule' of section 203-25 of the *Income Tax Assessment Act 1997*;
  - (vi) may be franked to the maximum extent possible, subject always to no VGI Group Member having a franking deficit at any time as a result of the payment of the Permitted VGI Dividend;
  - (vii) must not put any VGI Group Member in breach of the applicable capital requirements set out in ASIC Regulatory Guide 166; and
  - (viii) must comply with the Corporations Act.

## 5 Completion

### 5.1 Time and manner

Subject to clause 3, Completion will occur at 10.00am on the Completion Date by electronic means in Sydney, Australia.

### 5.2 Obligations at Completion

- (a) At or before Completion, Regal must deliver to VGI:
  - (i) each Regal Shareholder's counterpart of the share transfer forms required to effectively transfer the Sale Shares to VGI from each Regal Shareholder;
  - (ii) the counterpart of New Highland (in its capacity as trustee of the King Family Trust) to the NH Voluntary Escrow Deed;
  - (iii) the counterparts of each Regal ESOP Shareholder and New Highland (as trustee of the King Family Trust) to the Regal ESOP Shareholder Escrow Deed;
  - (iv) the counterpart of Stroud Agricultural Company Pty Ltd (in its capacity as trustee of the Vernon Trust) to the Stroud Escrow Deed;
  - (v) the counterparts of the trustees of the Regal Foundation (in their capacity as trustees of the Regal Foundation) to the Foundation Escrow Deed; and
  - (vi) the written confirmation that New Highland is required to provide to VGI under clause 4.4(a)(i).
- (b) At or before Completion, VGI must do the following things:
  - (i) deliver to Regal VGI's counterparts to the Escrow Deeds;
  - (ii) deliver to Regal the final ASX announcement which is to be released immediately

after Completion which discloses:

- (A) the occurrence of Completion of the Merger;
  - (B) the resignation and appointment of VGI directors which is to take effect at Completion;
  - (C) the written confirmation that New Highland is required to provide to VGI under clause 4.4(a)(i); and
  - (D) the resignation and appointment of any senior executives, including the appointment of Brendan O'Connor as Chief Executive Officer of the Merged Group and the appointment of Ian Cameron as Chief Financial Officer of the Merged Group;
- (iii) deliver to Regal evidence that the Proposed Resolutions were passed by VGI Shareholders;
  - (iv) deliver to Regal evidence of the application for quotation of New VGI Shares to the official list of ASX; and
  - (v) issue each Regal Shareholder New VGI Shares in the proportions determined in accordance with the Letter Agreement.

### 5.3 Occurrence of actions at Completion simultaneous

- (a) Subject to clause 5.3(b), the actions contemplated by clause 5.2 are interdependent and, provided that they have occurred, are deemed to have occurred simultaneously.
- (b) VGI may, in its sole discretion, waive any or all of the actions that Regal is required to perform under clause 5.2(a) and Regal may, in its sole discretion, waive any or all of the actions that VGI is required to perform under clause 5.2(b).

## 6 VGI Board recommendation

### 6.1 Recommendation and Voting Statement

Subject to clauses 6.2 and 6.3, VGI must use its best endeavours to ensure that:

- (a) all of the directors of VGI recommend that VGI Shareholders vote in favour of the Proposed Resolutions at the VGI Shareholder Meeting, in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report that the Merger is reasonable for VGI Shareholders (the **Recommendation**);
- (b) the Explanatory Memorandum includes a statement by all of the directors of VGI to that effect, and to the effect that each director of VGI intends, in the absence of a Superior Proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Merger is reasonable for VGI Shareholders, to vote (or procure the voting of) all VGI Shares held or controlled by him or her in favour of the Proposed Resolutions at the VGI Shareholder Meeting (the **Voting Statement**); and
- (c) no member of the VGI Board changes, withdraws or modifies his or her Recommendation or Voting Statement or makes a recommendation or statement that is inconsistent with such Recommendation or Voting Statement.

### 6.2 Withdrawal of Recommendation or Voting Statement

The obligations in clause 6.1 cease to apply:

- (a) if the Independent Expert concludes in the Independent Expert's Report that the Merger

is not reasonable for VGI Shareholders;

- (b) if VGI has received a Competing Proposal which is a Superior Proposal, VGI has notified Regal in accordance with clause 10.5, and two Business Days have elapsed after the date of that notice;
- (c) in respect of any director of VGI, if the director of VGI has determined, after obtaining advice from his or her legal Advisers, that, by virtue of his or her fiduciary or statutory duties, the relevant director is required to change, withdraw, qualify or modify, or abstain from making, his or her Recommendation or Voting Statement (provided that if VGI has received a Competing Proposal which is a Superior Proposal, the obligations in clause 6.1 will not cease to apply until VGI has notified Regal in accordance with clause 10.5, and two Business Days have elapsed after the date of that notice); or
- (d) in respect of any director of VGI, in response to a requirement or request from a Government Agency that the applicable director of VGI change, withdraw, qualify or modify, or abstain from making, his or her Recommendation or Voting Statement.

### 6.3 Qualification of Recommendation or Voting Statement

For the purposes of clause 6.1 and 12.2, any public announcement or other statement made by VGI, the VGI Board or any director of VGI to the effect that no action should be taken by VGI Shareholders pending the assessment of a Competing Proposal by the VGI Board, will not be regarded as a failure to make, or an adverse change, withdrawal, adverse modification or adverse qualification of, a Recommendation or Voting Statement, or an endorsement of a Competing Proposal, and will not contravene clause 6.1 or trigger a right for Regal to terminate this Deed under clause 12.2.

### 6.4 No liability for permitted change

VGI will not be liable to the other parties to this Deed or any Regal Shareholders other than in accordance with its terms, as a result of or in connection with a director of VGI publicly (or otherwise) adversely changing, withdrawing, adversely modifying or adversely qualifying his or her Recommendation or Voting Statement as permitted by clause 6.2(d).

## 7 Warranties

### 7.1 VGI Warranties

- (a) VGI represents and warrants to Regal (in its own right and separately as trustee or nominee for each of the other Regal Indemnified Parties) that each of the VGI Warranties is true and correct.
- (b) Regal acknowledges and agrees that the VGI Warranties (except VGI Warranties 1 to 6 inclusive in Schedule 2) are given subject to those matters which:
  - (i) are expressly provided for in this Deed;
  - (ii) are Fairly Disclosed in the VGI Due Diligence Material; or
  - (iii) would have been Fairly Disclosed to Regal had Regal conducted searches two Business Days prior to the date of this Deed of public records maintained by:
    - (A) ASIC;
    - (B) the Australian Financial Security Authority (including the Personal

- Property Securities Register);
- (C) the High Court of Australia;
- (D) the Federal Court of Australia;
- (E) the Supreme Court of New South Wales; or
- (F) the Court of Appeal of the Supreme Court of New South Wales.

## 7.2 Regal Warranties

- (a) Each of Regal and New Highland (in its capacity as trustee of the King Family Trust) represents and warrants to VGI (in their own right and, in respect of Regal, also separately as trustee or nominee for each of the other VGI Indemnified Parties) on a joint and several basis that each of the Regal Warranties is true and correct.
- (b) VGI acknowledges and agrees that the Regal Warranties (except Regal Warranties 1 to 8 inclusive in Schedule 3) are given subject to those matters which:
  - (i) are expressly provided for in this Deed;
  - (ii) are Fairly Disclosed in the Regal Due Diligence Material; or
  - (iii) would have been Fairly Disclosed to VGI had VGI conducted searches two Business Days prior to the date of this Deed of public records maintained by:
    - (A) ASIC;
    - (B) the Australian Financial Security Authority (including the Personal Property Securities Register);
    - (C) the High Court of Australia;
    - (D) the Federal Court of Australia;
    - (E) the Supreme Court of New South Wales; or
    - (F) the Court of Appeal of the Supreme Court of New South Wales.
- (c) VGI acknowledges that any Regal Warranties given with respect to Attunga Capital Pty Limited or Kilter or the affairs of those companies are given as far as Regal is aware (having undertaking reasonable enquiries of direct reports).

## 7.3 Independent warranties

- (a) Each Regal Warranty is to be construed independently of the others and is not limited by reference to any other warranty.
- (b) Each VGI Warranty is to be construed independently of the others and is not limited by reference to any other warranty.

## 7.4 Survival of warranties

Each Regal Warranty and VGI Warranty referred to in clauses 7.1 and 7.2 (as applicable):

- (a) is severable; and
- (b) survives the termination of this Deed, but does not survive, and will be taken to have no further force or effect following Completion, except to the extent that a Claim relates to the fraud, wilful misconduct, or wilful misrepresentation of, as applicable, a VGI Indemnified Party, a Regal Indemnified Party, or New Highland, in which case the relevant Regal Warranty or VGI Warranty which relates to that Claim survives until the

date which is 18 months after the Completion Date.

## 7.5 Timing of representation and warranties

- (a) Each Regal Warranty and VGI Warranty referred to in clauses 7.1 and 7.2 (as applicable) is given:
  - (i) at the date of this Deed;
  - (ii) immediately prior to Completion; and
  - (iii) where expressed to be given at a particular time or during a particular period, at that time or during that period.
- (b) If between the date of this Deed and Completion, VGI becomes aware of any fact, matter, or circumstances which could be reasonably considered to give rise to a potential breach of any VGI Warranty (as if each VGI Warranty was repeated on each day between the date of this Deed and the Completion Date), then it must promptly provide written notice of such fact, matter, or circumstance to Regal together with sufficient information to enable Regal to assess the significance of fact, matter, or circumstance and determine whether a breach of a VGI Warranty may have occurred or may occur.
- (c) If between the date of this Deed and Completion, Regal becomes aware of any fact, matter, or circumstances which could be reasonably considered to give rise to a potential breach of any Regal Warranty (as if each Regal Warranty was repeated on each day between the date of this Deed and the Completion Date), then it must promptly provide written notice of such fact, matter, or circumstance to VGI together with sufficient information to enable VGI to assess the significance of fact, matter, or circumstance and determine whether a breach of a Regal Warranty may have occurred or may occur.

## 7.6 Claims

- (a) A Claim for breach of a Regal Warranty cannot be made by a Regal Shareholder.
- (b) A Claim for breach of a Regal Warranty made:
  - (i) before Completion can be made against Regal or New Highland (as trustee of the King Family Trust); and
  - (ii) after Completion cannot be made against Regal and must be made against New Highland (as trustee of the King Family Trust) subject to clause 7.4(b).
- (c) No party will be liable for a breach of a VGI Warranty or a Regal Warranty unless notice of the Claim for breach is given in writing with particulars between the date of this Deed and the date which is 18 months after Completion.
- (d) Other than the Regal Warranty set out in paragraph 45 of Schedule 3, in respect of which neither Regal nor New Highland will be liable for a breach of that warranty unless the amount of the Claim exceeds \$1 million, no party will be liable for any breach of a VGI Warranty or a Regal Warranty unless the amount of the Claim exceeds \$5 million.
- (e) The maximum liability of VGI for breaches of the VGI Warranties (other than VGI Warranties 1 to 6 inclusive in Schedule 2, in respect of which there shall be no limit of liability) is \$50 million.
- (f) The maximum liability of Regal and New Highland (as trustee of the King Family Trust) for breaches of the Regal Warranties (other than the Regal Warranties 1 to 8 inclusive in

Schedule 3, in respect of which there shall be no limit of liability) is \$50 million.

## **8 Releases**

### **8.1 VGI directors and officers**

- (a) Regal releases its respective rights, and agrees with VGI that it will not make a Claim, against any VGI Indemnified Party (other than VGI and Robert Luciano) as at the date of this Deed in connection with:
  - (i) any breach of any representations, covenants and warranties of VGI or any VGI Group Member in this Deed; or
  - (ii) any disclosures made (at any time) by any VGI Indemnified Party that contains any statement which is false or misleading whether in content or by omission, except to the extent that a Claim relates to the fraud, wilful misconduct, or wilful misrepresentation of a VGI Indemnified Party.
- (b) This clause is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly.
- (c) VGI receives and holds the benefit of this clause to the extent it relates to each VGI Indemnified Party as trustee for each of them.

### **8.2 Regal directors and officers**

- (a) VGI releases its respective rights, and agrees with Regal that it will not make a Claim, against any Regal Indemnified Party (other than Regal and New Highland) as at the date of this Deed in connection with:
  - (i) any breach of any Regal Warranties;
  - (ii) any breach of any covenant or restriction given by Regal or New Highland under this Deed; or
  - (iii) any disclosure made (at any time) by any Regal Indemnified Party that contains any statement which is false or misleading whether in content or by omission, except to the extent that a Claim relates to the fraud, wilful misconduct, or wilful misrepresentation of a Regal Indemnified Party or New Highland.
- (b) This clause is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly.
- (c) Regal receives and holds the benefit of this clause to the extent it relates to each Regal Indemnified Party as trustee for each of them.

## **9 Public announcements**

### **9.1 Announcement of entry into this Deed**

Immediately after the execution of this Deed, VGI will announce the execution of this Deed and any other documents relating to the Merger to ASX.

### **9.2 Other public announcements**

Other than in relation to a tax ruling application to which clause 4.3(c) applies, prior to making any public announcement or disclosure of or in relation to the Merger or any other transaction the subject of this Deed, each party must, to the extent reasonably practicable and lawful, consult



with the other party as to the timing, form and content of that announcement or disclosure.

## 10 Exclusivity

### 10.1 No current discussions regarding a Competing Proposal

VGI represents and warrants that, as at the time of execution of this Deed, it has not received a Competing Proposal that has not been withdrawn, it is not expecting to receive a Competing Proposal, and it is not in any negotiations or discussions with any Third Party in respect of any Competing Proposal.

### 10.2 Termination and replacement of term sheet exclusivity

VGI and Regal agree that the exclusivity obligations and restrictions set out in the term sheet entered into by VGI and Regal on 31 January 2022 (as amended on 15 March 2022 and 29 March 2022) cease to have effect on the date of this Deed.

### 10.3 No-shop, no talk and no due diligence

During the Exclusivity Period, VGI must not, and must ensure that each of its Representatives, does not:

- (a) **(no shop)** solicit, invite, encourage or initiate any Competing Proposal, or any enquiries, proposal, negotiations or discussions with any Third Party in relation to, or that may reasonably be expected to encourage or lead to, any Competing Proposal, or communicate any intention to do any of those things;
- (b) **(no talk)** subject to clause 10.4, enter into, continue or participate in negotiations or discussions with, or negotiate or enter into any agreement, arrangement or understanding with, any Third Party in relation to, or that may reasonably be expected to encourage or lead to, any Competing Proposal; or
- (c) **(no due diligence)** subject to clause 10.4, disclose or otherwise make available to any Third Party any material non-public information relating to VGI for the purposes of such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, any Competing Proposal.

### 10.4 Limitation to no-talk and no-due diligence

Clauses 10.3(b) and 10.3(c) do not prevent VGI or its Representatives from taking or omitting to take any action in relation to a Competing Proposal, provided that the VGI Board has first determined in good faith and after consultation with its legal and financial Advisers, that:

- (a) the Competing Proposal is, or could reasonably be expected to lead to, a Superior Proposal; and
- (b) failing to respond to such Competing Proposal would, or would be reasonably likely to, constitute a breach of any of the fiduciary or statutory duties of any member of the VGI Board.

### 10.5 Notification by VGI

- (a) During the Exclusivity Period, VGI must as soon as reasonably practicable, but in any event no later than two Business Days of becoming aware of such matter, notify Regal of any approach, inquiry, request, or attempt to initiate any negotiations or discussions in respect of any Competing Proposal which is received in writing (whether direct, indirect, solicited or unsolicited). Any amendment to a Competing Proposal will constitute a new

Competing Proposal.

- (b) A notification given under clause 10.5(a) must include a summary of the material terms and conditions of the Competing Proposal (if any) and the identity of the Third Party making or proposing the Competing Proposal, except to the extent the VGI Board has first determined, in good faith, and after consulting with its external legal Advisers, that providing such information would, or would be reasonably likely to, constitute a breach of any of the VGI Board's fiduciary or statutory duties.

## 10.6 Compliance with law

- (a) This clause 10 imposes obligations on VGI only to the extent that the performance of all or part of those obligations:
  - (i) does not constitute unacceptable circumstances as declared by the Takeovers Panel;
  - (ii) does not require any member of the VGI Board to take or fail to take any action that would, or would reasonably be likely to, constitute a breach of his or her fiduciary or statutory duties; and
  - (iii) is not determined to be unlawful by a court.
- (b) The parties must not make, or cause or permit to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination of a kind referred to in clause 10.6(a).

## 10.7 Normal provision of information

Nothing in this clause 10 prevents VGI from:

- (a) providing information to its Representatives;
- (b) providing information to any Government Agency;
- (c) providing information to its auditors, customers, financiers, joint venturers and suppliers acting in that capacity in the ordinary course of business;
- (d) providing information required to be provided by law, including to satisfy its obligations of disclosure under the ASX Listing Rules or to any Government Agency;
- (e) making presentations to, and responding to enquiries from, brokers, portfolio investors, analysts, institutional investors and institutional lenders in the ordinary course in relation to its business generally; or
- (f) engaging with VGI Shareholders (in their capacity as a VGI Shareholder) in the ordinary course and consistent with past practice, in relation to the VGI Group.

## 11 Merged Group matters after Completion

From Completion, the Listed Entity and each member of the Merged Group will be subject to the oversight of the Listed Entity board. The parties also acknowledge and agree the following matters that will apply to the Merged Group from Completion:

- (a) Brendan O'Connor will act as Chief Executive Officer of the Merged Group;
- (b) Ian Cameron will act as Chief Financial Officer of the Merged Group;
- (c) Robert Luciano will retain operational control of all existing VGI investment mandates other than VG8, which may be enhanced with additional management resources or transitioned within the Merged Group. For these purposes, "operational control" includes

- responsibility for investment decisions and portfolio management, investment team staffing, headcount, and remuneration (including performance related remuneration), and decisions with respect to operational and trading infrastructure;
- (d) with respect to the ongoing operation of VGI investment mandates other than VG8, the Listed Entity board will provide clear operating parameters including costs and a remuneration framework within which Robert Luciano will have operating flexibility, including parameters for yearly team bonuses and / or performance fee payout ratios;
  - (e) Philip King will retain operational control of all existing Regal investment mandates. For these purposes, "operational control" includes responsibility for investment decisions and portfolio management, investment team staffing, headcount, and remuneration (including performance related remuneration), and decisions with respect to operational and trading infrastructure;
  - (f) with respect to the ongoing operation of Regal investment mandates, the Listed Entity board will provide clear operating parameters including costs and a remuneration framework within which Philip King will have operating flexibility, including parameters for yearly team bonuses and / or performance fee payout ratios;
  - (g) in addition to base salaries, the Merged Group investment teams will participate in performance fees of around 40% payout ratio from their respective investment strategies over the medium term, subject to review and endorsement by the Listed Entity board;
  - (h) Robert Luciano's and Philip King's employment, termination, and compensation arrangements, including participation in performance fees and any Merged Group performance right plans, will be subject to review and endorsement by the Listed Entity board;
  - (i) having regard to the Listed Entity's ongoing disclosure obligations, the Listed Entity board will take appropriate steps to ensure that significant Listed Entity shareholders consult with the Listed Entity board prior to selling or transferring their interests in the Listed Entity (in particular, in respect of the proposed manner and timing of any such sale or transfer), for the purpose of preserving an orderly market for Listed Entity securities;
  - (j) to the extent that the VGI Restructure has not been completed on or by Completion, the Listed Entity will undertake a review of the steps required to implement the VGI Restructure after Completion with a view, subject to the receipt of further advice and completion of due diligence, to implementing the VGI Restructure as soon as practicable thereafter;
  - (k) within 30 Business Days following Completion, the Listed Entity will procure that ASIC is notified of the change of control of each of Regal, Attunga Capital Pty Ltd, and Kilter Investments Pty Ltd in relation to the AFSL held by each of those entities; and
  - (l) the Listed Entity will develop and launch an employee share incentive plan as soon as practicable after Completion which will promote alignment of employee incentives across the Merged Group.

## 12 Termination

### 12.1 Termination by VGI

Without prejudice to any other rights of termination under this Deed, VGI may terminate this Deed

by written notice to the other parties:

- (a) at any time before the Completion Date, if:
    - (i) either:
      - (A) Regal or New Highland is in material breach of any provision of this Deed (other than a Regal Warranty not being true and correct); or
      - (B) a Regal Warranty is not true and correct, where that breach of Regal Warranty is material in the context of the Merger as a whole;
- provided that VGI has given written notice Regal setting out the relevant circumstances and stating an intention to terminate this Deed and the relevant circumstances continue to exist for five Business Days from the time the notice of intention to terminate is given (or any shorter period ending at 5pm on the Business Day before the Completion Date);
- (b) if Regal or New Highland fails to satisfy its obligations under clause 5 and VGI has given notice of such failure to Regal, and such failure has not been remedied within 3 Business Days from the date of the notice;
  - (c) if a majority of VGI directors have changed, withdrawn or adversely modified their Recommendation or Voting Statement or have recommended or made a statement supporting or endorsing a Superior Proposal in any circumstance permitted by clause 6.2; or
  - (d) in the circumstances set out in, and in accordance with, clause 3.4(b).

## 12.2 Termination by Regal

Without prejudice to any other rights of termination under this Deed, Regal may terminate this Deed by written notice to VGI:

- (a) at any time before the Completion Date, if:
    - (i) a majority of VGI directors have changed, withdrawn or adversely modified their Recommendation or Voting Statement or have recommended or made a statement supporting or endorsing a Competing Proposal;
    - (ii) a VGI Group Member enters into a definitive agreement to implement a Superior Proposal (and, for the avoidance of doubt, any such definitive agreement does not include VGI entering into a confidentiality agreement or like agreement in relation to an actual, proposed or potential Competing Proposal); or
    - (iii) either:
      - (A) VGI is in material breach of any provision of this Deed (other than VGI Warranty not being true and correct); or
      - (B) a VGI Warranty is not true and correct, where that breach of VGI Warranty is material in the context of the Merger as a whole; and
- provided that Regal has given written notice to VGI setting out the relevant circumstances and stating an intention to terminate this Deed the relevant circumstances continue to exist for five Business Days from the time the notice of intention to terminate is given (or any shorter period ending at 5pm on the Business Day before the Completion Date); or
- (b) if VGI fails to satisfy its obligations under clause 5 and Regal has given notice of such failure to VGI, and such failure has not been remedied within 3 Business Days from the

date of the notice; or

(c) in the circumstances set out in, and in accordance with, clause 3.4(b).

### 12.3 Automatic termination

Without limiting any other term of this Deed, this Deed will terminate automatically if, at the VGI Shareholder Meeting, VGI Shareholders do not pass the Proposed Resolutions to approve the Merger in accordance with the requirements of the Corporations Act and ASX Listing Rules.

### 12.4 Termination by written agreement

The parties may terminate this Deed by another written agreement between them.

### 12.5 Effect of termination

If this Deed is terminated by either party under clauses 3.4(b), 12.1, 12.2 or 12.3, except if the termination results from a breach by either party of its obligations under this Deed, this Deed will become void and have no effect, without any liability or obligation on the part of any party, other than in relation to rights and obligations that accrued prior to termination and the provisions of this clause 12.5 and of clauses 1, 7.4, 8, 9, 13, 14, 15 and 16, which will remain in force after termination.

### 12.6 Termination

Where a party has a right to terminate this Deed, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this Deed and the provision under which it is terminating the Deed.

## 13 Confidentiality

Each party agrees and acknowledges that it is bound by the terms of the Confidentiality Deed save that the terms of this Deed will prevail over the Confidentiality Deed to the extent of any inconsistency, and clause 5 (*Standstill*) of the Confidentiality Deed will cease to apply at Completion.

## 14 GST

### 14.1 Recovery of GST

If GST is or becomes payable, or notionally payable, on a supply made under or in connection with this Deed, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**) as calculated by the party making the supply (the **Supplier**) in accordance with the GST Law. Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time and in the same manner that the other consideration for the supply is provided. This clause 14 does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

### 14.2 Liability net of GST

Notwithstanding any other provision in this Deed, where any indemnity, reimbursement or similar payment under this Deed is based on any cost, expense or other liability incurred by a party, it may be reduced by any input tax credit entitlement, or notional input tax credit entitlement, of that

party (or its representative member) in relation to the relevant cost, expense or other liability.

14.3 Adjustment events

If an adjustment event occurs in relation to a supply under or in connection with this Deed, the GST Amount will be recalculated in accordance with the GST Law to reflect that adjustment and an appropriate payment will be made between the parties and the Supplier shall issue an adjustment note to the recipient within 10 Business Days after becoming aware of the occurrence of the adjustment event.

14.4 Survival

This clause 14 will continue to apply after expiration or termination of this Deed.

14.5 Definitions

Unless the context requires otherwise, words used in this clause 14 that have a specific meaning in the GST Law (as defined in the GST Act) have the same meaning in this clause 14.

15 Notices

Any notice, demand, consent or other communication (a **Notice**) given or made under this Deed:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient:
  - (i) by prepaid post (or, if posted to an address in another country, by registered airmail) or by hand to the address below or the address last notified by the intended recipient to the sender; or
  - (ii) by email to the email address below or the email address last notified by the intended recipient to the sender:

|                            |            |   |
|----------------------------|------------|---|
| to Regal and New Highland: | Address:   | 'Gateway' Level 47, 1 Macquarie Place Sydney NSW 2000                                 |
|                            | Email:     | kathleen.liu@regalfm.com  |
|                            | Attention: | Kathleen Liu  |
|                            |            | with a copy to (which by itself does not constitute a Notice) tim.bednall@au.kwm.com  |
| to VGI and Robert Luciano: | Address:   | 39 Phillip Street, Sydney NSW 2000 Australia  |
|                            | Email:     | Ian.Cameron@vgipartners.com   |
|                            | Attention: | Ian Cameron   |
|                            |            | with a copy to (which by itself does not constitute a Notice) tom.story@allens.com.au |
- (c) will be conclusively taken to be duly given or made:
  - (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by post, six Business Days after the date of posting (if posted to an address in the same country) or ten Business Days after the date of



- posting (if posted to an address in another country); and
- (iii) in the case of delivery by email, the earlier of:
- (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
  - (B) the time that the email is first opened or read by the intended recipient, or an employee or officer of the intended recipient; and
  - (C) two hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, during that two hour period, an automated message that the email has not been delivered,
- but if the result is that a Notice would be taken to be given or made:
- (iv) on a day that is not a business day in the place to which the Notice is sent or later than 5:00pm (local time), then it will be taken to have been duly given or made at the start of business on the next business day in that place; or
  - (v) before 9:00am (local time) on a business day in the place to which the Notice is sent, then it will be taken to have been duly given or made at 9:00am (local time) on that business day in that place.

## **16 General**

### **16.1 Amendment**

This Deed may be amended only by another deed executed by all the parties.

### **16.2 Assignment**

A party cannot assign, charge, encumber or otherwise deal with at law or in equity any of its rights or obligations under this Deed, or attempt or purport to do so, without the prior consent of the other parties.

### **16.3 Consents**

Where this Deed contemplates that a party may agree or consent to something (however it is described), unless this Deed expressly contemplates otherwise, the party may:

- (a) agree or consent, or not agree or consent, in its sole and absolute discretion; and
- (b) agree or consent subject to conditions.

### **16.4 Costs and duty**

- (a) Subject to clause 16.4(b), each party must bear its own costs arising out of the negotiation, preparation and execution of this Deed and the transactions contemplated by it (and for the avoidance of doubt each party shall be entitled to pay transaction costs incurred in relation to the negotiation, preparation and execution of this Deed and the transactions contemplated by it). All duty (including stamp duty and fines, penalties and interest) payable on or in connection with this Deed and any instrument executed under or any transaction evidenced by this Deed must be borne by the Listed Entity.
- (b) All costs and expenses incurred by Regal or VGI specifically for the purposes of implementing the Merger, including without limitation the fees and costs incurred in relation to the Independent Expert, the printing and despatch of the Explanatory Memorandum, and coordinating the VGI Shareholder Meeting, will be borne by the Listed

Entity.

#### **16.5 Counterparts**

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

#### **16.6 Entire agreement**

This Deed, the Confidentiality Deed, the Escrow Deeds and any other documents specified by the parties for the purposes of this clause 16.6 contain the entire agreement between the parties with respect to their subject matter. This Deed, the Confidentiality Deed, the Escrow Deeds and any other documents specified by the parties for the purposes of this clause 16.6 set out the only conduct relied on by the parties and supersede all earlier conduct and prior agreements and understandings between the parties in connection with their subject matter including the term sheet entered into by VGI and Regal on 31 January 2022.

#### **16.7 Further assurances**

Each party must do anything necessary (including executing agreements and documents) to give full effect to this Deed and the transactions contemplated by it.

#### **16.8 Governing law and jurisdiction**

This Deed is governed by the laws of New South Wales. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

#### **16.9 No merger**

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

#### **16.10 No agency or partnership**

Nothing in this Deed is to be construed as constituting an agency, partnership, joint venture, or any other form of association between the parties in which one party may be liable for the acts or omissions of any other party. No party has the authority to incur any obligation or make any representation or warranty on behalf of, or to pledge the credit of, any other party.

#### **16.11 No representation or reliance**

- (a) Each party acknowledges that no party (or any person acting on its behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed or Fairly Disclosed, in the case of VGI, in the Regal Due Diligence Materials or in the case of Regal and the Regal Shareholders, the VGI Due Diligence Materials, and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this Deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this Deed or Fairly Disclosed, in the case of VGI, in the Regal Due Diligence Materials or in the case of Regal and the Regal

Shareholders, the VGI Due Diligence Materials.

#### **16.12 No waiver**

A failure to exercise or a delay in exercising any right, power or remedy under this Deed does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

#### **16.13 Severability of provisions**

Any provision of this Deed that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Deed nor affect the validity or enforceability of that provision in any other jurisdiction.

#### **16.14 Third party beneficiary**

This Deed will inure to the benefit of the Regal Indemnified Parties and the VGI Indemnified Parties, to the extent expressly set forth in clauses 7.1, 7.2, 8.1 and 8.2.

#### **16.15 Capacity**

If a party has entered into this deed as a trustee of a trust:

- (a) notwithstanding any other provision of this deed including any provision expressed to prevail over this clause 16.15 but subject to clause 16.15(c), that party enters into this deed only in its capacity as trustee of the trust and in no other capacity. A liability arising under or in connection with this deed can be enforced against that party only to the extent that it can be satisfied out of the property of the trust for which the party is actually indemnified for the liability. That party will exercise its rights of indemnification in order to satisfy its obligations under this deed;
- (b) subject to clause 16.15(c), another party to this deed may not sue that party in any capacity other than as trustee in respect of the trust, including seeking the appointment to that party of a receiver (except in relation to property of the trust), liquidator, administrator or any similar person; and
- (c) the provisions of this clause 16.15 will not apply to any obligation or liability of that party to the extent that it is not satisfied because under the relevant trust deed or by operation of law, there is a reduction to the extent, or elimination of, that party's right of indemnification out of the assets of the trust, or the right does not exist at all, as a result of that party's fraud, negligence, improper performance of duties or breach of trust.

**Schedule 1****Regal Shareholders**

| Name   | Share class     |
|--|-----------------|
| NEW HIGHLAND PTY LIMITED (ACN 121 604 500) as trustee of the King Family Trust   | Ordinary shares |
| STROUD AGRICULTURAL COMPANY PTY LTD (ACN 615 249 682) as trustee of the Vernon Trust   | Ordinary shares |
| PHILIP KING, ANDREW KING and DAVID GORE as trustees of the REGAL FOUNDATION (ABN 88 781 341 594)   | Ordinary shares |
| TAYLAJORJA PTY LTD (ACN 111 314 179)   | Employee Shares |
| CRAIG COLLIE   | Employee Shares |
| MACKENZIE COVE INVESTMENTS PTY LTD (ACN 629 657 623)   | Employee Shares |
| GLEN BARNES  | Employee Shares |
| FREEDOM THROUGH PROPERTY PTY. LTD. (ACN 130 299 928)   | Employee Shares |
| HADB INVESTMENTS PTY LTD (ACN 119 782 820)   | Employee Shares |
| DIMENSION GROUP PTY LIMITED (ACN 129 064 204)  | Employee Shares |
| STEPHANIE MORMANIS   | Employee Shares |
| CAMPBELL CHAMBERS  | Employee Shares |
| EMPIRE CAPITAL INVESTMENTS PTY LTD (ACN 124 274 157)   | Employee Shares |
| JESSICA FARR-JONES   | Employee Shares |
| JAMES HOOD   | Employee Shares |
| LING JIN   | Employee Shares |
| ROBERT SAUNDERS  | Employee Shares |
| DR FESQ PTY LTD (ACN 635 980 568)  | Employee Shares |
| GREG LAUGHLIN  | Employee Shares |
| GIBSON CAPITAL PTY LIMITED (ACN 075 554 899)   | Employee Shares |
| NEW HIGHLAND PTY LIMITED (ACN 121 604 500) (as trustee of the Philip King Family Trust)  | Employee Shares |
| NEW HIGHLAND PTY LIMITED (ACN 121 604 500) (as trustee of the King Family Trust)   | Employee Shares |
| M & B O'CONNOR INVESTMENTS PTY LTD (ACN 623 181 251)   | Employee Shares |
| MARK NATHAN  | Employee Shares |
| JAMES SIOUD  | Employee Shares |
| HENRY RENSHAW  | Employee Shares |
| SU CHIN LAI (LISTED AS JAMIE LAI ON THE SHAREHOLDER REGISTER OF REGAL FUNDS MANAGEMENT PTY LIMITED PRIOR TO A CORRECTION ON 29 MARCH 2022) | Employee Shares |
| KATHLEEN LIU   | Employee Shares |
| ALOYSIUS CAPITAL PTY LTD (ACN 653 046 112)   | Employee Shares |

**Schedule 2****VGI Warranties**

- 1 **(Status)** It is a corporation duly incorporated and validly existing under the laws of the place of its incorporation.
- 2 **(Power)** It has the power to enter into and perform its obligations under this Deed and to carry out the transactions contemplated by this Deed.
- 3 **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into and performance of this Deed by it and to carry out the transactions contemplated by this Deed.
- 4 **(Deed binding)** This Deed is its valid and binding obligation enforceable in accordance with its terms.
- 5 **(Transactions permitted)** The execution and performance by it of this Deed and each transaction contemplated by this Deed does not and will not violate any provision of:
- (a) a law or treaty or a judgment, ruling, order or decree of a Government Agency binding on it or any of its Subsidiaries; or
  - (b) its constitution or other constituent documents.
- 6 **(Capital structure)**
- (a) As at the date of this Deed,
    - (i) VGI has 69,806,169 VGI Shares on issue; and
    - (ii) 2,194,271 VGI Options on issue,
 and there are no other securities, issued and outstanding at the date of this Deed.
  - (b) No VGI Group Member is subject to any obligation (including any contingent obligation) to issue or have transferred to any person securities in or of it or any other VGI Group Member other than VGI Shares that may be issued under the terms of the VGI Options that VGI has issued and outstanding at the date of this Deed.
- 7 **(Continuous disclosure):**
- (a) it has complied in all material respects with its continuous disclosure obligations under ASX Listing Rule 3.1; and
  - (b) as at the date of this Deed, it is not withholding any information from public disclosure in reliance on ASX Listing Rule 3.1A (other than the information in relation to the Merger).
- 8 **(Ownership of VGI Group Shares)**
- (a) VGI is the legal and beneficial owner of:
    - (i) all of the issued share capital in each of:
      - (A) VGI Partners Asian Investments Management Pty Limited (ACN 635 179 538);
      - (B) VGI Partners Agricultural Investments No.1 Pty Ltd (ACN 634 420 812);
      - (C) VGI Partners Principal Investments Pty Limited (ACN 646 491 778);
      - (D) VPPI No.1 Pty Limited (ACN 652 242 110);
      - (E) VGI Partners Share Plan Pty Ltd (ACN 663 203 433);
      - (F) VGI Partners, Inc.;

- (G) VGI Partners Private Partnerships 1A Pty Ltd (ACN 610 797 129);
- (H) VGI Partners Private Partnerships 1B Pty Ltd (ACN 610 797 138);
- (I) VGI Partners Private Partnerships 1C Pty Ltd (ACN 610 797 147);
- (J) Vichingo Global Investors Pty Limited (ACN 142 978 621);
- (K) Vichingo Global Investments Pty Limited (ACN 129 237 323); and
- (L) VGI Partners Investments Pty Ltd (ACN 627 014 573);
- (ii) 1.48% of the issued share capital in VGI Partners Global Investment Limited (ACN 619 660 721); and
- (iii) 6.88% of the issued share capital in VGI Partners Asian Investments Limited (ACN 635 219 484).
- (b) Other than the shareholdings noted in 8(a) above, no VGI Group Members holds any interest in any other entity (except in a capacity as an investment manager).
- 9 **(Explanatory Memorandum)** As far as VGI is aware, at the time VGI commenced sending the Explanatory Memorandum to VGI Shareholders, the information contained in the Explanatory Memorandum (other than the Regal Information and the Independent Expert's Report) is true and correct in all material respects, complies with all applicable laws and does not contain any statement which is misleading or deceptive in any material respect (whether by omission or otherwise).
- 10 **(Solvency)** No VGI Group Member is the subject of an Insolvency Event.
- 11 **(No material breach of laws)** VGI is not aware of any material breach of law, regulation or industrial instrument by any VGI Group Member of any Australian or foreign laws and regulations applicable to it or orders of Australian or foreign Government Agencies having jurisdiction over it.
- 12 **(Anti-Bribery)** No VGI Group Member nor any director, and, so far as VGI is aware, any officer, agent, employee or other person or entity that provides services for or acts for or on behalf of a VGI Group Member has at any time either directly or indirectly offered, promised provided, or authorised the provision of any money, property, contribution, gift, entertainment or other thing of value to any government official or person acting for on behalf of a Government Agency in the exercise of his or her duties (including acts that may fall outside that person's official duties) in connection with or to further the business, including to influence official action or secure an improper advantage (including to obtain or retain business or a financial or business advantage (including a future business advantage)), or to encourage the recipient to breach a duty of good faith or loyalty or the policies of his or her employer.
- 13 **(Anti-Money Laundering)**
- (a) Each:
- (i) VGI Group Member and its directors; and
- (ii) so far as VGI is aware, officer, agent or employee or other person or entity that provides services for or acts for or on behalf of a VGI Group Member,
- has complied with, in relation to the services for or actions taken for or on behalf of the VGI Group Member, all Anti-Corruption Laws and all Anti-Money Laundering Laws.
- (b) As far as VGI is aware, no proceeding by or before any Government Agency with respect to a breach of Anti-Corruption Laws and all Anti Money Laundering Laws by a VGI Group



Member is pending or threatened.

- 14 **(No sanctions)** No VGI Group Member nor any director of VGI, and, so far as VGI is aware, no officer, agent, employee or other person or entity that provides services for or acts for or on behalf of a VGI Group Member is subject to any sanction or restrictions imposed or administered under laws concerning trade embargoes, economic or financial sanctions, or export or import restrictions imposed, administered, or enforced by any country in which a VGI Group Member operates.
- 15 **(Material licences and authorisations)** The VGI Group has all material licences, permits and franchises necessary for it to conduct its activities as they are conducted as at the date of this Deed and is in material compliance with all such licences, permits and franchises.
- 16 **(Notices of violations)** No VGI Group Member has received any notice within the past 3 years regarding any actual or alleged: (i) breach of any applicable laws or regulations; (ii) breach of any licences, authorisations or approvals; or (iii) deficiency in any licences, authorisations or approvals held by any VGI Group Member.
- 17 **(Due Diligence Material)** As far as VGI is aware:
  - (a) the VGI Due Diligence Material has been collated and prepared in good faith, and VGI is not aware of any information contained in the VGI Due Diligence Material that is false or misleading in any material respect (including by omission); and
  - (b) other than where VGI has indicated to Regal that it is withholding particular information from disclosure to Regal on the basis that it is commercially sensitive information, VGI has not withheld information from disclosure to Regal which has been requested by Regal and could reasonably be expected to be material to Regal's evaluation of the VGI Group and the merits of the Merger,however VGI does not make any representation or warranty as to the accuracy or adequacy of a forecast, prediction or projection, budget, business plan or other forward looking statement in respect of the future financial position of VGI.
- 18 **(Correspondence with Government Agencies)** The VGI Due Diligence Materials contain true and complete copies of all material enquiries from, material correspondence with, and all material information and documentation delivered to Government Agencies in each case relating to a VGI Group Member in the 5 years prior to the date of this Deed.
- 19 **(Contracts)** As far as VGI is aware:
  - (a) the VGI Due Diligence Material contains copies of all material legally-binding agreements, arrangements or understandings that have been entered into by or on behalf of any VGI Group Member (other than as agreed between Regal and VGI, including without limitation, non-disclosure agreements, soft-dollar agreements and documentation relating to unlisted investments),
  - (b) no VGI Group Member is in default under a material contract to which it is a party, and nothing has occurred which is (or would be following the giving of notice or the lapse of time) an event of default or would give another party a termination right or right to accelerate any material right or obligation under any such material contract; and
  - (c) where template agreements have been provided in the VGI Due Diligence Materials, all agreements in force between a VGI Group Member and other parties based off the template agreements have been executed on the terms of the template other than any

variables noted in the template, including party names and dates.

20 **(Insurance)**

- (a) The VGI Due Diligence Materials contain accurate particulars of all material VGI Insurance Policies which, as of the date of this Deed, provides insurance coverage in respect of a VGI Group Member and the activities undertaken by the VGI Group.
- (b) Each VGI Insurance Policy is currently in full force and effect in accordance with its terms and all applicable premiums have been paid. To the best of the knowledge of VGI, no fact, matter or circumstance exists that would render any such VGI Insurance Policy void, voidable or unenforceable in any material respect.
- (c) As far as VGI is aware, there are no material outstanding claims made by a VGI Group Member or any person on their behalf under a VGI Insurance Policy or an insurance policy previously held by a VGI Group Member.
- (d) As far as VGI is aware, no VGI Group Member is in material breach, nor would be in material breach but for the requirements of notice or lapse of time, of any VGI Insurance Policy, and, as of the date of this Deed, all material notifications and disclosures required to have been made by a VGI Group Member under a VGI Insurance Policy have been made.

21 **(Accounts)** As far as VGI is aware:

- (a) there has not been any event, change, effect or development that would require VGI to restate VGI's financial statements as provided to ASIC; and
- (b) the VGI Accounts:
  - (i) have been prepared in the manner described in the notes to them;
  - (ii) have been prepared in accordance with the Accounting Standards, all applicable laws and with the requirements of the relevant entities jurisdictions of incorporation;
  - (iii) give a true and fair view of the financial performance and position of the entity or entities to which such VGI Accounts relate as at the date of the VGI Accounts and its performance and cash flows for the 12 months ended on the date of the VGI Accounts;
  - (iv) and include an unqualified auditor's opinion.

22 **(Adequate disclosure of incentive arrangements and liabilities)** Details of all incentives, benefits, entitlements and other compensation arrangements with employees, consultants, officers, and directors of each VGI Group Member, and any actual, contingent and expected liabilities relating thereto, have been Fairly Disclosed in the VGI Due Diligence Materials.

23 **(Litigation)** There are no current material actions, suits, arbitrations or legal or administrative proceedings against any VGI Group Member and, as far as VGI is aware: (a) there are no (i) current, pending or threatened material claims, disputes or demands, or (ii) pending or threatened material actions, suits, arbitrations or legal or administrative proceedings, in each case against any VGI Group Member; (b) no VGI Group Member is the specific focus of any material formal investigation by a Government Agency (not being an industry-wide investigation).

24 **(Investigations)** No VGI Group Member has received any written notice of nor, as far as VGI is aware, is the subject of, any investigation or enforcement action by ASIC or any other Government Agency and, as far as VGI is aware, no such investigation or enforcement action is

pending or anticipated or being threatened by ASIC or any other Government Agency.

25 **(No Encumbrances over assets)** Other than any security interests disclosed in the VGI Due Diligence Material, there are no security interests over all or any of the VGI Group's present or futures assets or revenues.

26 **(VGI Business IP)**

- (a) The VGI Group does not use or rely on any unregistered Intellectual Property Rights not owned by a VGI Group Member which are material to the VGI Group.
- (b) A VGI Group Member is the sole legal and beneficial owner of all right, title and interest in, and to, the VGI Business IP or has a valid right to use the VGI Business IP and the VGI Business IP comprises all the Intellectual Property Rights necessary to operate the VGI Group's business in substantially the manner in which it is being operated as at the date of this Deed.

27 **(No infringement of third party rights)** So far as VGI is aware:

- (a) neither the carrying on of the VGI Group's business nor the use of the VGI Business IP by a VGI Group Member infringes the Intellectual Property Rights of any third party; and
- (b) no VGI Group Member has received written notice from a third party alleging the foregoing in the 24 months prior to the date of this Deed.

28 **(VGI IT Systems)** The VGI IT Systems:

- (a) are owned by a VGI Group Member or are licensed, leased or supplied under an enforceable agreement with a VGI Group Member;
- (b) perform their intended function and are sufficient for the operation of each VGI Group Member; and
- (c) are the subject of administrative and technical measures reasonably necessary to protect the security and business continuity of the VGI IT Systems (including disaster recovery and business continuity plans and procedures).

29 **(IT incidents)** So far as VGI is aware, details of all actual or potential cybersecurity incidents, breaches of cybersecurity protocols, and breaches of procedures designed to protect the integrity of the VGI IT Systems (**VGI IT incidents**) have been disclosed in the VGI Due Diligence Materials and, so far as VGI is aware, no material VGI IT incidents have occurred in the 2 years prior to the date of this Deed nor have any material deficiencies been identified which could make the VGI Group vulnerable to material VGI IT incidents.

30 **(Confidential and personal information)** So far as VGI is aware, there has not been any misuse or unauthorised disclosure of or access to any VGI Business Confidential Information or VGI Business Personal Information.

31 **(Tax paid)** All Tax for which a VGI Group Member is liable that relates to a period or part period up to and including the Completion Date, including any penalty or interest, has been fully paid or provided for.

32 **(Adequate records)** Each VGI Group Member has created and maintained adequate records to enable it to materially comply with its obligations to:

- (a) prepare and submit any information, notices, computations, Tax Returns and payments

- required in respect of any Tax Law;
- (b) prepare any accounts necessary for compliance with any Tax Law;
  - (c) support any position taken in relation to the application of any Tax Law; and
  - (d) retain necessary records as required by any Tax Law.
- 33 **(Returns accurate)** All Tax Returns required to be lodged by a VGI Group member with a Government Agency have been lodged with the relevant Government Agency and any Tax Return or similar document which has been submitted by the VGI Group members to any Government Agency discloses all material facts that must be disclosed under any Tax Law and is not misleading in any material respect.
- 34 **(Correct withholdings)** Any obligation on a VGI Group Member under any Tax Law to withhold amounts at source on account of Tax has been complied with and, where appropriate, duly paid to the relevant Government Agency in accordance with the relevant Tax Law and by the relevant due date.
- 35 **(No dispute or Tax audit)**
- (a) There is no current, pending or threatened dispute between any VGI Group Member and any Government Agency in respect of any Tax.
  - (b) VGI is not aware of any pending or threatened Tax audit, investigation or review relating to a VGI Group Member.
  - (c) No Government Agency is at present conducting or proposing to conduct any review, investigation or audit into all or any part of the business affairs of the VGI Group.
- 36 **(No permanent establishment)**
- (a) Each VGI Group Member is a resident (for tax purposes) solely in the jurisdiction in which it was incorporated.
  - (b) No VGI Group Member carries on business through a permanent establishment (as that expression is defined in either section 6(1) of the Tax Act or any relevant double taxation agreement) in any other country than Australia.
- 37 **(Foreign entities managed by VGI)** No foreign company, partnership or trust for which a VGI Group Member acts as an investment manager has a permanent establishment in Australia.
- 38 **(Consolidation)**
- (a) The VGI Group Members validly formed a Consolidated Group effective 1 July 2019.
  - (b) Each member of the VGI Tax Consolidated Group has at all times been a party to a valid Tax Funding Agreement and Tax Sharing Agreement and have satisfied their obligations in respect of these agreements.
  - (c) No VGI Group Member has at any time been a member of a Consolidated Group other than the VGI Tax Consolidated Group.
- 39 **(Public officer and tax agent registration)**
- (a) The office of public officer as required under any Tax Law has always been occupied for each VGI Group Member.
  - (b) No VGI Group Member has been required to be a registered tax agent or BAS agent as

those terms are defined in the *Tax Agent Services Act 2009 (Cth)*

40 **(Specified income tax matters)**

- (a) The VGI Tax Consolidated Group has accurately maintained its franking account and has not been liable for franking deficit tax for the purposes of Division 205 of the ITAA 1997.
- (b) No debt or other obligation of a VGI Group Member has been forgiven within the meaning of the Tax Law, other than a debt or obligation the forgiveness or waiver of which would not be recognised.
- (c) The VGI Group Members have complied with all transfer pricing requirements in the respective jurisdictions and maintained associated contemporaneous transfer pricing documentation to support all material international related party dealings.
- (d) No VGI Group Member has any shares in an entity or other instruments to which Division 832 of the ITAA 1997, the OECD hybrid mismatch rules or other similar law would apply resulting in additional tax liability.
- (e) The share capital account of each VGI Group Member is not 'tainted' within the meaning of that term as defined in section 995-1 of the ITAA 1997.
- (f) No representative of any VGI Group Member has taken any steps or been involved in any conduct that will result in the relevant VGI Group Member being a promoter of a tax exploitation scheme under Division 290 of Schedule 1 to the Taxation Administration Act 1953.
- (g) All Tax related accounting provisions are free from material misstatement.
- (h) No entity for which a VGI Group Member is responsible or liable for Tax in its capacity as trustee, responsible entity, general partner or manager (including as a result of any act or omission in this capacity), has any unpaid Tax that would be due or payable to a Government Agency.
- (i) All Tax Returns for which a VGI Group Member is responsible to another entity (including in its capacity as trustee, responsible entity, general partner or manager) have been lodged with a relevant Government Agency.

41 **(GST)**

- (a) Each VGI Group Member has complied with all laws, contracts, agreements or arrangements relating to GST and, where a VGI Group Member has the right to require another party to any such agreement or arrangement to pay to it an amount on account of GST, it has enforced that right.
- (b) Each VGI Group Member that is registered for GST is entitled to be registered.
- (c) Each VGI Group Member if required to be registered for GST:
  - (i) is registered for GST and is a member of the VGI GST Group;
  - (ii) is and has been a member of the VGI GST Group for at least the past 4 years or from incorporation if less than 4 years;
  - (iii) other than VGI Partners Limited, is not and has never been the representative member of the VGI GST Group;
  - (iv) has not been a member of any other GST Group;
  - (v) has not entered into an Indirect Tax Sharing Agreement or an indirect tax funding

- agreement in respect of the VGI GST Group;
- (vi) has complied with the GST Law; and
  - (vii) has adequate systems and processes established for it to ensure it complies with the GST Law and any rulings or determinations.
- (d) The representative member of the VGI GST Group has in all respects correctly accounted for GST, including the lodgement of returns and that it has paid or accounted for all GST (including any adjustments) within the time limits prescribed on supplies, acquisitions and importations made by a member of the VGI GST Group, and has claimed input tax credits (including any adjustments) for all creditable acquisitions and creditable importations made by a member of the VGI GST Group.
  - (e) There is no contract, agreement or arrangement requiring any VGI Group Member to supply anything that does not contain a provision enabling the entity as supplier to recover from the other party to the contract, agreement or arrangement an additional amount equal to the amount of GST payable on the supply.
  - (f) No VGI Group Member acts as a resident agent for a non-resident, has registered a GST branch, is a party to a GST joint venture or a partner of a tax or general law partnership, or has entered into any Division 153B agreement or any reverse charge agreement under Division 83 of the GST Act.

42 **(Stamping or foreign equivalent)**

- (a) All transactions and instruments for which a VGI Group Member is the liable to pay the Duty, or where a VGI Group Member has agreed to pay the Duty or where a VGI Group Member has an interest in the enforcement of the transactions and instruments, have been lodged with the relevant Government Agency, are stamped, are not insufficiently stamped, the Duty has been paid and there is no requirement to up stamp on the account of an interim assessment.
- (b) No event has occurred or will occur as a result of anything provided for in this agreement, including entry into and completion of this agreement, that will result in Duty becoming payable by a VGI Group Member in respect to a corporate reconstruction exemption (or similar exemption/concession) from Duty that has been granted by a Government Agency.
- (c) No VGI Group Member has been a party to any transaction where an exemption, concession or other relief from Duty was obtained in the last three years, including any transaction in relation to which the VGI Group Member, whether wholly or partly, obtained relief from Duty under any corporate reconstruction, exemption or concession provisions or as a result of ex gratia arrangements in any Australian jurisdiction.
- (d) All documents (including electronic documents) required to be created by a VGI Group Member under a law relating to Duty have been created and all Duty assessed or payable has been paid in full in accordance with all applicable laws, and the documents have been properly stamped if required to be stamped.
- (e) No VGI Group Member has been a party to or the subject of any Duty audit, review, investigation, compliance check or inquiry by a Government Agency and is not aware of, nor have they been notified of, any such audit, review, investigation or inquiry.



### Schedule 3

#### Regal Warranties

- 1 **(Status)** It is a corporation duly incorporated and validly existing under the laws of the place of its incorporation.
- 2 **(Power)** It has the power to enter into and perform its obligations under this Deed and to carry out the transactions contemplated by this Deed.
- 3 **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into and performance of this Deed by it and to carry out the transactions contemplated by this Deed.
- 4 **(Deed binding)** This Deed is its valid and binding obligation enforceable in accordance with its terms.
- 5 **(Transactions permitted)** The execution and performance by it of this Deed and each transaction contemplated by this Deed does not and will not violate any provision of:
  - (a) a law or treaty or a judgment, ruling, order or decree of a Government Agency binding on it or any of its Subsidiaries; or
  - (b) its constitution or other constituent documents.
- 6 **(Capital structure)**
  - (a) As at the date of this Deed, Regal has 212,179 Regal Shares on issue including 97,893 Employee Shares and there are no other securities, issued and outstanding at the date of this Deed.
  - (b) No Regal Group Member is subject to any obligation (including any contingent obligation) to issue or have transferred to any person securities in or of it or any other Regal Group Member other than:
    - (i) Employee Shares that may be issued under the terms of the Regal ESOP that Regal has issued and outstanding at the date of this Deed; or
    - (ii) shares that may be issued under the terms of the Kilter ESOP that Kilter has issued and outstanding at the date of this Deed.
- 7 **(Ownership of Sale Shares)** At Completion:
  - (a) the Regal Shareholders are the legal and (except where the Regal Shareholder expressly enters into this Deed as trustee of a trust) beneficial owners of the Sale Shares;
  - (b) the Sale Shares comprise all of the issued capital of Regal; and
  - (c) VGI will acquire the full legal and beneficial ownership of the Sale Shares free and clear of all Encumbrances, subject to registration of VGI in the Regal register of shareholders.
- 7.2 **(Ownership of Regal Group Shares)**
  - (a) Regal is the legal and beneficial owner of:
    - (i) all of the issued share capital in each of Regal Funds Management Asia Pte Ltd, and RFM Capital Pty Ltd and Regal ESOP Pty Ltd;
    - (ii) 51% of the issued share capital in Attunga Capital Pty Ltd; and
    - (iii) 61.49% of the ordinary shares in Kilter Pty Ltd.
  - (b) Kilter Pty Ltd is the legal and beneficial owner of all of the issued share capital in each of Kilter Investments Pty Ltd and Kilter Management Services Pty Ltd and holds 50% of the

issued share capital in Wedgetail Food & Fibre Pty Ltd.

- (c) Other than the shareholdings noted in 7.2(a) and 7.2(b) above, no Regal Group Member holds any interest in any other entity (except in a capacity as an investment manager).

- 8 **(No Encumbrances)** The Sale Shares are free and clear of all Encumbrances at Completion, can be sold and transferred free of any competing rights, including pre-emptive rights or rights of first refusal, and are fully paid and no money is owing in respect of them.
- 9 **(Explanatory Memorandum)** As far as Regal is aware, at the time VGI commenced sending the Explanatory Memorandum to VGI Shareholders, the Regal Information contained in the Explanatory Memorandum is true and correct in all material respects, complies with all applicable laws and does not contain any statement which is misleading or deceptive in any material respect (whether by omission or otherwise).
- 10 **(Solvency)** No Regal Group Member is the subject of an Insolvency Event.
- 11 **(No material breach of laws)** Regal is not aware of any material breach of law, regulation or industrial instrument by any Regal Group Member of any Australian or foreign laws and regulations applicable to it or orders of Australian or foreign Government Agencies having jurisdiction over it.
- 12 **(Anti-Bribery)** No Regal Group Member nor any director, and, so far as Regal is aware, any officer, agent, employee or other person or entity that provides services for or acts for or on behalf of a Regal Group Member has at any time either directly or indirectly offered, promised provided, or authorised the provision of any money, property, contribution, gift, entertainment or other thing of value to any government official or person acting for on behalf of a Government Agency in the exercise of his or her duties (including acts that may fall outside that person's official duties) in connection with or to further the business, including to influence official action or secure an improper advantage (including to obtain or retain business or a financial or business advantage (including a future business advantage)), or to encourage the recipient to breach a duty of good faith or loyalty or the policies of his or her employer.
- 13 **(Anti-Money Laundering)**
- (a) Each:
- (i) Regal Group Member and each director of Regal; and
- (ii) so far as Regal is aware, officer, agent or employee or other person or entity that provides services for or acts for or on behalf of a Regal Group Member,
- has complied with, in relation to the services for or actions taken for or on behalf of the Regal Group Member, all Anti-Corruption Laws and all Anti-Money Laundering Laws.
- (b) As far as Regal is aware, no proceeding by or before any Government Agency with respect to a breach of Anti-Corruption Laws and all Anti Money Laundering Laws by a Regal Group Member is pending or threatened.
- (c) Regal has undertaken reasonable enquiries to ensure that the processes and systems of Kilter are fully compliant with, and for the 2 years preceding this Deed have been fully complaint with, all Anti-Corruption Laws and Anti-Money Laundering Laws.
- 14 **(No sanctions)** No Regal Group Member nor any director of Regal, and, so far as Regal is aware, no officer, agent, employee or other person or entity that provides services for or acts for or on behalf of a Regal Group Member is subject to any sanction or restrictions imposed or administered under laws concerning trade embargoes, economic or financial sanctions, or export or import restrictions imposed, administered, or enforced by any country in which a Regal Group

Member operates.

- 15 **(Material licences and authorisations)** The Regal Group has all material licences, permits and franchises necessary for it to conduct its activities as they are conducted as at the date of this Deed and is in material compliance with all such licences, permits and franchises.
- 16 **(Notices of violations)** No Regal Group Member has received any notice within the past 3 years regarding any actual or alleged: (i) breach of any applicable laws or regulations; (ii) breach of any licences, authorisations or approvals; or (iii) deficiency in any licences, authorisations or approvals held by the Regal Group.
- 17 **(Due Diligence Material)** As far as Regal is aware:
- (a) the Regal Due Diligence Material has been collated and prepared in good faith, and Regal is not aware of any information contained in the Regal Due Diligence Material that is false or misleading in any material respect (including by omission); and
  - (b) other than where Regal has indicated to VGI that it is withholding particular information from disclosure to VGI on the basis that it is commercially sensitive information, Regal has not withheld information from disclosure to VGI which has been requested by VGI and could reasonably be expected to be material to VGI's evaluation of the Regal Group and the merits of the Merger,
- however Regal does not make any representation or warranty as to the accuracy or adequacy of a forecast, prediction or projection, budget, business plan or other forward looking statement in respect of the future financial position of Regal.
- 18 **(Correspondence with Government Agencies)** The Regal Due Diligence Materials contain true and complete copies of all material enquiries from, material correspondence with, and all material information and documentation delivered to Government Agencies in each case relating to a Regal Group Member in the 5 years prior to the date of this Deed.
- 19 **(Contracts)** As far as Regal is aware:
- (a) the Regal Due Diligence Material contains copies of all material legally-binding agreements, arrangements or understandings that have been entered into by or on behalf of any Regal Group Member (other than as agreed between Regal and VGI, including, without limitation, non-disclosure agreements, soft-dollar agreements and documentation relating to unlisted investments);
  - (b) no Regal Group Member is in default under a material contract to which it is a party, and nothing has occurred which is (or would be following the giving of notice or the lapse of time) an event of default or would give another party a termination right or right to accelerate any material right or obligation under any such material contract; and
  - (c) where template agreements have been provided in the Regal Due Diligence Materials, all agreements in force between a Regal Group Member and other parties based off the template agreements have been executed on the terms of the template other than any variables noted in the template, including party names and dates.
- 20 **(Insurance)**
- (a) The Regal Due Diligence Materials contain accurate particulars of all material Regal Insurance Policies which, as of the date of this Deed, provides insurance coverage in respect of a Regal Group Member and the activities undertaken by the Regal Group.
  - (b) Each Regal Insurance Policy is currently in full force and effect in accordance with its terms and all applicable premiums have been paid. To the best of the knowledge of Regal, no fact, matter or circumstance exists that would render any such Regal Insurance

Policy void, voidable or unenforceable in any material respect.

- (c) As far as Regal is aware, there are no material outstanding claims made by a Regal Group Member or any person on their behalf under a Regal Insurance Policy or an insurance policy previously held by a Regal Group Member.
- (d) As far as Regal is aware, no Regal Group Member is in material breach, nor would be in material breach but for the requirements of notice or lapse of time, of any Regal Insurance Policy, and, as of the date of this Deed, all material notifications and disclosures required to have been made by a Regal Group Member under a Regal Insurance Policy have been made.

## 21 (Accounts)

- (a) As far as Regal is aware, there has not been any event, change, effect or development that would require Regal to restate Regal's financial statements as provided to ASIC.
- (b) The Regal Accounts:
  - (i) have been prepared in the manner described in the notes to them;
  - (ii) have been prepared in accordance with the Accounting Standards, all applicable laws and with the requirements of the relevant entities jurisdictions of incorporation; and
  - (iii) give a true and fair view of the financial position of the entity or entities to which the Regal Accounts relate as at the date of the Regal Accounts and their performance and cash flows for the 12 months ended on the date of the Regal Accounts.

## 22 (Management Accounts) The Management Accounts:

- (a) are materially complete;
- (b) have been prepared with reasonable care and attention; and
- (c) do not materially misstate the financial position of the entity or entities to which they relate as at the date of the Management Accounts and its performance for the periods ending on the date of the Management Accounts.

## 23 (Adequate disclosure of incentive arrangements and liabilities) Details of all incentives, benefits, entitlements and other compensation arrangements with employees, consultants, officers, and directors of each Regal Group Member, and any actual, contingent and expected liabilities relating thereto, have been Fairly Disclosed in the Regal Due Diligence Materials.

## 24 (Litigation) There are no current material actions, suits, arbitrations or legal or administrative proceedings against any Regal Group Member and, as far as Regal is aware: (a) there are no (i) current, pending or threatened material claims, disputes or demands, or (ii) pending or threatened material actions, suits, arbitrations or legal or administrative proceedings, in each case against any Regal Group Member; (b) no Regal Group Member is the specific focus of any material formal investigation by a Government Agency (not being an industry-wide investigation).

## 25 (Investigations) No Regal Group Member has received any written notice of nor, as far as Regal is aware, is the subject of, any investigation or enforcement action by ASIC or any other Government Agency and, as far as Regal is aware, no such investigation or enforcement action is pending or anticipated or being threatened by ASIC or any other Government Agency.

## 26 (No Encumbrances over assets) Other than any security interests disclosed in the Regal Due Diligence Material, there are no security interests over all or any of the Regal Group's present or

futures assets or revenues.

27 **(Regal Business IP)**

- (a) The Regal Group does not use or rely on any unregistered Intellectual Property Rights not owned by a Regal Group Member which are material to the Regal Group.
- (b) A Regal Group Member is the sole legal and beneficial owner of all right, title and interest in, and to, the Regal Business IP or has a valid right to use the Regal Business IP and the Regal Business IP comprises all the Intellectual Property Rights necessary to operate the Regal Group's business in substantially the manner in which it is being operated as at the date of this Deed.

28 **(No infringement of third party rights)** So far as Regal is aware:

- (a) neither the carrying on of the Regal Group's business nor the use of the Regal Business IP by a Regal Group Member infringes the Intellectual Property Rights of any third party; and
- (b) no Regal Group Member has received written notice from a third party alleging the foregoing in the 24 months prior to the date of this Deed.

29 **(Regal IT Systems)** The Regal IT Systems:

- (a) are owned by a Regal Group Member or are licensed, leased or supplied under an enforceable agreement with a Regal Group Member;
- (b) perform their intended function and are sufficient for the operation of each Regal Group Member; and
- (c) are the subject of administrative and technical measures reasonably necessary to protect the security and business continuity of the Regal IT Systems (including disaster recovery and business continuity plans and procedures).

30 **(IT incidents)** So far as Regal is aware, details of all actual or potential cybersecurity incidents, breaches of cybersecurity protocols, and breaches of procedures designed to protect the integrity of the Regal IT Systems (**IT incidents**) have been disclosed in the Regal Due Diligence Materials and, so far as Regal is aware, no material IT incidents have occurred in the 2 years prior to the date of this Deed nor have any material deficiencies been identified which could make the Regal Group vulnerable to material IT incidents.

31 **(Confidential and personal information)** So far as Regal is aware, there has not been any misuse or unauthorised disclosure of or access to any Regal Business Confidential Information or Regal Business Personal Information.

32 **(No arrangements between shareholders)** Other than the Transaction Documents, neither Regal nor New Highland (in any capacity) has entered into any agreement, arrangement, or understanding which relates to such person's interest in shares in the Listed Entity, or which would otherwise require or restrict such persons from exercising any rights in relation to shares in the Listed Entity.

33 **(Tax paid)** All Tax for which a Regal Group Member is liable that relates to a period or part period up to and including the Completion Date, including any penalty or interest, has been fully paid or provided for.

34 **(Adequate records)** Each Regal Group Member has created and maintained adequate records to enable it to materially comply with its obligations to:

- (a) prepare and submit any information, notices, computations, Tax Returns and payments

required in respect of any Tax Law;

- (b) prepare any accounts necessary for compliance with any Tax Law;
- (c) support any position taken in relation to the application of any Tax Law; and
- (d) retain necessary records as required by any Tax Law.

35 **(Returns accurate)** All Tax Returns required to be lodged by a Regal Group member with a Government Agency have been lodged with the relevant Government Agency and any Tax Return or similar document which has been submitted by the Regal Group members to any Government Agency discloses all material facts that must be disclosed under any Tax Law and is not misleading in any material respect.

36 **(Correct withholdings)** Any obligation on a Regal Group Member under any Tax Law to withhold amounts at source on account of Tax has been complied with and, where appropriate, duly paid to the relevant Government Agency in accordance with the relevant Tax Law and by the relevant due date.

37 **(No dispute or Tax audit)**

- (a) There is no current, pending or threatened dispute between any Regal Group Member and any Government Agency in respect of any Tax.
- (b) Regal is not aware of any pending or threatened Tax audit, investigation or review relating to a Regal Group Member.
- (c) No Government Agency is at present conducting or proposing to conduct any review, investigation or audit into all or any part of the business affairs of the Regal Group.

38 **(No permanent establishment)**

- (a) Each Regal Group Member is a resident (for tax purposes) solely in the jurisdiction in which it was incorporated.
- (b) No Regal Group Member carries on business through a permanent establishment (as that expression is defined in either section 6(1) of the ITAA 1936 or any relevant double taxation agreement) in any other country than Australia.

39 **(Foreign entities managed by Regal)** No foreign company, partnership or trust for which a Regal Group Member acts as an investment manager has a permanent establishment in Australia.

40 **(Consolidation)**

Other than Attunga Capital Pty Ltd, Kilter and subsidiaries of Kilter:

- (a) The Regal Group Members have validly formed a Consolidated Group.
- (b) Each member of the Regal Tax Consolidated Group has at all times been a party to a valid Tax Funding Agreement and Tax Sharing Agreement and have satisfied their obligations in respect of these agreements.
- (c) No Regal Group Member has at any time been a member of a Consolidated Group other than the Regal Tax Consolidated Group.

41 **(Public officer and tax agent registration)**

- (a) The office of public officer as required under any Tax Law has always been occupied for each Regal Group Member.
- (b) No Regal Group Member has been required to be a registered tax agent or BAS agent as



those terms are defined in the *Tax Agent Services Act 2009 (Cth)*

42 **(Specified income tax matters)**

- (a) The Regal Tax Consolidated Group has accurately maintained its franking account and has not been liable for franking deficit tax for the purposes of Division 205 of the ITAA 1997.
- (b) No debt or other obligation of a Regal Group Member has been forgiven within the meaning of the Tax Law, other than a debt or obligation the forgiveness or waiver of which would not be recognised.
- (c) The Regal Group Members have complied with all transfer pricing requirements in the respective jurisdictions and maintained associated contemporaneous transfer pricing documentation to support all material international related party dealings.
- (d) No Regal Group Member has any shares in an entity or other instruments to which Division 832 of the ITAA 1997, the OECD hybrid mismatch rules or other similar law would apply resulting in additional tax liability.
- (e) The share capital account of each Regal Group Member is not 'tainted' within the meaning of that term as defined in section 995-1 of the ITAA 1997.
- (f) No representative of any Regal Group Member has taken any steps or been involved in any conduct that will result in the relevant Regal Group Member being a promoter of a tax exploitation scheme under Division 290 of Schedule 1 to the Taxation Administration Act 1953.
- (g) All Tax related accounting provisions are free from material misstatement.
- (h) No entity for which a Regal Group Member is responsible or liable for Tax in its capacity as trustee, responsible entity, general partner or manager (including as a result of any act or omission in this capacity), has any unpaid Tax that would be due or payable to a Government Agency.
- (i) All Tax Returns for which a Regal Group Member is responsible to another entity (including in its capacity as trustee, responsible entity, general partner or manager) have been lodged with a relevant Government Agency.

43 **(GST)**

- (a) Each Regal Group Member has complied with all laws, contracts, agreements or arrangements relating to GST and, where a Regal Group Member has the right to require another party to any such agreement or arrangement to pay to it an amount on account of GST, it has enforced that right.
- (b) Each Regal Group Member that is registered for GST is entitled to be registered.
- (c) Each Regal Group Member if required to be registered for GST:
  - (i) is registered for GST and is a member of the Regal GST Group;
  - (ii) is and has been a member of the Regal GST Group for at least the past 4 years or from incorporation if less than 4 years;
  - (iii) other than Regal Limited, is not and has never been the representative member of the Regal GST Group;
  - (iv) has not been a member of any other GST Group;
  - (v) has not entered into an Indirect Tax Sharing Agreement or an indirect tax funding

agreement in respect of the Regal GST Group;

- (vi) has complied with the GST Law; and
- (vii) has adequate systems and processes established for it to ensure it complies with the GST Law and any rulings or determinations.

- (d) The representative member of the Regal GST Group has in all respects correctly accounted for GST, including the lodgement of returns and that it has paid or accounted for all GST (including any adjustments) within the time limits prescribed on supplies, acquisitions and importations made by a member of the Regal GST Group, and has claimed input tax credits (including any adjustments) for all creditable acquisitions and creditable importations made by a member of the Regal GST Group.
- (e) There is no contract, agreement or arrangement requiring any Regal Group Member to supply anything that does not contain a provision enabling the entity as supplier to recover from the other party to the contract, agreement or arrangement an additional amount equal to the amount of GST payable on the supply.
- (f) No Regal Group Member acts as a resident agent for a non-resident, has registered a GST branch, is a party to a GST joint venture or a partner of a tax or general law partnership, or has entered into any Division 153B agreement or any reverse charge agreement under Division 83 of the GST Act.

44 **(Stamping or foreign equivalent)**

- (a) All transactions and instruments for which a Regal Group Member is the liable to pay the Duty, or where a Regal Group Member has agreed to pay the Duty or where a Regal Group Member has an interest in the enforcement of the transactions and instruments, have been lodged with the relevant Government Agency, are stamped, are not insufficiently stamped, the Duty has been paid and there is no requirement to up stamp on the account of an interim assessment.
- (b) No event has occurred or will occur as a result of anything provided for in this agreement, including entry into and completion of this agreement, that will result in Duty becoming payable by a Regal Group Member in respect to a corporate reconstruction exemption (or similar exemption/concession) from Duty that has been granted by a Government Agency.
- (c) No Regal Group Member has been a party to any transaction where an exemption, concession or other relief from Duty was obtained in the last three years, including any transaction in relation to which the Regal Group Member, whether wholly or partly, obtained relief from Duty under any corporate reconstruction, exemption or concession provisions or as a result of ex gratia arrangements in any Australian jurisdiction.
- (d) All documents (including electronic documents) required to be created by a Regal Group Member under a law relating to Duty have been created and all Duty assessed or payable has been paid in full in accordance with all applicable laws, and the documents have been properly stamped if required to be stamped.
- (e) No Regal Group Member has been a party to or the subject of any Duty audit, review, investigation, compliance check or inquiry by a Government Agency and is not aware of, nor have they been notified of, any such audit, review, investigation or inquiry.

45 **(Disclosure of claims)** The Regal Due Diligence Materials contain full details of all written information regarding the termination of the employment of any Specified Employees which would be relevant to any actual or potential Claim against Regal brought by such Specified Employees, and all actual or potential Claims against Regal notified by such Specified Employees, and so far

as Regal is aware there are no Claims from any Specified Employees against Regal which are outstanding.

- 46 **(Sophisticated investors)** Each Regal Shareholder is a person to whom an offer and issue of the Sale Shares can be made without disclosure as a result of sections 708(8) or 708(11) of the Corporations Act.

**Schedule 4****VGI Prescribed Occurrences**

- 1 VGI converting all or any of its shares into a larger or smaller number of shares.
- 2 Any VGI Group Member (other than a direct or indirect wholly owned Subsidiary) resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares (excluding any purchase or buyback of VG1 or VG8 shares).
- 3 Any VGI Group Member (other than a direct or indirect wholly owned Subsidiary):
  - (a) entering into a buy-back agreement (other than an agreement to effect an on-market buyback of VG1 or VG8 shares); or
  - (b) resolving to approve the terms of a buy-back agreement (other than an agreement to effect an on-market buyback of VG1 or VG8 shares) under the Corporations Act.
- 4 Except for a Permitted VGI Dividend, any VGI Group Member (other than a direct or indirect wholly owned Subsidiary) declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its shareholders.
- 5 Any VGI Group Member issuing shares or other securities to a person, or granting an option over or a right to receive its shares or other securities, or agreeing to make such an issue or grant such an option or right, other than:
  - (a) where the shares or other securities are issued, or where the options are granted, by a VGI Group Member (other than VGI) to another VGI Group Member;
  - (b) the issuing of VGI Shares upon the exercise or vesting of VGI Options which are on issue as at the date of this Deed; or
  - (c) as permitted by clause 4.12(c).
- 6 Any VGI Group Member making any change to its constitution other than VGI amending its constitution to provide for virtual shareholder meetings and making any changes required in relation to the replacement of CHESS (Clearing House Electronic Subregister System) by ASX.
- 7 Any VGI Group Member disposing, or agreeing to dispose, of the whole, or a substantial part, of the VGI Group's business or property.
- 8 Any VGI Group Member creating, or agreeing to create, any security interest over the whole or a substantial part of the VGI Group's business or property.
- 9 An Insolvency Event occurring in relation to a VGI Group Member.
- 10 Any VGI Group Member issuing, or agreeing to issue, convertibles notes, other than to VGI or a wholly owned Subsidiary of VGI.
- 11 Any material change to the VG1 IMA, the VG8 IMA, or the investment strategies of either of those companies.
- 12 Any VGI Group Member agreeing to pay a bonus to an employee that outside the ordinary course of business or otherwise not consistent with the employee's employment contract, other than as disclosed by VGI to Regal prior to the date of this Deed.

**Schedule 5****Regal Prescribed Occurrences**

- 1 Any Regal Shares being transferred, sold, charged, or otherwise encumbered, except the transfer of Regal Shares held by the individuals who are trustees of the Regal Foundation as at the date of this Deed to a new trustee of the Regal Foundation (solely in its capacity as trustee of the Regal Foundation) provided that written evidence of such transfer is provided to VGI.
- 2 Regal converting all or any of its shares into a larger or smaller number of shares.
- 3 Any Regal Group Member (other than a direct or indirect wholly owned Subsidiary) resolving to reduce its share capital in any way or reclassifying (other than as permitted under both the terms of the Regal ESOP and this Deed), combining, splitting or redeeming or repurchasing directly or indirectly any of its shares.
- 4 Any Regal Group Member (other than a direct or indirect wholly owned Subsidiary):
  - (a) entering into a buy-back agreement; or
  - (b) resolving to approve the terms of a buy-back agreement under the Corporations Act.
- 5 Except for a Permitted Regal Dividend, any Regal Group Member (other than a direct or indirect wholly owned Subsidiary) declaring, paying or distributing any other dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its shareholders.
- 6 Any Regal Group Member issuing shares or other securities to a person, or granting an option over or a right to receive its shares or other securities, or agreeing to make such an issue or grant such an option or right, other than where the shares or other securities are issued, or where the options are granted, by a Regal Group Member (other than Regal) to another Regal Group Member.
- 7 Any Regal Group Member making any change to its constitution.
- 8 Any Regal Group Member disposing, or agreeing to dispose, of the whole, or a substantial part, of the Regal Group's business or property.
- 9 Any Regal Group Member creating, or agreeing to create, any security interest over the whole or a substantial part of the Regal Group's business or property.
- 10 An Insolvency Event occurring in relation to a Regal Group Member
- 11 Any Regal Group Member issues, or agrees to issue, convertibles notes, other than to Regal or a wholly owned Subsidiary of Regal.
- 12 Any material change to the investment management agreement of The Regal Investment Fund (RF1), or the investment strategy of that fund.
- 13 Any Regal Group Member agreeing to pay a bonus to an employee that outside the ordinary course of business or otherwise not consistent with the employee's employment contract, other than as disclosed by Regal to VGI prior to the date of this Deed.

**Schedule 6****Timetable**

| Event   | Target date           |
|---|-----------------------|
| VGI appointed Independent Expert  | 23 March 2022         |
| Announcement of execution of this Deed  | The date of this Deed |
| VGI to lodge draft Explanatory Memorandum with ASIC   | 14 April 2022         |
| Despatch of Explanatory Memorandum to VGI Shareholders (expected to be despatched simultaneously with Notice of VGI Annual General Meeting) | 29 April 2022         |
| VGI Shareholder Meeting (expected to be combined with VGI Annual General Meeting)   | 27 May 2022           |
| Completion  | 4 June 2022           |



**Schedule 7**

**Form of NH Voluntary Escrow Deed**

VGI Partners Limited  
New Highland Pty Limited as trustee of the King Family Trust  
Philip Brian Vernon King

## Voluntary Escrow Deed

Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia  
T +61 2 9230 4000  
F +61 2 9230 5333  
[www.allens.com.au](http://www.allens.com.au)

© Allens Australia 2022

**Contents**

|          |  |          |
|----------|--|----------|
| <b>1</b> | <b>Defined terms &amp; interpretation</b>    | <b>1</b> |
| 1.1      | Defined terms                                | 1        |
| 1.2      | Interpretation                               | 3        |
| 1.3      | Headings                                     | 4        |
| 1.4      | Compliance with Listing Rules                | 4        |
| <b>2</b> | <b>Escrow restrictions</b>                   | <b>4</b> |
| 2.1      | Holder restrictions during the Escrow Period | 4        |
| 2.2      | Controller Interests                         | 4        |
| 2.3      | Escrow restrictions                          | 4        |
| 2.4      | Exceptions                                   | 5        |
| 2.5      | Notice                                       | 6        |
| <b>3</b> | <b>Warranties and acknowledgment</b>         | <b>6</b> |
| 3.1      | Giving of warranties                         | 6        |
| 3.2      | Representations and warranties               | 6        |
| 3.3      | Survival of warranties and representations   | 7        |
| <b>4</b> | <b>Consequences of breaching this deed</b>   | <b>7</b> |
| <b>5</b> | <b>Amendment and waiver</b>                  | <b>8</b> |
| <b>6</b> | <b>Capacity</b>                              | <b>8</b> |
| <b>7</b> | <b>Termination</b>                           | <b>8</b> |
| <b>8</b> | <b>General</b>                               | <b>8</b> |
| 8.1      | PPSA   | 8        |
| 8.2      | Non-merger                                   | 8        |
| 8.3      | Entire agreement                             | 9        |
| 8.4      | Inconsistent agreements                      | 9        |
| 8.5      | Further assurances                           | 9        |
| 8.6      | Costs  | 9        |
| 8.7      | Notices                                      | 9        |
| 8.8      | Time of essence                              | 9        |
| 8.9      | Counterparts                                 | 9        |
| 8.10     | Governing law and jurisdiction               | 9        |

**This Deed** is made on

#### Parties

- 1 **VGI Partners Limited** (ACN 129 188 450) of 39 Phillip Street, Sydney NSW 2000 (the **Company**).
- 2 **New Highland Pty Ltd** (ACN 121 604 500) as trustee for the King Family Trust of Level 47, 1 Macquarie Place Sydney NSW 2000 (the **Holder**).
- 3 **Philip Brian Vernon King** of 13 Lakeside Crescent, North Manly, NSW 2100 (the **Controller**).

#### Recitals

- A The Company and Regal Funds Management Pty Limited (**Regal**) intend to combine in an all-scrip merger, pursuant to which the Company will acquire all of the issued shares in Regal in consideration for the issue of ordinary shares in the Company to Regal shareholders (**Proposed Merger**).
- B Following Completion (as that term is defined in the Merger Implementation Deed) of the Proposed Merger, the Holder will hold Securities in the Company.
- C The Holder agrees to not Deal in their Restricted Securities for the Escrow Period on the terms and conditions set out in this deed.
- D The Holder is controlled by the Controller.
- E The Holder agrees to escrow all of the Restricted Securities for the Escrow Period pursuant and subject to, and the Controller agrees to be bound by, the terms of this deed.

**It is agreed** as follows.

## 1 Defined terms & interpretation

### 1.1 Defined terms

In this deed:

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

**Associate** has the meaning given to that term in the Corporations Act.

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

**ASX Settlement** means ASX Settlement Pty Ltd (ABN 49 008 504 532).

**Board** means the board of directors of the Company from time to time.

**Business Day** means:

- (a) for receiving a notice under clause 8.7, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received; and
- (b) for all other purposes, a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, Australia.

**Controller Interests** means in respect of a Controller, the legal, beneficial or economic interests in the Holder or the Restricted Securities in which the Controller has a direct or indirect interest and each intermediate entity through which that interest occurs.

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

**Dealing** in respect of any Restricted Securities or Controller Interest, means to directly or indirectly:

- (a) sell, assign, transfer or otherwise Dispose of, or agree or offer to sell, assign, transfer or otherwise dispose of;
- (b) create, or agree or offer to create, any Security Interest in;
- (c) enter into any option which, if exercised, enables or requires the Holder to sell, assign, transfer or otherwise dispose of; or
- (d) do, or omit to do, or agree to do, or agree to omit to do, any act if the act or omission would have the effect of transferring, whether directly or indirectly, effective ownership or control of, or any interest in or economic benefit of,

any Restricted Security or Controller Interest or any legal, beneficial or economic interest in that Restricted Share or Controller Interest, and **Deal** and **Dealt** each have a corresponding meaning.

**Dispose** has the meaning given to that term in the Listing Rules.

**Escrow Period** means the period from the Completion Date (as that term is defined under the Merger Implementation Deed) and 21 June 2024.

**Holding Lock** has the meaning given to that term in Section 2 of the Settlement Rules.

**Immediate Family Member:**

- (a) of a Controller means a parent, sibling, spouse or child over 18 years of age of the Controller; and
- (b) of a Holder means a parent, sibling, spouse or child over 18 years of age of the Controller.

**Initial Securities** means the number of Shares which is equal in number to two-thirds of the total number of Shares issued to the Holder on completion of the Proposed Transaction in exchange for the transfer of all of the Holder's ordinary shares in Regal to the Company.

**Issuer Sponsored Subregister** means the part of the Company's register for shares that is administered by the Company (and not ASX Settlement) and records uncertificated holdings of Securities.

**Listing Rules** means the listing rules of ASX, as amended, varied, modified or waived from time to time.

**Merger Implementation Deed** means the merger implementation deed between, among others, the Company and Regal which relates to the implementation of the Proposed Merger.

**Notice** means a notice which is:

- (a) legible and in English;
- (b) addressed to the party to whom that notice is being given;
- (c) marked to the attention of the individual who is specified in the address of that party; and
- (d) delivered to that party by being left at, or sent by security post to, the postal address which is specified in the address of that party.

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

**PPSA Security Interest** means a 'security interest' within the meaning of the PPSA.

**Release Date** means, in respect of a Security, the Business Day after the last day of the Escrow Period.

**Restriction Deed** a restriction deed entered into between the Company and one or more shareholders of the Company under which Shares are subject to restrictions on Dealing.

**Restricted Securities** means, in relation to the Holder, the Initial Securities (including any interest, direct or indirect, in such Securities) and, for the avoidance of doubt, includes any greater or lesser number of Securities into which the Initial Securities are split or consolidated.

**Securities** has the meaning given to that term in the Corporations Act.

**Security Interest** means an interest or power:

- (a) reserved in or over an interest in any security including, but not limited to, any retention of title;
- (b) created or otherwise arising in or over any interest in any security under a bill of sale, mortgage, charge, lien, pledge, trust or power;
- (c) an interest of the kind referred to in section 12 of the PPSA; or
- (d) or any agreement to grant or create any such interest or power.

**Settlement Rules** means the settlement operating rules made by ASX Settlement Pty Limited, as amended, varied, modified or waived from time to time.

**Share** means a fully paid ordinary share in the Company.

**Trading Day** means a 'trading day' as defined in the Listing Rules.

## 1.2 Interpretation

In this deed including the recitals, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this deed, and a reference to this deed includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to time is to Sydney, Australia time;
- (f) a reference to a party is to a party to this deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (j) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (k) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it;



- (l) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
- (m) for so long as the Company is listed on the official list of ASX, words and expressions defined in the Listing Rules, and not in this deed, have the meanings given to them in the Listing Rules (as applicable); and
- (n) any agreement, representation, warranty, indemnity or undertaking made or given by a Holder binds and is given by it severally and not jointly nor jointly and severally with any other holder of shares in the Company.

### 1.3 Headings

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

### 1.4 Compliance with Listing Rules

For so long as the Company is listed on the official list of ASX:

- (a) notwithstanding anything contained in this deed, if the Listing Rules prohibit an act being done, that act must not be done;
- (b) nothing contained in this deed prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not done, authority is given for that act to be done or not done (as the case may be);
- (d) if the Listing Rules require this deed to contain a provision and it does not contain such a provision, this deed is deemed to contain that provision;
- (e) if the Listing Rules require this deed not to contain a provision and it contains such a provision, this deed is deemed not to contain that provision; and
- (f) if any provision of this deed is or becomes inconsistent with the Listing Rules, this deed is deemed not to contain that provision to the extent of the inconsistency.

## 2 Escrow restrictions

### 2.1 Holder restrictions during the Escrow Period

Subject to clause 2.4 below, the Holder must not Deal in their Restricted Securities during the Escrow Period.

### 2.2 Controller Interests

Subject to clause 2.4 below, during the Escrow Period, the Controller must not Deal in their Controller Interests.

### 2.3 Escrow restrictions

The parties acknowledge and agree that:

- (a) as soon as practicable following the issue of the Restricted Securities to the Holder, the Restricted Securities will be registered and held for the Holder on the Issuer Sponsored Subregister;
- (b) the Company, and where applicable its registry provider or other advisors acting on behalf of the Company, will apply a Holding Lock to the Restricted Securities as soon as practicable after registration of the Restricted Shares on the Issuer Sponsored Subregister and the Holder hereby agrees to the application of the Holding Lock; and

- (c) the Company, and where applicable its registry provider or other advisors acting on behalf of the Company, will do all things necessary or desirable to ensure that the Holding Lock is released:
- (i) to the extent necessary to permit disposals of Restricted Securities permitted by this deed; and
  - (ii) in full in respect of the relevant Restricted Securities at 4.00pm on the Release Date,
- including notifying ASX that the Restricted Securities will be released from the Holding Lock in accordance with the timing requirements set out in Listing Rule 3.10A.

## 2.4 Exceptions

- (a) During the Escrow Period, the Holder or Controller may Deal in any of its Restricted Securities and Controller Interests if the Dealing arises solely as a result of:
- (i) the acceptance of a bona fide takeover bid made under Chapter 6 of the Corporations Act in respect of the Shares, provided that the holders of at least half of the Shares that are not subject to any Restriction Deed, and to which the offers under the bid relate, have accepted the bid;
  - (ii) the transfer or cancellation of the Shares as part of a scheme of arrangement under Part 5.1 of the Corporations Act;
  - (iii) a disposal of, but not the creation of a Security Interest in, some or all of the Restricted Securities to:
    - (A) any Immediate Family Member;
    - (B) a company wholly-owned by the Holder;
    - (C) a trust in relation to which the Holder or, in the case of a Holder that is an individual, their Immediate Family Member is the beneficiary;
    - (D) its Associates;
    - (E) the trustees of the Regal Foundation, ABN 88 781 341 594),(each, a **Transferee**), where the Transferee also enters into an escrow arrangement with the Company in respect of those securities on substantially the same terms as this deed for the remainder of the Escrow Period;
  - (iv) a transfer of Restricted Securities necessitated by the death, serious disability or incapacity of the Holder provided that the transfer is to the estate or guardian of the Holder (as the case may be); or
  - (v) a requirement of applicable law (including an order of a court of competent jurisdiction); or
  - (vi) with the prior approval of the Company.
- (b) During the Escrow Period, a Holder or Controller may create a Security Interest in some (or all) of its Restricted Securities in favour of a bona fide third party financial institution (**Financial Institution**) as security for a loan, hedge or other financial accommodation on arm's length terms provided that:
- (i) the Security Interest (taken together with any related arrangements, including the relevant loan or other financial accommodation) does not in any way constitute a direct or indirect disposal of the economic interest, or decrease in the economic interest, that the Holder has in any of its Restricted Securities;

- (ii) no Restricted Securities are to be transferred or delivered to the Financial Institution in connection with the Security Interest; and
  - (iii) the documentation for the Security Interest makes it clear that the Restricted Securities remain in escrow and subject to the voluntary escrow arrangements set out in this deed for the Escrow Period, including the restrictions contained in the representations, warranties and undertakings contained in this deed, as if the Financial Institution were a party to this Deed.
- (c) If either of the events described in clauses 2.4(a)(i) or 2.4(a)(ii) occur, and if for any reason any or all Restricted Securities are not transferred or cancelled in accordance with such a takeover bid or scheme of arrangement for any reason, then the Holder agrees that the restrictions applying to the Restricted Securities under this deed will continue to apply and without limiting the foregoing, the Holding Lock will be reapplied to all Restricted Securities not so transferred or cancelled.

## 2.5 Notice

If the Holder or Controller becomes aware:

- (a) that a Dealing in any of its Restricted Securities or Controller Interests has occurred, or is likely to occur, during the Escrow Period; or
- (b) of any matter which is likely to give rise to a Dealing in any of its Restricted Securities or Controller Interests during the Escrow Period,

it must notify the Company as soon as practicable after becoming aware of the actual or potential Dealing or the matters giving rise to the actual or potential Dealing, providing full details.

## 3 Warranties and acknowledgment

### 3.1 Giving of warranties

Each of the warranties and representations in this clause 3 are given in favour of the Company, as at:

- (a) the date of this deed; and
- (b) at all times until and including the Release Date.

The warranties and representations given in this clause 3 are given in respect of any and all Restricted Securities which the Holder holds and in respect of which the Controller has Controller Interests in from time to time during the Escrow Period.

### 3.2 Representations and warranties

The Holder and Controller jointly warrants and represents the following:

- (a) prior to the Escrow Period, it has not done, or omitted to do, any act which would result in it breaching clause 2 of this deed if it were an act or omission which would take effect during the Escrow Period;
- (b) the Holder holds the Restricted Securities;
- (c) the Controller is the controller of the Holder's Restricted Securities;
- (d) the Restricted Securities of the Holder are free from all Security Interests and other third party interests or rights (other than under the Company's constitution);
- (e) it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms;

- (f) this deed constitutes legal, valid and binding obligations and, subject to any necessary stamping and registration, is enforceable in accordance with its terms;
- (g) it has full power and authority, without the consent of any other person, to enter into and perform its obligations under this deed (including, if the Holder has entered into this deed as a trustee (**Trustee**), under the trust deed for the relevant trust (**Trust**));
- (h) if the Holder is a Trustee, the Trustee is the sole trustee of the Trust and, to the best of its knowledge and belief, there is no proposal to remove it as trustee of the Trust;
- (i) if the Holder is a Trustee:
  - (i) that Holder has the right to be fully indemnified out of the assets of the Trust in respect of any liability arising under, or in connection with, this deed and the right has not been modified, released or diminished in any way. The assets of the Trust are sufficient to satisfy that right in full and that Holder has not released or disposed of its equitable lien over that Trust; and
  - (ii) the Trust has not been terminated and there is no effective proposal or requirement to wind up, deregister, terminate, reconstitute or resettle the Trust; and
- (j) the execution, delivery and performance by the Holder or Controller of this deed does not and will not violate, breach or result in a contravention of:
  - (i) any applicable law, regulation or authorisation;
  - (ii) its constitution or other constituent documents (or, if the Holder or Controller is a Trustee, the trust deed for the Trust); or
  - (iii) any agreement, undertaking, Security Interest or document which is binding on the Holder or the Controller.

### 3.3 Survival of warranties and representations

The warranties and representations in this clause 3 survive the termination of this deed.

## 4 Consequences of breaching this deed

- (a) If the Holder or Controller breaches this deed or reasonably expects that a breach will occur (including a breach of clause 3.2) (a **Defaulting Party**), each of the following applies:
  - (i) the Company may take the steps necessary to enforce this deed, or to rectify or prevent the breach, as soon as practicable after becoming aware of the breach or the prospective breach; and
  - (ii) subject to the Listing Rules, the Company may, in addition to its other rights and remedies, refuse to acknowledge, deal with, accept or register any sale, assignment or transfer of any of the Defaulting Party's Restricted Securities.
- (b) If the Holder or Controller breaches this deed, the Holder and Controller each acknowledge and agree that such a breach could cause substantial commercial and financial detriment to the Company and other third parties.
- (c) The parties agree that damages would be an insufficient remedy for breach of this deed and the Holder and Controller agree that the Company is entitled to seek and obtain an injunction or specific performance to enforce the Holder's and/or Controller's obligations under this deed without proof of actual damage and without prejudice to any of its other rights or remedies.

## 5 Amendment and waiver

This deed may not be amended or waived without the prior written consent of all parties.

## 6 Capacity

If the Holder has entered into this deed as Trustee:

- (a) notwithstanding any other provision of this deed including any provision expressed to prevail over this clause 6 but subject to clause 6(c), that Holder enters into this deed only in its capacity as Trustee of the Trust and in no other capacity. A liability arising under or in connection with this deed can be enforced against that Holder only to the extent that it can be satisfied out of the property of the Trust for which the Holder is actually indemnified for the liability. That Holder will exercise its rights of indemnification in order to satisfy its obligations under this deed;
- (b) subject to clause 6(c) a party to this deed may not sue that Holder in any capacity other than as Trustee in respect of the Trust, including seeking the appointment to that Holder of a receiver (except in relation to property of the Trust), liquidator, administrator or any similar person; and
- (c) the provisions of this clause 6 will not apply to any obligation or liability of that Holder to the extent that it is not satisfied because under the relevant trust deed or by operation of law, there is a reduction to the extent, or elimination of, that Holder's right of indemnification out of the assets of the Trust, or the right does not exist at all, as a result of the Holder's fraud, negligence, improper performance of duties or breach of trust.

## 7 Termination

If the Merger Implementation Deed is terminated prior to Completion in accordance with its terms, the obligations of the parties under this deed will automatically terminate and the terms of this deed will be of no further force or effect.

## 8 General

### 8.1 PPSA

If the Company determines that this deed results in the creation of a PPSA Security Interest, the Holder and the Controller agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Company reasonably asks and considers necessary for the purposes of:

- (a) ensuring that the PPSA Security Interest is enforceable, perfected and otherwise effective;
- (b) enabling the Company to apply for any registration, or give any notification, in connection with the PPSA Security Interest so that the PPSA Security Interest has the priority required by the Company; and
- (c) enabling the Company to exercise rights in connection with the PPSA Security Interest.

### 8.2 Non-merger

The warranties, other representations and undertakings by the parties in this deed are continuing and will not merge or be extinguished on entry into this deed.

**8.3 Entire agreement**

This deed and the documents referred to in this deed are the entire agreement of the parties about the subject matter of this deed and supersede any representations, negotiations, arrangements, understandings, or agreements and all other communications.

**8.4 Inconsistent agreements**

If a provision of this deed is inconsistent with a provision in any other agreement, document, representation, negotiation, arrangement or understanding between the Holder and a Controller and any other person, the provision of this deed prevails.

**8.5 Further assurances**

Each party must do all things and execute all further documents required to give full effect to this deed.

**8.6 Costs**

Each party must pay its own costs of negotiating, preparing and executing this deed.

**8.7 Notices**

A Notice is regarded as given by a party to another party, at the time of delivery of that Notice to the address which is specified in the address of that other party.

**8.8 Time of essence**

Time is of the essence to this deed.

**8.9 Counterparts**

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

**8.10 Governing law and jurisdiction**

This deed is governed by the laws of New South Wales, Australia and each party submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

**Executed and delivered as a deed**

**Company**

**Executed** as a deed in accordance with  
section 127 of the *Corporations Act 2001* by  
**VGI Partners Limited** (ACN 129 188 450):

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name



**Holder**

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **New Highland Pty Ltd** (ACN 121 604 500) as trustee for the King Family Trust:

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Controller**

**Signed** by **Philip Brian Vernon King** in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

**Schedule 8**

**Form of Regal ESOP Shareholder Escrow Deed**

# Escrow Deed

Dated

VGI Partners Limited (ABN 33 129 188 450) ("**Company**")

The Holders listed in Schedule 1 ("**Holders**")

The Controllers listed in Schedule 1 ("**Controllers**")

**King & Wood Mallesons**

Level 61  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Australia  
T +61 2 9296 2000  
F +61 2 9296 3999  
DX 113 Sydney  
[www.kwm.com](http://www.kwm.com)

# Escrow Deed

## Contents

|  |           |
|--|-----------|
| <b>Details</b>                                   | <b>1</b>  |
| <b>General terms</b>                             | <b>2</b>  |
| <b>1 Definitions and interpretation</b>          | <b>2</b>  |
| 1.1 Definitions                                  | 2         |
| 1.2 General interpretation                       | 4         |
| 1.3 Compliance with ASX Listing Rules            | 5         |
| <b>2 Escrow</b>                                  | <b>5</b>  |
| 2.1 Restrictions                                 | 5         |
| 2.2 Escrow restrictions and Holding Lock         | 6         |
| 2.3 Notice to the Company                        | 6         |
| <b>3 Exceptions to escrow restrictions</b>       | <b>6</b>  |
| 3.1 Dividends and voting rights                  | 6         |
| 3.2 Takeovers, mergers and reorganisations       | 6         |
| 3.3 ASX notification requirement                 | 7         |
| 3.4 Other exceptions                             | 7         |
| 3.5 Acknowledgement                              | 8         |
| <b>4 Termination</b>                             | <b>8</b>  |
| <b>5 Warranties and acknowledgement</b>          | <b>8</b>  |
| 5.1 Warranties                                   | 8         |
| 5.2 Representations and warranties               | 8         |
| <b>6 Leaver provisions</b>                       | <b>9</b>  |
| 6.1 Mandatory sale                               | 9         |
| 6.2 Proceeds of disposal                         | 10        |
| 6.3 Payment method for Sale Price                | 10        |
| <b>7 Consequences of breaching this document</b> | <b>10</b> |
| <b>8 Notices and other communications</b>        | <b>11</b> |
| <b>9 Capacity</b>                                | <b>11</b> |
| <b>10 General</b>                                | <b>11</b> |
| 10.1 Variation and waiver                        | 11        |
| 10.2 Consents, approvals or waivers              | 12        |
| 10.3 Discretion in exercising rights             | 12        |
| 10.4 Partial exercising of rights                | 12        |
| 10.5 Conflict of interest                        | 12        |
| 10.6 Remedies cumulative                         | 12        |
| 10.7 Inconsistent law                            | 12        |
| 10.8 Supervening law                             | 12        |

|   |                                |           |
|---|--------------------------------|-----------|
| 10.9  | Costs                          | 12        |
| 10.10   | Counterparts                   | 12        |
| 10.11   | Continuing clauses             | 12        |
| 10.12   | Further steps                  | 13        |
| 10.13   | Assignment or other dealings   | 13        |
| 10.14   | No liability for loss          | 13        |
| 10.15   | Severability                   | 13        |
| 10.16   | Rules of construction          | 13        |
| 10.17   | PPSA further steps             | 13        |
| <hr/>   |                                |           |
| <b>11</b>   | <b>Governing law</b>           | <b>14</b> |
| 11.1  | Governing law and jurisdiction | 14        |
| 11.2  | Serving documents              | 14        |
| <hr/>   |                                |           |
| <b>Schedule 1 – Holder and Controller details</b> |                                | <b>15</b> |

# Escrow Deed

## Details

### Parties

|                      |           |                                    |
|----------------------|-----------|------------------------------------|
| <b>Company</b>       | Name      | <b>VGI Partners Limited</b>        |
|                      | ABN       | 33 129 188 450                     |
|                      | Formed in | Australia                          |
|                      | Address   | 39 Phillip Street, Sydney NSW 2000 |
|                      | Email     | Kathleen.liu@regalfm.com           |
|                      | Attention | General Counsel                    |
| <b>Holders</b>       |           | The parties listed in Schedule 1.  |
| <b>Controllers</b>   |           | The parties listed in Schedule 1.  |
| <b>Governing law</b> |           | New South Wales, Australia         |

### Recitals

- A** The Company and Regal Funds Management Pty Limited (ABN 30 107 576 821) ("**Regal**") have agreed to combine in a scrip merger, pursuant to which VGI will acquire all of the issued shares in Regal in consideration for the issue of New VGI Shares to Regal Shareholders (the "**Merger**").
- B** New VGI Shares received by a Regal ESOP Shareholders will be held in escrow by the Company pursuant to this document until the expiry of the relevant Escrow Period attaching to those New VGI Shares, subject to the terms of this document.
- C** The Controllers control or is associated with the Holder listed in the same row as the Controller in Schedule 1.
- D** Each Holder is a Regal ESOP Shareholder and has agreed to enter into this voluntary escrow arrangement to facilitate the Merger subject to, and the Controller agrees to be bound by, the terms of this document.

# Escrow Deed

## General terms

---

### 1 Definitions and interpretation

#### 1.1 Definitions

In this document, unless a contrary intention appears, the following terms have the following meanings, and all other capitalised terms have the meaning given to them in, and are to be interpreted in accordance with, the Merger Implementation Deed:

**ASX** means ASX Limited or the market operated by it, as the context requires.

**ASX Listing Rules** means the listing rules of ASX.

**ASX Settlement** means ASX Settlement Pty Limited (ABN 49 008 504 532).

**ASX Settlement Operating Rules** means the operating rules of ASX Settlement.

**Board** means the board of directors of the Company.

**Business Day** means a business day as defined in the ASX Listing Rules.

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

**Deal** means:

- (a) sell, assign, transfer or otherwise dispose (including to “dispose” as defined in the ASX Listing Rules) of;
- (b) offer to sell, assign, transfer or otherwise dispose (including to “dispose” as defined in the ASX Listing Rules) of;
- (c) enter into any option which, if exercised, enables or requires the holder to sell, assign, transfer or otherwise dispose of;
- (d) create or agree to create or permit to be created any Security Interest in; or
- (e) agree (or agree to offer) to do any of the things in paragraphs (a) to (d) above,

and **Dealing** has a corresponding meaning.

**Details** means the section of this document headed “Details”.

**Disposal Proceeds** means the consideration received by the Company for the disposal of all of the Leaver Sale Securities pursuant to clause 6.1, net of any brokerage, fees and other sale expenses.

**Employee** means:

- (a) if the Holder is employed by a VGI Group Member, the Holder; or



- (b) if the Controller is employed a VGI Group Member, the Controller.

**Escrow Period** means, in relation to a Holder, the period commencing on the date on which Completion occurs and ending on the Vesting Date applicable to that Holder.

**Escrow Shares** means, in relation to a Holder:

- (a) if no new VGI Shares are issued between the date of the Merger Implementation Deed and Completion, the number of New VGI Shares listed in Schedule 1 that are issued to the Holder at Completion; or
- (b) if new VGI Shares are issued between the date of the Merger Implementation Deed and Completion, the number of New VGI Shares that are issued to the Holder at Completion in accordance with the Merger Implementation Deed.

**Holding Lock** has the meaning given in section 2 of the ASX Settlement Operating Rules.

**Inconsistent Instrument** means any power of attorney or any other instrument signed, executed or issued by or on behalf of the Holder at any time, whether before, on or after the date of this document, conferring on persons other than the attorneys appointed under this document (whether jointly or severally or jointly and severally) rights with respect to Escrow Shares.

**Issuer Sponsored Subregister** has the meaning given in section 2 of the ASX Settlement Operating Rules.

**Leaver** means an Employee:

- (a) who has given notice of resignation in respect of employment by a VGI Group Member (other than in circumstances where such Employee will, following cessation of that employment, be employed by another member of the VGI Group);
- (b) who has ceased employment with a VGI Group Member after having been put on notice by such VGI Group Member for issues of underperformance or performance management; or
- (c) whose employment with a VGI Group Member is otherwise terminated with or without notice for gross misconduct or serious breach of a VGI Group Member policy.

**Leaver Consideration** means the amount which the Company estimates to be the capital gains tax payable (if any) by the Holder in respect of the disposal of the Leaver Sale Securities, taking into account the cost base of those shares, and the brokerage and other sale costs incurred with respect to the disposal of those shares, whether the Leaver is entitled to a CGT discount and assuming that the Leaver pays income tax at the highest marginal rate.

**Merger Implementation Deed** means the merger implementation deed entered into by the Company and Regal Funds Management Pty Limited (ABN 30 107 576 821) (amongst others) dated on or around 28 March 2022.

**Notification Period** has the meaning given in clause 3.3(b).

**PPSA Security Interest** means a "security interest" within the meaning of the *Personal Property Securities Act 2009* (Cth).

**Regal** means Regal Funds Management Pty Limited (ABN 30 107 576 821).

**Security Interest** means an interest or power:

- (a) reserved in or over an interest in any securities including, any retention of title; or
- (b) created or otherwise arising in or over any interest in any securities under a bill of sale, mortgage, charge, lien pledge, trust or power,

by way of, or having similar commercial effect to, security for the payment of a debt, any other monetary obligation or the performance of any other obligation, but is not limited to:

- (c) any agreement to grant or create any of the above; and
- (d) a PPSA Security Interest.

**Share Registry** means the share registry engaged by the Company to administer and manage its register of members.

**Takeover Offer** means a takeover offer for some or all Shares under Chapter 6 of the Corporations Act.

**Trading Day** means a “trading day” as defined in the ASX Listing Rules.

**Vesting Date** means the date specified against the relevant Holder and Controller in Schedule 1.

## 1.2 General interpretation

Headings labels used for definitions are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this document

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (e) a reference to “person” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to Melbourne time;
- (h) a reference to “law” includes common law, principles of equity and legislation (including regulations);

- (i) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (j) a reference to "regulations" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (k) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and each of them individually;
- (l) an agreement, representation or warranty by 2 or more persons binds them jointly and each of them individually;
- (m) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (n) a reference to any thing (including an amount) is a reference to the whole and each part of it; and
- (o) if the day on which a party must do something under this document is not a Business Day, the party must do it on the next Business Day.

### **1.3 Compliance with ASX Listing Rules**

For so long as the Company is listed on the official list of ASX:

- (a) notwithstanding anything contained in this document, if the ASX Listing Rules prohibit an act being done, that act must not be done;
- (b) nothing contained in this document prevents an act being done that the ASX Listing Rules require to be done;
- (c) if the ASX Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the ASX Listing Rules require this document to contain a provision and it does not contain such a provision, this document is deemed to contain that provision;
- (e) if the ASX Listing Rules require this document not to contain a provision and it contains such a provision, this document is deemed not to contain that provision; and
- (f) if any provision of this document is or becomes inconsistent with the ASX Listing Rules this document is deemed not to contain that provision to the extent of the inconsistency.

---

## **2 Escrow**

### **2.1 Restrictions**

Subject to clause 3, during the Escrow Period the Holder agrees not to:

- (a) Deal with;
- (b) Deal in any interest (including any legal, beneficial or economic interest) or right in respect of; or

- (c) do, or omit to do, any act if the act or omission would (or would be likely to) have the effect of resulting in a Dealing with, or in any interest (including any legal, beneficial or economic interest) or right in respect of,

any or all of the Escrow Shares.

## 2.2 Escrow restrictions and Holding Lock

The parties agree that:

- (a) **(registration)** as soon as practicable following the date of this document, the Company will arrange for the Escrow Shares to be registered and held for the Holder on the Issuer Sponsored Subregister;
- (b) **(Holding Lock)** the Company will apply a Holding Lock on the Escrow Shares as soon as practicable after registration of the Escrow Shares on the Issuer Sponsored Subregister and the Holder agrees to the application of the Holding Lock; and
- (c) **(release)** the Company will do all things necessary to ensure that the Holding Lock is released:
- (i) to the extent necessary to permit Dealings of the Escrow Shares permitted by this document;
- (ii) in full at the conclusion of the Escrow Period,
- including notifying the ASX that the Escrow Shares will be released from the Holding Lock, in accordance with the timing requirements set out in ASX Listing Rule 3.10A.

## 2.3 Notice to the Company

If a Holder or Controller becomes aware:

- (a) that any action, event or circumstance referred to in clause 2.1 has occurred, or is likely to occur, during the Escrow Period; or
- (b) of any matter which is likely to give rise to any action, event or circumstance referred to in clause 2.1 during the Escrow Period,

it must notify the Company as soon as practicable after becoming aware of the action, event, circumstance or matter, as applicable, providing full details.

---

## 3 Exceptions to escrow restrictions

### 3.1 Dividends and voting rights

The parties agree that the terms of this document will have no effect on any rights of the Holder to receive dividends, a return of capital or other distribution attaching to the Escrow Shares or to exercise voting rights in respect of the Escrow Shares.

### 3.2 Takeovers, mergers and reorganisations

Clause 2.1 will cease to apply to the extent necessary to allow:

- (a) **(Takeover Offer)** the Holder to accept an offer made under a Takeover Offer for any of its Escrow Shares, provided that the holders of at least 50% of the Shares that are not subject to escrow arrangements and to which the offers under the Takeover Offer relate have accepted the Takeover Offer;
- (b) **(bid acceptance facility)** the Holder to tender any of its Escrow Shares into a bid acceptance facility established in connection with a Takeover Offer, provided that holders of at least 50% of Shares that are not subject to escrow arrangements and to which the offers under the Takeover Offer relate have either accepted the Takeover Offer or tendered (and not withdrawn) their Shares into the bid acceptance facility; or
- (c) **(scheme)** the Escrow Shares to be transferred or cancelled as part of a merger or an acquisition of share capital being implemented by way of a scheme of arrangement under Part 5.1 of the Corporations Act which has received all necessary approvals, including all such necessary approvals by shareholders of the Company and courts,

provided that, if for any reason any or all Escrow Shares are not transferred or cancelled in accordance with a Takeover Offer (including because the Takeover Offer does not become unconditional) or scheme of arrangement described in clause 3.2(c), then the Holder and the Controller agrees that the restrictions applying to the Escrow Shares under this document (including under clause 2.1) will continue to apply and the Holding Lock will be re-applied to all Escrow Shares not so transferred or cancelled for the remainder of the Escrow Period.

### 3.3 ASX notification requirement

- (a) At least 5 Business Days before the expiry of the relevant escrow period, the Company will use reasonable endeavours to notify ASX under ASX Listing Rule 3.10A that the relevant Escrow Shares (rounded down to the nearest whole Escrow Share) can be released from escrow in accordance with this document.
- (b) The Holder acknowledges and agrees that under ASX Listing Rule 3.10A, ASX requires not less than 5 Business Days' notice ("**Notification Period**") in order for the relevant Escrow Shares to be released from escrow. The Holder further acknowledges and agrees that the relevant Escrow Shares will be released from escrow following the expiry of the Notification Period.

### 3.4 Other exceptions

Clause 2.1 will cease to apply to the extent necessary to allow a Dealing in Escrow Shares:

- (a) **(applicable laws)** pursuant to any applicable laws (including an order of a court of competent jurisdiction);
- (b) **(no change in beneficial ownership)** by which the Holder transfers the Escrow Shares to a transferee when:
- (i) the transfer does not result in a change in the beneficial ownership of the Escrow Shares;
  - (ii) the transfer does not reduce the Escrow Period; and
  - (iii) the transferee enters into an escrow deed on substantially the same terms as this document; and

- (c) **(Company consent)** where the Holder transfers the Escrow Shares to a transferee:
- (i) with the prior written consent of the Company;
  - (ii) the transferee enters into an escrow deed on substantially the same terms as this document provided that the mandatory sale conditions shall still apply to the extent the Employee is a Leaver.

### 3.5 Acknowledgement

The Holder acknowledges that the Holder remains responsible for compliance with any legislation or regulation applicable to trading in securities, including the insider trading provisions of the Corporations Act.

---

## 4 Termination

- (a) This document terminates with immediate effect and without the action of any party upon the end of the Escrow Period provided that the Company has complied with all of its obligations under this document, including the obligation in clause 4(b) below.
- (b) The Company must procure that the Share Registry releases the Holding Lock in respect of the Escrow Shares, if it is still in effect, as soon as possible following termination of this document under clause 4(a).

---

## 5 Warranties and acknowledgement

### 5.1 Warranties

Each of the warranties and representations in this clause 5 is given in favour of the Company:

- (a) as at the date of this document, unless a later date is specified in clause 5.2; and
- (b) from the applicable date under clause 5.1(a), at all times until expiry of the Escrow Period or earlier termination of this document.

The warranties and representations in this clause 5 are given in respect of any and all Escrow Shares from time to time during the period from the date of this document until the end of the Escrow Period.

### 5.2 Representations and warranties

The Holder represents and warrants that:

- (a) **(Deal)** prior to the Escrow Period it has not and will not do or omit to do anything which would result in a breach of clause 2.1 of this document during the Escrow Period;
- (b) **(No power to direct)** no person (other than the Controller, if any) has the power to direct or cause the direction of the Holder or the management of the Holder, whether through the ownership of voting securities or by agreement or by virtue of any person being the manager or adviser of the Holder or otherwise;

- (c) **(free from all Security Interests)** subject to clause 10.17, from the date of Completion of the Merger, the Escrow Shares are free from all Security Interests and other third party interests or rights;
- (d) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it (including, if the Holder has entered into this document as a trustee ("**Trustee**"), under the trust deed for the relevant Trust ("**Trust**"));
- (e) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:
- (i) its constituent documents or other constituent documents (or, if the Holder is a Trustee, the trust deed for the Trust) or cause a limitation on its powers or the powers of its directors to be exceeded; or
  - (ii) any law binding on or applicable to it or its assets.
- (f) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (g) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms; and
- (h) **(Trustee)** if the Holder is a Trustee:
- (i) the Trustee is the sole trustee of the Trust and, to the best of its knowledge and belief, there is no proposal to remove or replace it as trustee of the Trust;
  - (ii) the Holder has the right to be fully indemnified out of the assets of the Trust in respect of any liability arising under, or in connection with, this document and the right has not been modified, released or diminished in any way. The assets of the Trust are sufficient to satisfy that right in full and the Holder has not released or disposed of its equitable lien over that trust; and
  - (iii) the Trust has not been terminated and there is no effective proposal or requirement to wind up, deregister, terminate, reconstitute or resettle the Trust.

---

## 6 Leaver provisions

### 6.1 Mandatory sale

If the Employee becomes a Leaver during the Escrow Period:

- (a) the Holder irrevocably and unconditionally appoints the Company as its agent and attorney to, either directly or through a broker appointed by the Company, dispose of any or all of the Escrow Shares held by the Holder in any manner permitted by law and to complete and execute any necessary documentation required to be delivered by the Holder in connection with such disposal;
- (b) the Board may determine in its sole discretion to dispose of all or any of the Escrow Shares held by the Holder (the Escrow Shares determined



by the Board to be disposed of being “**Leaver Sale Securities**”) and such Leaver Sale Securities shall be released from the Holding Lock;

- (c) upon the disposal of such Leaver Sale Securities, the Company will promptly notify the Holder and Controller (if any) of the Disposal Proceeds and Leaver Consideration referable to the Leaver Sale Securities provided that the Leaver Consideration determined by the Company shall be binding and final in the absence of manifest error;
- (d) to the extent the Board has determined that the Holder may retain some or all of their Escrow Shares pursuant to paragraph (b) above, the Holder and Controller (if any) agree that the restrictions applying to such Escrow Shares under this document (including under clause 2.1) will continue to apply; and
- (e) the Holder and Controller (if any) agree that:
  - (i) that all acts and things done by any director of the Company in exercising powers under the power of attorney in clause 6.1(a) will be as good and valid as if they had been done by the Holder;
  - (ii) to ratify and confirm whatever is done in exercising powers under the power of attorney in clause 6.1(a);
  - (iii) that the power of attorney in clause 6.1(a) is irrevocable and continuing during the Escrow Period; and
  - (iv) in respect of the Holder, that it will not issue, sign or execute any Inconsistent Instrument and undertakes to immediately revoke any powers given in any Inconsistent Instrument. If the Holder fails to revoke an Inconsistent Instrument each attorney appointed under clause 6.1(a) is authorised to revoke the powers given in the Inconsistent Instrument.

## **6.2 Proceeds of disposal**

If the Company has disposed of any Leaver Sale Securities pursuant to clause 6.1:

- (a) the Company will pay to the Holder an amount equal to the Leaver Consideration from the Disposal Proceeds; and
- (b) the Holder will forfeit any right it has to the remainder of the Disposal Proceeds.

## **6.3 Payment method for Sale Price**

The Leaver Consideration is payable in cash.

---

# **7 Consequences of breaching this document**

- (a) If the Holder or Controller (if any) breaches this document or the Company believes that a prospective breach of this document may occur, the Company:
  - (i) may take any steps necessary to enforce the document, or to rectify the breach, as soon as practicable after becoming aware of the breach or prospective breach; and

- (ii) subject to the ASX Listing Rules, may, in addition to its other rights and remedies, refuse to acknowledge, deal with, accept or register any sale, assignment, transfer of or other Dealing in any of the Escrow Shares.
- (b) The parties agree that damages would be an insufficient remedy for a breach or prospective breach of this document by the Holder or Controller (if any) and the Holder and Controller (if any) each agree that the Company is entitled to seek and obtain an injunction or specific performance to enforce the Holder's obligations under this document, without proof of actual damage and without prejudice to any of the Company's other rights or remedies.

---

## 8 Notices and other communications

Notices and other communications in connection with this document must be in writing. They must be sent to the address or email address referred to in the Details and (except in the case of email) marked for the attention of the person referred to in the Details. If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

---

## 9 Capacity

If the Holder has entered into this document as a trustee:

- (a) notwithstanding any other provision of this document including any provision expressed to prevail over this clause 9 but subject to clause 9(c), the Holder enters into this document only in its capacity as trustee of the relevant trust and in no other capacity. A liability arising under or in connection with this document can be enforced against the Holder only to the extent which it can be satisfied out of the property of the relevant trust for which the Holder is actually indemnified for the liability. The Holder will exercise its rights of indemnification in order to satisfy its obligations under this document;
- (b) subject to clause 9(c), a party to this document may not sue the Holder in any capacity other than as trustee in respect of the relevant trust, including seeking the appointment to the Holder of a receiver (except in relation to property of the relevant trust), a liquidator, administrator or any similar person; and
- (c) the provisions of this clause 9 will not apply to any obligation or liability of the Holder to the extent that it is not satisfied because under the relevant trust deed or by operation of law, there is a reduction in the extent to which the Holder is entitled to exercise its right of indemnification out of the assets of the relevant trust, or the right does not exist at all, as a result of the Holder's fraud, negligence, improper performance of duties or breach of trust.

---

## 10 General

### 10.1 Variation and waiver

A provision of this document, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party to be bound.

## **10.2 Consents, approvals or waivers**

By giving any approval, consent or waiver a party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.

## **10.3 Discretion in exercising rights**

Unless this document expressly states otherwise, a party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this document in its absolute discretion (including by imposing conditions).

## **10.4 Partial exercising of rights**

Unless this document expressly states otherwise, if a party does not exercise a right, power or remedy in connection with this document fully or at a given time, they may still exercise it later.

## **10.5 Conflict of interest**

Each party may exercise their rights, powers and remedies in connection with this document even if this involves a conflict of duty or they have a personal interest in their exercise.

## **10.6 Remedies cumulative**

The rights, powers and remedies of a party in connection with this document are in addition to other rights, powers and remedies given by law independently of this document.

## **10.7 Inconsistent law**

To the extent the law permits, this document prevails to the extent it is inconsistent with any law.

## **10.8 Supervening law**

Any present or future law which operates to vary the obligations of a party in connection with this document with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

## **10.9 Costs**

Each party must pay its own costs of negotiating, preparing and executing this deed.

## **10.10 Counterparts**

This document may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document and the date on which the last counterpart is executed is the date of the document.

## **10.11 Continuing clauses**

Each representation, warranty and other clause in this document which is capable of having effect after termination continues despite termination.

#### **10.12 Further steps**

Each party agrees to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed), which another party asks and considers necessary to:

- (a) bind the other party and any other person intended to be bound under this document; or
- (b) show whether the other party is complying with this document.

#### **10.13 Assignment or other dealings**

Neither the Holder nor the Controller (if any) may assign or otherwise deal with their rights under this document or allow any interest in them to arise or be varied without the prior written consent of the Company.

#### **10.14 No liability for loss**

Unless this document expressly states otherwise, a party is not liable for any loss, liability or Costs arising in connection with the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right, power or remedy in connection with this document.

#### **10.15 Severability**

If the whole or any part of a provision of this document is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this document has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this document or is contrary to public policy.

#### **10.16 Rules of construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this document or any part of it.

#### **10.17 PPSA further steps**

If the Company determines that this document results in the creation of a PPSA Security Interest, the Holder agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Company reasonably asks and considers necessary for the purposes of:

- (a) ensuring that the PPSA Security Interest is enforceable, perfected and otherwise effective;
- (b) enabling the Company to apply for any registration, or give any notification, in connection with the PPSA Security Interest so that the PPSA Security Interest has the priority required by the Company; and
- (c) enabling the Company to exercise rights in connection with the PPSA Security Interest.

---

## **11 Governing law**

### **11.1 Governing law and jurisdiction**

The law in force in the place specified in the Details governs this document. The parties submit to the non-exclusive jurisdiction of the courts of that place.

### **11.2 Serving documents**

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address set out in the Details.

**EXECUTED** as a deed

**Schedule 9**

**Form of Stroud Escrow Deed**

VGI Partners Limited

Stroud Agricultural Company Pty Ltd as trustee of the Vernon Trust

Andrew Robert Vernon King

## Voluntary Escrow Deed

Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia  
T +61 2 9230 4000  
F +61 2 9230 5333  
[www.allens.com.au](http://www.allens.com.au)

© Allens Australia 2022



**Contents**

|          |  |          |
|----------|--|----------|
| <b>1</b> | <b>Defined terms &amp; interpretation</b>    | <b>1</b> |
| 1.1      | Defined terms                                | 1        |
| 1.2      | Interpretation                               | 3        |
| 1.3      | Headings                                     | 4        |
| 1.4      | Compliance with Listing Rules                | 4        |
| <b>2</b> | <b>Escrow restrictions</b>                   | <b>4</b> |
| 2.1      | Holder restrictions during the Escrow Period | 4        |
| 2.2      | Controller Interests                         | 4        |
| 2.3      | Escrow restrictions                          | 4        |
| 2.4      | Exceptions                                   | 5        |
| 2.5      | Notice                                       | 6        |
| <b>3</b> | <b>Warranties and acknowledgment</b>         | <b>6</b> |
| 3.1      | Giving of warranties                         | 6        |
| 3.2      | Representations and warranties               | 6        |
| 3.3      | Survival of warranties and representations   | 7        |
| <b>4</b> | <b>Consequences of breaching this deed</b>   | <b>7</b> |
| <b>5</b> | <b>Amendment and waiver</b>                  | <b>8</b> |
| <b>6</b> | <b>Capacity</b>                              | <b>8</b> |
| <b>7</b> | <b>Termination</b>                           | <b>8</b> |
| <b>8</b> | <b>General</b>                               | <b>8</b> |
| 8.1      | PPSA   | 8        |
| 8.2      | Non-merger                                   | 8        |
| 8.3      | Entire agreement                             | 9        |
| 8.4      | Inconsistent agreements                      | 9        |
| 8.5      | Further assurances                           | 9        |
| 8.6      | Costs  | 9        |
| 8.7      | Notices                                      | 9        |
| 8.8      | Time of essence                              | 9        |
| 8.9      | Counterparts                                 | 9        |
| 8.10     | Governing law and jurisdiction               | 9        |

**This Deed** is made on

#### Parties

- 1 **VGI Partners Limited** (ACN 129 188 450) of 39 Phillip Street, Sydney NSW 2000 (the **Company**).
- 2 **Stroud Agricultural Company Pty Ltd** (ACN 615 249 682) as trustee for the Vernon Trust of A4, 15 Narabang Way, Belrose NSW 2085 (the **Holder**).
- 3 **Andrew Robert Vernon King** of (ARVK) SE A4, 15 Narabang Way, Belrose NSW 2085 (the **Controller**).

#### Recitals

- A The Company and Regal Funds Management Pty Limited (**Regal**) intend to combine in an all-scrip merger, pursuant to which the Company will acquire all of the issued shares in Regal in consideration for the issue of ordinary shares in the Company to Regal shareholders (**Proposed Merger**).
- B Following Completion (as that term is defined in the Merger Implementation Deed) of the Proposed Merger, the Holder will hold Securities in the Company.
- C The Holder agrees to not Deal in their Restricted Securities for the Escrow Period on the terms and conditions set out in this deed.
- D The Holder is controlled by the Controller.
- E The Holder agrees to escrow all of the Restricted Securities for the Escrow Period pursuant and subject to, and the Controller agrees to be bound by, the terms of this deed.

**It is agreed** as follows.

## 1 Defined terms & interpretation

### 1.1 Defined terms

In this deed:

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

**Associate** has the meaning given to that term in the Corporations Act.

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

**ASX Settlement** means ASX Settlement Pty Ltd (ABN 49 008 504 532).

**Board** means the board of directors of the Company from time to time.

**Business Day** means:

- (a) for receiving a notice under clause 8.7, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received; and
- (b) for all other purposes, a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, Australia.

**Controller Interests** means in respect of a Controller, the legal, beneficial or economic interests in the Holder or the Restricted Securities in which the Controller has a direct or indirect interest and each intermediate entity through which that interest occurs.

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

**Dealing** in respect of any Restricted Securities or Controller Interest, means to directly or indirectly:

- (a) sell, assign, transfer or otherwise Dispose of, or agree or offer to sell, assign, transfer or otherwise dispose of;
- (b) create, or agree or offer to create, any Security Interest in;
- (c) enter into any option which, if exercised, enables or requires the Holder to sell, assign, transfer or otherwise dispose of; or
- (d) do, or omit to do, or agree to do, or agree to omit to do, any act if the act or omission would have the effect of transferring, whether directly or indirectly, effective ownership or control of, or any interest in or economic benefit of,

any Restricted Security or Controller Interest or any legal, beneficial or economic interest in that Restricted Share or Controller Interest, and **Deal** and **Dealt** each have a corresponding meaning.

**Dispose** has the meaning given to that term in the Listing Rules.

**Escrow Period** means the period from the Completion Date (as that term is defined under the Merger Implementation Deed) and 21 June 2024.

**Holding Lock** has the meaning given to that term in Section 2 of the Settlement Rules.

**Immediate Family Member:**

- (a) of a Controller means a parent, sibling, spouse or child over 18 years of age of the Controller; and
- (b) of a Holder means a parent, sibling, spouse or child over 18 years of age of the Controller.

**Initial Securities** means the number of Shares which is equal in number to two-thirds of the total number of Shares issued to the Holder on completion of the Proposed Transaction in exchange for the transfer of all of the Holder's ordinary shares in Regal to the Company.

**Issuer Sponsored Subregister** means the part of the Company's register for shares that is administered by the Company (and not ASX Settlement) and records uncertificated holdings of Securities.

**Listing Rules** means the listing rules of ASX, as amended, varied, modified or waived from time to time.

**Merger Implementation Deed** means the merger implementation deed between, among others, the Company and Regal which relates to the implementation of the Proposed Merger.

**Notice** means a notice which is:

- (a) legible and in English;
- (b) addressed to the party to whom that notice is being given;
- (c) marked to the attention of the individual who is specified in the address of that party; and
- (d) delivered to that party by being left at, or sent by security post to, the postal address which is specified in the address of that party.

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

**PPSA Security Interest** means a 'security interest' within the meaning of the PPSA.

**Release Date** means, in respect of a Security, the Business Day after the last day of the Escrow Period.

**Restriction Deed** a restriction deed entered into between the Company and one or more shareholders of the Company under which Shares are subject to restrictions on Dealing.

**Restricted Securities** means, in relation to the Holder, the Initial Securities (including any interest, direct or indirect, in such Securities) and, for the avoidance of doubt, includes any greater or lesser number of Securities into which the Initial Securities are split or consolidated.

**Securities** has the meaning given to that term in the Corporations Act.

**Security Interest** means an interest or power:

- (a) reserved in or over an interest in any security including, but not limited to, any retention of title;
- (b) created or otherwise arising in or over any interest in any security under a bill of sale, mortgage, charge, lien, pledge, trust or power;
- (c) an interest of the kind referred to in section 12 of the PPSA; or
- (d) or any agreement to grant or create any such interest or power.

**Settlement Rules** means the settlement operating rules made by ASX Settlement Pty Limited, as amended, varied, modified or waived from time to time.

**Share** means a fully paid ordinary share in the Company.

**Trading Day** means a 'trading day' as defined in the Listing Rules.

## 1.2 Interpretation

In this deed including the recitals, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this deed, and a reference to this deed includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to time is to Sydney, Australia time;
- (f) a reference to a party is to a party to this deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (j) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (k) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it;

## Voluntary Escrow Deed

- (l) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
- (m) for so long as the Company is listed on the official list of ASX, words and expressions defined in the Listing Rules, and not in this deed, have the meanings given to them in the Listing Rules (as applicable); and
- (n) any agreement, representation, warranty, indemnity or undertaking made or given by a Holder binds and is given by it severally and not jointly nor jointly and severally with any other holder of shares in the Company.

**1.3 Headings**

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

**1.4 Compliance with Listing Rules**

For so long as the Company is listed on the official list of ASX:

- (a) notwithstanding anything contained in this deed, if the Listing Rules prohibit an act being done, that act must not be done;
- (b) nothing contained in this deed prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not done, authority is given for that act to be done or not done (as the case may be);
- (d) if the Listing Rules require this deed to contain a provision and it does not contain such a provision, this deed is deemed to contain that provision;
- (e) if the Listing Rules require this deed not to contain a provision and it contains such a provision, this deed is deemed not to contain that provision; and
- (f) if any provision of this deed is or becomes inconsistent with the Listing Rules, this deed is deemed not to contain that provision to the extent of the inconsistency.

**2 Escrow restrictions****2.1 Holder restrictions during the Escrow Period**

Subject to clause 2.4 below, the Holder must not Deal in their Restricted Securities during the Escrow Period.

**2.2 Controller Interests**

Subject to clause 2.4 below, during the Escrow Period, the Controller must not Deal in their Controller Interests.

**2.3 Escrow restrictions**

The parties acknowledge and agree that:

- (a) as soon as practicable following the issue of the Restricted Securities to the Holder, the Restricted Securities will be registered and held for the Holder on the Issuer Sponsored Subregister;
- (b) the Company, and where applicable its registry provider or other advisors acting on behalf of the Company, will apply a Holding Lock to the Restricted Securities as soon as practicable after registration of the Restricted Shares on the Issuer Sponsored Subregister and the Holder hereby agrees to the application of the Holding Lock; and

- (c) the Company, and where applicable its registry provider or other advisors acting on behalf of the Company, will do all things necessary or desirable to ensure that the Holding Lock is released:
- (i) to the extent necessary to permit disposals of Restricted Securities permitted by this deed; and
  - (ii) in full in respect of the relevant Restricted Securities at 4.00pm on the Release Date,
- including notifying ASX that the Restricted Securities will be released from the Holding Lock in accordance with the timing requirements set out in Listing Rule 3.10A.

## 2.4 Exceptions

- (a) During the Escrow Period, the Holder or Controller may Deal in any of its Restricted Securities and Controller Interests if the Dealing arises solely as a result of:
- (i) the acceptance of a bona fide takeover bid made under Chapter 6 of the Corporations Act in respect of the Shares, provided that the holders of at least half of the Shares that are not subject to any Restriction Deed, and to which the offers under the bid relate, have accepted the bid;
  - (ii) the transfer or cancellation of the Shares as part of a scheme of arrangement under Part 5.1 of the Corporations Act;
  - (iii) a disposal of, but not the creation of a Security Interest in, some or all of the Restricted Securities to:
    - (A) any Immediate Family Member;
    - (B) a company wholly-owned by the Holder;
    - (C) a trust in relation to which the Holder or, in the case of a Holder that is an individual, their Immediate Family Member is the beneficiary;
    - (D) its Associates;
    - (E) the trustees of the Regal Foundation, ABN 88 781 341 594),(each, a **Transferee**), where the Transferee also enters into an escrow arrangement with the Company in respect of those securities on substantially the same terms as this deed for the remainder of the Escrow Period;
  - (iv) a transfer of Restricted Securities necessitated by the death, serious disability or incapacity of the Holder provided that the transfer is to the estate or guardian of the Holder (as the case may be); or
  - (v) a requirement of applicable law (including an order of a court of competent jurisdiction); or
  - (vi) with the prior approval of the Company.
- (b) During the Escrow Period, a Holder or Controller may create a Security Interest in some (or all) of its Restricted Securities in favour of a bona fide third party financial institution (**Financial Institution**) as security for a loan, hedge or other financial accommodation on arm's length terms provided that:
- (i) the Security Interest (taken together with any related arrangements, including the relevant loan or other financial accommodation) does not in any way constitute a direct or indirect disposal of the economic interest, or decrease in the economic interest, that the Holder has in any of its Restricted Securities;

- (ii) no Restricted Securities are to be transferred or delivered to the Financial Institution in connection with the Security Interest; and
  - (iii) the documentation for the Security Interest makes it clear that the Restricted Securities remain in escrow and subject to the voluntary escrow arrangements set out in this deed for the Escrow Period, including the restrictions contained in the representations, warranties and undertakings contained in this deed, as if the Financial Institution were a party to this Deed.
- (c) If either of the events described in clauses 2.4(a)(i) or 2.4(a)(ii) occur, and if for any reason any or all Restricted Securities are not transferred or cancelled in accordance with such a takeover bid or scheme of arrangement for any reason, then the Holder agrees that the restrictions applying to the Restricted Securities under this deed will continue to apply and without limiting the foregoing, the Holding Lock will be reapplied to all Restricted Securities not so transferred or cancelled.

## 2.5 Notice

If the Holder or Controller becomes aware:

- (a) that a Dealing in any of its Restricted Securities or Controller Interests has occurred, or is likely to occur, during the Escrow Period; or
- (b) of any matter which is likely to give rise to a Dealing in any of its Restricted Securities or Controller Interests during the Escrow Period,

it must notify the Company as soon as practicable after becoming aware of the actual or potential Dealing or the matters giving rise to the actual or potential Dealing, providing full details.

## 3 Warranties and acknowledgment

### 3.1 Giving of warranties

Each of the warranties and representations in this clause 3 are given in favour of the Company, as at:

- (a) the date of this deed; and
- (b) at all times until and including the Release Date.

The warranties and representations given in this clause 3 are given in respect of any and all Restricted Securities which the Holder holds and in respect of which the Controller has Controller Interests in from time to time during the Escrow Period.

### 3.2 Representations and warranties

The Holder and Controller jointly warrants and represents the following:

- (a) prior to the Escrow Period, it has not done, or omitted to do, any act which would result in it breaching clause 2 of this deed if it were an act or omission which would take effect during the Escrow Period;
- (b) the Holder holds the Restricted Securities;
- (c) the Controller is the controller of the Holder's Restricted Securities;
- (d) the Restricted Securities of the Holder are free from all Security Interests and other third party interests or rights (other than under the Company's constitution);
- (e) it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms;



- (f) this deed constitutes legal, valid and binding obligations and, subject to any necessary stamping and registration, is enforceable in accordance with its terms;
- (g) it has full power and authority, without the consent of any other person, to enter into and perform its obligations under this deed (including, if the Holder has entered into this deed as a trustee (**Trustee**), under the trust deed for the relevant trust (**Trust**));
- (h) if the Holder is a Trustee, the Trustee is the sole trustee of the Trust and, to the best of its knowledge and belief, there is no proposal to remove it as trustee of the Trust;
- (i) if the Holder is a Trustee:
- (i) that Holder has the right to be fully indemnified out of the assets of the Trust in respect of any liability arising under, or in connection with, this deed and the right has not been modified, released or diminished in any way. The assets of the Trust are sufficient to satisfy that right in full and that Holder has not released or disposed of its equitable lien over that Trust; and
  - (ii) the Trust has not been terminated and there is no effective proposal or requirement to wind up, deregister, terminate, reconstitute or resettle the Trust; and
- (j) the execution, delivery and performance by the Holder or Controller of this deed does not and will not violate, breach or result in a contravention of:
- (i) any applicable law, regulation or authorisation;
  - (ii) its constitution or other constituent documents (or, if the Holder or Controller is a Trustee, the trust deed for the Trust); or
  - (iii) any agreement, undertaking, Security Interest or document which is binding on the Holder or the Controller.

### 3.3 Survival of warranties and representations

The warranties and representations in this clause 3 survive the termination of this deed.

## 4 Consequences of breaching this deed

- (a) If the Holder or Controller breaches this deed or reasonably expects that a breach will occur (including a breach of clause 3.2) (a **Defaulting Party**), each of the following applies:
- (i) the Company may take the steps necessary to enforce this deed, or to rectify or prevent the breach, as soon as practicable after becoming aware of the breach or the prospective breach; and
  - (ii) subject to the Listing Rules, the Company may, in addition to its other rights and remedies, refuse to acknowledge, deal with, accept or register any sale, assignment or transfer of any of the Defaulting Party's Restricted Securities.
- (b) If the Holder or Controller breaches this deed, the Holder and Controller each acknowledge and agree that such a breach could cause substantial commercial and financial detriment to the Company and other third parties.
- (c) The parties agree that damages would be an insufficient remedy for breach of this deed and the Holder and Controller agree that the Company is entitled to seek and obtain an injunction or specific performance to enforce the Holder's and/or Controller's obligations under this deed without proof of actual damage and without prejudice to any of its other rights or remedies.

## 5 Amendment and waiver

This deed may not be amended or waived without the prior written consent of all parties.

## 6 Capacity

If the Holder has entered into this deed as Trustee:

- (a) notwithstanding any other provision of this deed including any provision expressed to prevail over this clause 6 but subject to clause 6(c), that Holder enters into this deed only in its capacity as Trustee of the Trust and in no other capacity. A liability arising under or in connection with this deed can be enforced against that Holder only to the extent that it can be satisfied out of the property of the Trust for which the Holder is actually indemnified for the liability. That Holder will exercise its rights of indemnification in order to satisfy its obligations under this deed;
- (b) subject to clause 6(c) a party to this deed may not sue that Holder in any capacity other than as Trustee in respect of the Trust, including seeking the appointment to that Holder of a receiver (except in relation to property of the Trust), liquidator, administrator or any similar person; and
- (c) the provisions of this clause 6 will not apply to any obligation or liability of that Holder to the extent that it is not satisfied because under the relevant trust deed or by operation of law, there is a reduction to the extent, or elimination of, that Holder's right of indemnification out of the assets of the Trust, or the right does not exist at all, as a result of the Holder's fraud, negligence, improper performance of duties or breach of trust.

## 7 Termination

If the Merger Implementation Deed is terminated prior to Completion in accordance with its terms, the obligations of the parties under this deed will automatically terminate and the terms of this deed will be of no further force or effect.

## 8 General

### 8.1 PPSA

If the Company determines that this deed results in the creation of a PPSA Security Interest, the Holder and the Controller agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Company reasonably asks and considers necessary for the purposes of:

- (a) ensuring that the PPSA Security Interest is enforceable, perfected and otherwise effective;
- (b) enabling the Company to apply for any registration, or give any notification, in connection with the PPSA Security Interest so that the PPSA Security Interest has the priority required by the Company; and
- (c) enabling the Company to exercise rights in connection with the PPSA Security Interest.

### 8.2 Non-merger

The warranties, other representations and undertakings by the parties in this deed are continuing and will not merge or be extinguished on entry into this deed.

### **8.3 Entire agreement**

This deed and the documents referred to in this deed are the entire agreement of the parties about the subject matter of this deed and supersede any representations, negotiations, arrangements, understandings, or agreements and all other communications.

### **8.4 Inconsistent agreements**

If a provision of this deed is inconsistent with a provision in any other agreement, document, representation, negotiation, arrangement or understanding between the Holder and a Controller and any other person, the provision of this deed prevails.

### **8.5 Further assurances**

Each party must do all things and execute all further documents required to give full effect to this deed.

### **8.6 Costs**

Each party must pay its own costs of negotiating, preparing and executing this deed.

### **8.7 Notices**

A Notice is regarded as given by a party to another party, at the time of delivery of that Notice to the address which is specified in the address of that other party.

### **8.8 Time of essence**

Time is of the essence to this deed.

### **8.9 Counterparts**

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

### **8.10 Governing law and jurisdiction**

This deed is governed by the laws of New South Wales, Australia and each party submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

**Executed and delivered as a deed**

**Company**

**Executed** as a deed in accordance with  
section 127 of the *Corporations Act 2001* by  
**VGI Partners Limited** (ACN 129 188 450):

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Holder**

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **Stroud Agricultural Company Pty Ltd** (ACN 615 249 682) as trustee for the Vernon Trust:

\_\_\_\_\_  
Sole Director Signature

\_\_\_\_\_  
Print Name

**Controller**

**Signed** by **Andrew Robert Vernon King** in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

**Schedule 10**

**Form of Foundation Escrow Deed**

VGI Partners Limited

Philip Brian Vernon King, Andrew Robert Vernon King and David Gore as trustees of the Regal Foundation

## Voluntary Escrow Deed

Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia  
T +61 2 9230 4000  
F +61 2 9230 5333  
[www.allens.com.au](http://www.allens.com.au)

© Allens Australia 2022

**Contents**

|          |  |          |
|----------|--|----------|
| <b>1</b> | <b>Defined terms &amp; interpretation</b>    | <b>1</b> |
| 1.1      | Defined terms                                | 1        |
| 1.2      | Interpretation                               | 3        |
| 1.3      | Headings                                     | 3        |
| 1.4      | Compliance with Listing Rules                | 4        |
| <b>2</b> | <b>Escrow restrictions</b>                   | <b>4</b> |
| 2.1      | Holder restrictions during the Escrow Period | 4        |
| 2.2      | Escrow restrictions                          | 4        |
| 2.3      | Exceptions                                   | 4        |
| 2.4      | Notice                                       | 5        |
| <b>3</b> | <b>Warranties and acknowledgment</b>         | <b>6</b> |
| 3.1      | Giving of warranties                         | 6        |
| 3.2      | Representations and warranties               | 6        |
| 3.3      | Survival of warranties and representations   | 7        |
| <b>4</b> | <b>Consequences of breaching this deed</b>   | <b>7</b> |
| <b>5</b> | <b>Amendment and waiver</b>                  | <b>7</b> |
| <b>6</b> | <b>Capacity</b>                              | <b>7</b> |
| <b>7</b> | <b>Termination</b>                           | <b>7</b> |
| <b>8</b> | <b>General</b>                               | <b>8</b> |
| 8.1      | PPSA   | 8        |
| 8.2      | Non-merger                                   | 8        |
| 8.3      | Entire agreement                             | 8        |
| 8.4      | Inconsistent agreements                      | 8        |
| 8.5      | Further assurances                           | 8        |
| 8.6      | Costs  | 8        |
| 8.7      | Notices                                      | 8        |
| 8.8      | Time of essence                              | 8        |
| 8.9      | Counterparts                                 | 8        |
| 8.10     | Governing law and jurisdiction               | 8        |



**This Deed** is made on

#### Parties

- 1 **VGI Partners Limited** (ACN 129 188 450) of 39 Phillip Street, Sydney NSW 2000 (the **Company**).
- 2 **Philip Brian Vernon King, Andrew Robert Vernon King and David Gore** as trustees of the **Regal Foundation**, ABN 88 781 341 594, of A4 15 Narabang Way Belrose NSW 2085 (the **Holder**).

#### Recitals

- A The Company and Regal Funds Management Pty Limited (**Regal**) intend to combine in an all-scrip merger, pursuant to which the Company will acquire all of the issued shares in Regal in consideration for the issue of ordinary shares in the Company to Regal shareholders (**Proposed Merger**).
- B Following Completion (as that term is defined in the Merger Implementation Deed) of the Proposed Merger, the Holder will hold Securities in the Company.
- C The Holder agrees to not Deal in their Restricted Securities for the Escrow Period on the terms and conditions set out in this deed.
- D The Holder agrees to escrow all of the Restricted Securities for the Escrow Period pursuant and subject to the terms of this deed.

**It is agreed** as follows.

## 1 Defined terms & interpretation

### 1.1 Defined terms

In this deed:

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

**Associate** has the meaning given to that term in the Corporations Act.

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

**ASX Settlement** means ASX Settlement Pty Ltd (ABN 49 008 504 532).

**Board** means the board of directors of the Company from time to time.

**Business Day** means:

- (a) for receiving a notice under clause 8.7, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received; and
- (b) for all other purposes, a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, Australia.

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

**Dealing** in respect of any Restricted Securities means to directly or indirectly:

- (a) sell, assign, transfer or otherwise Dispose of, or agree or offer to sell, assign, transfer or otherwise dispose of;
- (b) create, or agree or offer to create, any Security Interest in;

- (c) enter into any option which, if exercised, enables or requires the Holder to sell, assign, transfer or otherwise dispose of; or
- (d) do, or omit to do, or agree to do, or agree to omit to do, any act if the act or omission would have the effect of transferring, whether directly or indirectly, effective ownership or control of, or any interest in or economic benefit of,

any Restricted Security or any legal, beneficial or economic interest in that Restricted Share and **Deal** and **Dealt** each have a corresponding meaning.

**Dispose** has the meaning given to that term in the Listing Rules.

**Escrow Period** means the period from the Completion Date (as that term is defined under the Merger Implementation Deed) and 21 June 2024.

**Holding Lock** has the meaning given to that term in Section 2 of the Settlement Rules.

**Initial Securities** means the number of Shares which is equal in number to two-thirds of the total number of Shares issued to the Holder on completion of the Proposed Transaction in exchange for the transfer of all of the Holder's ordinary shares in Regal to the Company.

**Issuer Sponsored Subregister** means the part of the Company's register for shares that is administered by the Company (and not ASX Settlement) and records uncertificated holdings of Securities.

**Listing Rules** means the listing rules of ASX, as amended, varied, modified or waived from time to time.

**Merger Implementation Deed** means the merger implementation deed between, among others, the Company and Regal which relates to the implementation of the Proposed Merger.

**Notice** means a notice which is:

- (a) legible and in English;
- (b) addressed to the party to whom that notice is being given;
- (c) marked to the attention of the individual who is specified in the address of that party; and
- (d) delivered to that party by being left at, or sent by security post to, the postal address which is specified in the address of that party.

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

**PPSA Security Interest** means a 'security interest' within the meaning of the PPSA.

**Release Date** means, in respect of a Security, the Business Day after the last day of the Escrow Period.

**Restriction Deed** a restriction deed entered into between the Company and one or more shareholders of the Company under which Shares are subject to restrictions on Dealing.

**Restricted Securities** means, in relation to the Holder, the Initial Securities (including any interest, direct or indirect, in such Securities) and, for the avoidance of doubt, includes any greater or lesser number of Securities into which the Initial Securities are split or consolidated.

**Securities** has the meaning given to that term in the Corporations Act.

**Security Interest** means an interest or power:

- (a) reserved in or over an interest in any security including, but not limited to, any retention of title;
- (b) created or otherwise arising in or over any interest in any security under a bill of sale, mortgage, charge, lien, pledge, trust or power;

- (c) an interest of the kind referred to in section 12 of the PPSA; or
- (d) or any agreement to grant or create any such interest or power.

**Settlement Rules** means the settlement operating rules made by ASX Settlement Pty Limited, as amended, varied, modified or waived from time to time.

**Share** means a fully paid ordinary share in the Company.

**Trading Day** means a 'trading day' as defined in the Listing Rules.

## 1.2 Interpretation

In this deed including the recitals, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this deed, and a reference to this deed includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to time is to Sydney, Australia time;
- (f) a reference to a party is to a party to this deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (j) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (k) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it;
- (l) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
- (m) for so long as the Company is listed on the official list of ASX, words and expressions defined in the Listing Rules, and not in this deed, have the meanings given to them in the Listing Rules (as applicable); and
- (n) any agreement, representation, warranty, indemnity or undertaking made or given by a Holder binds and is given by it severally and not jointly nor jointly and severally with any other holder of shares in the Company.

## 1.3 Headings

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

## 1.4 Compliance with Listing Rules

For so long as the Company is listed on the official list of ASX:

- (a) notwithstanding anything contained in this deed, if the Listing Rules prohibit an act being done, that act must not be done;
- (b) nothing contained in this deed prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not done, authority is given for that act to be done or not done (as the case may be);
- (d) if the Listing Rules require this deed to contain a provision and it does not contain such a provision, this deed is deemed to contain that provision;
- (e) if the Listing Rules require this deed not to contain a provision and it contains such a provision, this deed is deemed not to contain that provision; and
- (f) if any provision of this deed is or becomes inconsistent with the Listing Rules, this deed is deemed not to contain that provision to the extent of the inconsistency.

## 2 Escrow restrictions

### 2.1 Holder restrictions during the Escrow Period

Subject to clause 2.3 below, the Holder must not Deal in their Restricted Securities during the Escrow Period.

### 2.2 Escrow restrictions

The parties acknowledge and agree that:

- (a) as soon as practicable following the issue of the Restricted Securities to the Holder, the Restricted Securities will be registered and held for the Holder on the Issuer Sponsored Subregister;
- (b) the Company, and where applicable its registry provider or other advisors acting on behalf of the Company, will apply a Holding Lock to the Restricted Securities as soon as practicable after registration of the Restricted Shares on the Issuer Sponsored Subregister and the Holder hereby agrees to the application of the Holding Lock; and
- (c) the Company, and where applicable its registry provider or other advisors acting on behalf of the Company, will do all things necessary or desirable to ensure that the Holding Lock is released:
  - (i) to the extent necessary to permit disposals of Restricted Securities permitted by this deed; and
  - (ii) in full in respect of the relevant Restricted Securities at 4.00pm on the Release Date,

including notifying ASX that the Restricted Securities will be released from the Holding Lock in accordance with the timing requirements set out in Listing Rule 3.10A.

### 2.3 Exceptions

- (a) During the Escrow Period, the Holder may Deal in any of its Restricted Securities if the Dealing arises solely as a result of:
  - (i) the acceptance of a bona fide takeover bid made under Chapter 6 of the Corporations Act in respect of the Shares, provided that the holders of at least

- half of the Shares that are not subject to any Restriction Deed, and to which the offers under the bid relate, have accepted the bid;
- (ii) the transfer or cancellation of the Shares as part of a scheme of arrangement under Part 5.1 of the Corporations Act;
  - (iii) a disposal of, but not the creation of a Security Interest in, some or all of the Restricted Securities to:
    - (A) a company wholly-owned by the Holder;
    - (B) new trustees of the Regal Foundation, ABN 88 781 341 594),
 (each, a **Transferee**), where the Transferee also enters into an escrow arrangement with the Company in respect of those securities on substantially the same terms as this deed for the remainder of the Escrow Period;
  - (iv) a requirement of applicable law (including an order of a court of competent jurisdiction); or
  - (v) with the prior approval of the Company.
- (b) During the Escrow Period, a Holder may create a Security Interest in some (or all) of its Restricted Securities in favour of a bona fide third party financial institution (**Financial Institution**) as security for a loan, hedge or other financial accommodation on arm's length terms provided that:
- (i) the Security Interest (taken together with any related arrangements, including the relevant loan or other financial accommodation) does not in any way constitute a direct or indirect disposal of the economic interest, or decrease in the economic interest, that the Holder has in any of its Restricted Securities;
  - (ii) no Restricted Securities are to be transferred or delivered to the Financial Institution in connection with the Security Interest; and
  - (iii) the documentation for the Security Interest makes it clear that the Restricted Securities remain in escrow and subject to the voluntary escrow arrangements set out in this deed for the Escrow Period, including the restrictions contained in the representations, warranties and undertakings contained in this deed, as if the Financial Institution were a party to this Deed.
- (c) If either of the events described in clauses 2.3(a)(i) or 2.3(a)(ii) occur, and if for any reason any or all Restricted Securities are not transferred or cancelled in accordance with such a takeover bid or scheme of arrangement for any reason, then the Holder agrees that the restrictions applying to the Restricted Securities under this deed will continue to apply and without limiting the foregoing, the Holding Lock will be reapplied to all Restricted Securities not so transferred or cancelled.

## 2.4 Notice

If the Holder become aware:

- (a) that a Dealing in any of its Restricted Securities has occurred, or is likely to occur, during the Escrow Period; or
- (b) of any matter which is likely to give rise to a Dealing in any of its Restricted Securities during the Escrow Period,

it must notify the Company as soon as practicable after becoming aware of the actual or potential Dealing or the matters giving rise to the actual or potential Dealing, providing full details.

### 3 Warranties and acknowledgment

#### 3.1 Giving of warranties

Each of the warranties and representations in this clause 3 are given in favour of the Company, as at:

- (a) the date of this deed; and
- (b) at all times until and including the Release Date.

The warranties and representations given in this clause 3 are given in respect of any and all Restricted Securities which the Holder holds from time to time during the Escrow Period.

#### 3.2 Representations and warranties

The Holder warrants and represents the following:

- (a) prior to the Escrow Period, it has not done, or omitted to do, any act which would result in it breaching clause 2 of this deed if it were an act or omission which would take effect during the Escrow Period;
- (b) the Holder holds the Restricted Securities;
- (c) the Restricted Securities of the Holder are free from all Security Interests and other third party interests or rights (other than under the Company's constitution);
- (d) it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms;
- (e) this deed constitutes legal, valid and binding obligations and, subject to any necessary stamping and registration, is enforceable in accordance with its terms;
- (f) it has full power and authority, without the consent of any other person, to enter into and perform its obligations under this deed (including, if the Holder has entered into this deed as a trustee (**Trustee**), under the trust deed for the relevant trust (**Trust**));
- (g) if the Holder is a Trustee, the Trustee is the sole trustee of the Trust and, to the best of its knowledge and belief, there is no proposal to remove it as trustee of the Trust;
- (h) if the Holder is a Trustee:
  - (i) that Holder has the right to be fully indemnified out of the assets of the Trust in respect of any liability arising under, or in connection with, this deed and the right has not been modified, released or diminished in any way. The assets of the Trust are sufficient to satisfy that right in full and that Holder has not released or disposed of its equitable lien over that Trust; and
  - (ii) the Trust has not been terminated and there is no effective proposal or requirement to wind up, deregister, terminate, reconstitute or resettle the Trust; and
- (i) the execution, delivery and performance by the Holder of this deed does not and will not violate, breach or result in a contravention of:
  - (i) any applicable law, regulation or authorisation;
  - (ii) its constitution or other constituent documents (or, if the Holder is a Trustee, the trust deed for the Trust); or
  - (iii) any agreement, undertaking, Security Interest or document which is binding on the Holder.

### 3.3 Survival of warranties and representations

The warranties and representations in this clause 3 survive the termination of this deed.

## 4 Consequences of breaching this deed

- (a) If the Holder breaches this deed or reasonably expects that a breach will occur (including a breach of clause 3.2) (a **Defaulting Party**), each of the following applies:
  - (i) the Company may take the steps necessary to enforce this deed, or to rectify or prevent the breach, as soon as practicable after becoming aware of the breach or the prospective breach; and
  - (ii) subject to the Listing Rules, the Company may, in addition to its other rights and remedies, refuse to acknowledge, deal with, accept or register any sale, assignment or transfer of any of the Defaulting Party's Restricted Securities.
- (b) If the Holder breaches this deed, the Holder acknowledges and agrees that such a breach could cause substantial commercial and financial detriment to the Company and other third parties.
- (c) The parties agree that damages would be an insufficient remedy for breach of this deed and the Holder agrees that the Company is entitled to seek and obtain an injunction or specific performance to enforce the Holder's obligations under this deed without proof of actual damage and without prejudice to any of its other rights or remedies.

## 5 Amendment and waiver

This deed may not be amended or waived without the prior written consent of all parties.

## 6 Capacity

If the Holder has entered into this deed as Trustee:

- (a) notwithstanding any other provision of this deed including any provision expressed to prevail over this clause 6 but subject to clause 6(c), that Holder enters into this deed only in its capacity as Trustee of the Trust and in no other capacity. A liability arising under or in connection with this deed can be enforced against that Holder only to the extent that it can be satisfied out of the property of the Trust for which the Holder is actually indemnified for the liability. That Holder will exercise its rights of indemnification in order to satisfy its obligations under this deed;
- (b) subject to clause 6(c) a party to this deed may not sue that Holder in any capacity other than as Trustee in respect of the Trust, including seeking the appointment to that Holder of a receiver (except in relation to property of the Trust), liquidator, administrator or any similar person; and
- (c) the provisions of this clause 6 will not apply to any obligation or liability of that Holder to the extent that it is not satisfied because under the relevant trust deed or by operation of law, there is a reduction to the extent, or elimination of, that Holder's right of indemnification out of the assets of the Trust, or the right does not exist at all, as a result of the Holder's fraud, negligence, improper performance of duties or breach of trust.

## 7 Termination

If the Merger Implementation Deed is terminated prior to Completion in accordance with its terms, the obligations of the parties under this deed will automatically terminate and the terms of this deed will be of no further force or effect.



## **8 General**

### **8.1 PPSA**

If the Company determines that this deed results in the creation of a PPSA Security Interest, the Holder agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Company reasonably asks and considers necessary for the purposes of:

- (a) ensuring that the PPSA Security Interest is enforceable, perfected and otherwise effective;
- (b) enabling the Company to apply for any registration, or give any notification, in connection with the PPSA Security Interest so that the PPSA Security Interest has the priority required by the Company; and
- (c) enabling the Company to exercise rights in connection with the PPSA Security Interest.

### **8.2 Non-merger**

The warranties, other representations and undertakings by the parties in this deed are continuing and will not merge or be extinguished on entry into this deed.

### **8.3 Entire agreement**

This deed and the documents referred to in this deed are the entire agreement of the parties about the subject matter of this deed and supersede any representations, negotiations, arrangements, understandings, or agreements and all other communications.

### **8.4 Inconsistent agreements**

If a provision of this deed is inconsistent with a provision in any other agreement, document, representation, negotiation, arrangement or understanding between the Holder and any other person, the provision of this deed prevails.

### **8.5 Further assurances**

Each party must do all things and execute all further documents required to give full effect to this deed.

### **8.6 Costs**

Each party must pay its own costs of negotiating, preparing and executing this deed.

### **8.7 Notices**

A Notice is regarded as given by a party to another party, at the time of delivery of that Notice to the address which is specified in the address of that other party.

### **8.8 Time of essence**

Time is of the essence to this deed.

### **8.9 Counterparts**

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

### **8.10 Governing law and jurisdiction**

This deed is governed by the laws of New South Wales, Australia and each party submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia.



For personal use only

**Executed and delivered as a deed**

**Company**

**Executed** as a deed in accordance with  
section 127 of the *Corporations Act 2001* by  
**VGI Partners Limited** (ACN 129 188 450):

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Holder**

**Executed** by Philip King, Andrew King and David Gore as trustees of the Regal Foundation:

\_\_\_\_\_  
Philip King

\_\_\_\_\_  
Andrew King

\_\_\_\_\_  
David Gore

\_\_\_\_\_  
Witness – Print Name:

Executed and delivered as a Deed

**Executed** as a deed in accordance with  
section 127 of the *Corporations Act 2001* by  
**VGI Partners Limited:**

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Executed** as a deed in accordance with  
section 127 of the *Corporations Act 2001* by  
**Regal Funds Management Pty Limited:**

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **New Highland Pty Limited** as trustee for the King Family Trust:

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **New Highland Pty Limited** as trustee for the Philip King Family Trust:

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Executed** as a deed in accordance with  
section 127 of the *Corporations Act 2001* by  
**Stroud Agricultural Company Pty Ltd** as  
trustee for the Vernon Trust:

\_\_\_\_\_  
Sole Director

\_\_\_\_\_  
Print Name

**Executed** by Philip King, Andrew King and David  
Gore as trustees of the Regal Foundation:

\_\_\_\_\_  
Philip King

\_\_\_\_\_  
Andrew King

\_\_\_\_\_  
David Gore

\_\_\_\_\_  
Witness – Print Name:

**Executed** as a deed by Regal Funds Management Pty Ltd as attorney for and on behalf of:

Craig Collie  
 Glen Barnes  
 Stephanie Mormanis  
 Campbell Chambers  
 Jessica Farr-Jones  
 James Hood  
 Robert Saunders  
 Dr Fesq Pty Ltd as trustee for The Mariners Revenge Trust  
 Greg Laughlin  
 Gibson Capital Pty Ltd as trustee for GC Trust  
 M&B O'Connor Investments Pty Ltd as trustee for the O'Connor Family Trust  
 Mark Nathan as trustee for Cape Dutch Family Trust  
 James Sioud  
 Henry Renshaw  
 Su Chin Lai (listed as Jamie Lai on the shareholder register of Regal Funds Management Pty Limited prior to a correction on 29 March 2022)  
 Kathleen Liu  
 HADB Investments Pty Ltd as trustee of The Blanche Family Trust  
 Taylajorja Pty Ltd as trustee for The Collins Road Trust  
 Dimension Group Pty Limited as trustee for Ho Family Trust  
 Freedom through property Pty Ltd as trustee for the Pennys Lane Trust  
 MacKenzie Cove Investments Pty Ltd as trustee for the McCallum Family Trust  
 Empire Capital Investments Pty Ltd as trustee for The Dynasty Trust  
 Ling Jin  
 Aloysius Capital Pty Ltd

under a power of attorney dated 20 February 2019

---

Signature of attorney