

ASX Announcement

7 June 2023

Revised non-binding proposal from Bain Capital and entry into Process Deed

- Revised non-binding proposal from Bain Capital at \$3.20 cash per share, to be reduced by cash amount of future dividends
- Estia Health is permitted to pay fully franked ordinary dividends of up to \$0.12 per share, allowing eligible Estia Health shareholders to receive up to approximately 5.1 cents per share in franking credits
- Estia Health has entered into a process deed with Bain Capital in order to progress a potential transaction

Estia Health Limited (ASX: EHE) ("**Estia Health**" or the "**Company**") advises that it has received a revised non-binding and conditional proposal ("**Revised Proposal**") from Bain Capital to acquire 100% of the issued capital of Estia Health by way of a scheme of arrangement ("**Potential Transaction**").

Receipt of the Revised Proposal follows a period of access to certain non-public financial and other information, as well as multiple engagements between Estia Health and Bain Capital.

Overview of the Revised Proposal

Under the terms of the Revised Proposal, Estia Health shareholders would receive \$3.20 per share in cash, less the cash amount of any dividends declared and paid after the date of the Revised Proposal.

Estia Health is permitted to pay ordinary dividends of up to \$0.12 cash per share, which would not be conditional on a scheme of arrangement proceeding. Payment of a \$0.12 per share fully franked dividend would enable eligible Estia Health shareholders to receive approximately 5.1 cents per share in additional benefit from franking credits, depending on their tax circumstances.

The price of \$3.20 cash per share represents premia of:

- 50% to the closing share price on 21 March 2023¹ of \$2.14;
- 52% to the 1-month VWAP² to 21 March 2023 of \$2.10 per share; and
- 59% to the 3-month VWAP² to 21 March 2023 of \$2.01 per share.

¹ Being the day immediately prior to market speculation around the existence of a possible change of control proposal in relation to the Company

² Period prior to 24 February 2023 (1HFY2023 dividend ex date) adjusted for the \$0.037 per share dividend

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The Revised Proposal remains subject to a number of conditions, including (but not limited to):

- completion of due diligence to the satisfaction of Bain Capital;
- regulatory approvals, including approval of the Foreign Investment Review Board;
- final approval of Bain Capital's investment committee;
- unanimous recommendation of the Board of Estia Health in the absence of a superior proposal and subject to an independent expert concluding that the transaction is in the best interests of Estia Health's shareholders;
- entry into a scheme implementation deed; and
- Estia Health shareholder approval.

Board intention

Following careful consideration of the Revised Proposal the Board of Estia Health has determined that it is in the interests of shareholders to progress the Revised Proposal and allow Bain Capital to undertake further due diligence to enable it to provide a binding proposal.

If Bain Capital provides a binding proposal consistent with the terms of the Revised Proposal and subject to entry into a binding scheme implementation deed in a form acceptable to Estia Health, the Board of Estia Health intends to unanimously recommend that Estia Health shareholders vote in favour of the Potential Transaction in the absence of a superior proposal and subject to an independent expert concluding, and continuing to conclude, that the Potential Transaction is in the best interests of Estia Health shareholders.

Next steps

The Revised Proposal was conditional on providing Bain Capital with certain exclusivity rights. Accordingly, Estia Health has entered into a Process Deed which provides Bain Capital the opportunity to conduct due diligence on an exclusive basis until a date which is 30 business days from the earlier of:

- the date on which Bain Capital has been provided with substantially all due diligence documents sought; and
- 5 business days post signing of the Process Deed ("**Exclusivity Period**").

During the Exclusivity Period customary exclusivity restrictions apply, including "no shop", "no talk", "no due diligence" and "notification" obligations. After 20 business days post the earlier of the dates referenced above, the Board of Estia Health would be able to exercise its fiduciary duty to deal with potentially superior proposals from competing acquirers. The Process Deed also includes a "matching right" regime in respect of any Superior Proposal³ received by Estia Health during the Exclusivity Period.

A copy of the Process Deed is attached to this announcement.

At this stage Estia Health shareholders do not need to take any action in respect of the Revised Proposal. Estia Health will continue to keep the market informed in accordance with its continuous disclosure obligations.

³ As defined in the Process Deed

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The Board notes that there is no certainty that the engagement between Estia Health and Bain Capital will result in Bain Capital providing a binding proposal that is capable of being recommended, the entry into a binding scheme implementation deed or completion of the Potential Transaction.

Approved for release by the Board of Estia Health Limited.

Further Enquiries:

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Estia Health Limited
and
Bain Capital Private Equity, LP

Process Deed

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This Deed is made on 7 June 2023

Parties

- 1 **Estia Health Limited** ACN 160 986 201 of Level 9, 227 Elizabeth Street, Sydney NSW 2000 (the **Company**); and
- 2 **Bain Capital Private Equity, LP** c/o Bain Capital Private Equity (Australia) Pty Limited, Level 28, 88 Phillip Street Sydney, NSW 2000 (**Bain Capital**).

Recitals

- A On or before the date of this Deed, Bain Capital provided to the Company a non-binding indicative offer letter in respect of a Potential Transaction.
- B Each party has agreed to progress the Potential Transaction on the terms of this Deed.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited (ACN 008 624 691), or the financial market known as the Australian Securities Exchange that it operates, as the context requires.

Bain Capital Fund Entities means one or more of the constituent entities of a private equity fund managed or advised by Bain Capital.

Board means the board of directors of the Company.

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.

Company Group means the Company and its Related Entities.

Competing Proposal means a transaction or arrangement, or any proposal, offer or expression of interest in relation to a transaction or arrangement:

- (a) pursuant to which a Third Party will, if the transaction or arrangement is entered into or completed:
 - (i) acquire (whether directly or indirectly) or become the holder of a legal, beneficial and/or economic interest in, all or a substantial part of the business or assets of the Company Group taken as a whole;
 - (ii) acquire a Relevant Interest in, or otherwise acquire or have a right to acquire a legal, beneficial and/or economic interest in, 20% or more of the shares or other securities of the Company or any other member of the Company Group; or
 - (iii) acquire control of the Company or any other member of the Company Group within the meaning of section 50AA of the Corporations Act or otherwise acquire or merge with any member of the Company Group; or

- (b) which would cause the Company or its Related Entities not to proceed with the Potential Transaction or as a result of which the Potential Transaction otherwise would not proceed,

whether by way of takeover bid, scheme of arrangement, shareholder approved transaction, capital reduction or buy-back, sale or purchase of shares or assets, joint venture, dual-listed company structure (or other synthetic merger), or other transaction or arrangement.

Confidentiality Deed means the Confidentiality Deed between the Company and Bain Capital dated 19 April 2023.

Confirmatory Due Diligence has the meaning given in clause 3.2(a).

Controlled Entity means, in relation to an entity, another entity that is a subsidiary of it, or that is controlled by it, in each case within the meaning of Part 1.2, Division 6 of the Corporations Act.

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

Counter Proposal has the meaning given in clause 5.7(a)(v).

Delayed Information has the meaning given in clause 3.2(c)(i).

Due Diligence Request List means the due diligence request list provided by Bain Capital to the Company before the time of execution of this Deed.

End Date means the date that is six months after the last day of the Exclusivity Period.

Exclusivity Period means the period commencing on the date of this Deed and ending at 5.00pm (Sydney, Australia time) on the date that falls 30 Business Days after the Virtual Data Room Confirmation Date.

Government Agency means any Australian or foreign government or governmental, semi-governmental or judicial entity or authority. It also includes any government minister (and their delegate), any self-regulatory organisation established under statute or any securities exchange and, for the avoidance of doubt, includes ASIC, ASX, the Australian Competition and Consumer Commission, the Foreign Investment Review Board and equivalent bodies in jurisdictions outside Australia.

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

Implementation Date means the date on which the scheme of arrangement with respect to the Potential Transaction is implemented.

Indicative Offer Letter means the revised confidential and non-binding indicative proposal letter, dated 4 June 2023, from Bain Capital to the Company.

Matching Date means the date that is 5 Business Days after the date of the provision of the information referred to in clause 5.6(b).

Non-public Information means non-public information relating to any member of the Company Group, any of the operations or assets of the Company Group's Business or any part thereof.

Permitted Dividend has the meaning given in clause 4.3(b).

Potential Transaction means a potential transaction whereby Bain Capital, a Bain Capital Fund Entity or any of their Related Entities (including via one or more special purpose vehicles) would acquire all or substantially all of the fully diluted share capital in the Company, for the Scheme Consideration (as adjusted for any Permitted Dividends) under a Board recommended scheme of arrangement.

Related Entity means, in relation to an entity (the **first entity**):

- (a) a Controlled Entity of the first entity;
- (b) an entity of which the first entity is a Controlled Entity; or
- (c) a Controlled Entity of another entity of which the first entity is also a Controlled Entity, provided that, in respect of Bain Capital only:
 - (d) no such persons shall be deemed a Related Entity, and nor shall Bain Capital have any liability for such person, unless such person is considered a Related Entity under the Confidentiality Deed; and
 - (e) no portfolio company of Bain Capital, a Bain Capital Fund Entity or their Related Entities shall be deemed a Related Entity under this Deed unless such portfolio company is considered a Related Entity under the Confidentiality Deed.

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

Representative of a party means:

- (a) any Related Entity of the party; and
 - (b) any:
 - (i) affiliate, director, other officer, employee, or professional adviser (including industry, technical or commercial consultant, financial adviser, legal adviser or accountant); or
 - (ii) if the party is Bain Capital, the investors in a private equity fund managed or advised by Bain Capital or its Related Entities, and any actual or potential source of equity or debt financing engaged by Bain Capital or its Related Entities in connection with the financing of the Potential Transaction,
- of the party or any of its Related Entities.

Scheme Consideration has the meaning given in clause 4.3(a).

Scheme Implementation Deed means the scheme implementation deed to be entered into by a Related Entity of a Bain Capital Fund Entity and the Company in relation to the implementation of the Potential Transaction.

Shareholder means a person who is identified on the register of members of the Company maintained by, or on behalf of, the Company in accordance with section 168(1) of the Corporations Act as a holder of ordinary shares in the Company from time to time.

Superior Proposal means a bona fide, written Competing Proposal which is received by the Company and which the Board determines, acting in good faith and in order to satisfy what the Board considers to be its fiduciary or statutory duties (after having obtained written advice from the Company's external legal adviser and financial advisers):

- (a) is reasonably capable of being valued and implemented taking into account all aspects of the Competing Proposal, including any timing considerations, its conditions, the identity, reputation and financial condition of the person making such proposal, the nature of any consideration offered and all other relevant legal, regulatory and financial matters, in each case, to the extent known by the Board; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to Shareholders than the latest proposal provided by Bain Capital, a Bain Capital Fund Entity or any of their Related Entities, taking into account all aspects of the Competing Proposal and the latest proposal provided by Bain Capital, a Bain Capital Fund Entity or

any of their Related Entities to the Company, including the identity, reputation and financial condition of the person making such proposal, legal, regulatory and financial matters, certainty and any other matters affecting the probability of the relevant proposal being completed in accordance with its terms.

Third Party means any person other than Bain Capital, a Bain Capital Fund Entity or any of their Related Entities.

Virtual Data Room means the virtual data room established by the Company for the purposes of providing information to Bain Capital for the purposes of the Confirmatory Due Diligence.

Virtual Data Room Confirmation Date means the earlier of (i) the date that the parties agree in writing (each acting reasonably and in good faith) that Bain Capital and its Representatives have been provided with access to the Virtual Data Room, which is populated in accordance with clause 3.2(b)(i) and (ii) the date that is 5 Business Days after the date of this Deed. For the avoidance of doubt, the fact that the Company may have notified Bain Capital under clause 3.2(c) that there is Delayed Information shall not constitute a reason for either the Company or Bain Capital to withhold such confirmation.

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 of interpretation 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, Schedule or Annexure is a reference to a clause of, or Schedule or Annexure to, this Deed.
 - (vi) 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).
 - (vii) 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.
 - (viii) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form (and includes a communication by electronic mail).

- (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) Unless defined in this Deed or the context requires otherwise, a word defined in the Corporations Act has the same meaning in this Deed.

1.3 Consents and 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, such consent or approval may be given or such discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion.

2 Confidentiality Deed

Nothing in this Deed limits or affects the operation of the Confidentiality Deed in accordance with its terms.

3 Due diligence

3.1 Confirmatory due diligence

The parties acknowledge that the Company has agreed to permit Bain Capital to conduct due diligence investigations in accordance with this Deed for the purposes of determining whether to proceed with the Potential Transaction.

3.2 Conduct of due diligence by Bain Capital

- (a) During the Exclusivity Period, Bain Capital and its Representatives:
 - (i) will conduct confirmatory due diligence in relation to the matters or areas of enquiry referenced in the Due Diligence Request List (**Confirmatory Due Diligence**); and
 - (ii) must use its best endeavours to complete (to its reasonable satisfaction) the Confirmatory Due Diligence before the end of the Exclusivity Period.
- (b) Subject to clause 3.2(d), in order to enable Bain Capital to undertake the Confirmatory Due Diligence, the Company agrees (throughout the Exclusivity Period) to:
 - (i) procure that promptly after the date of this Deed, a Virtual Data Room (with functionality enabled to allow printing and downloading of documents) is made available to Bain Capital and its Representatives, populated with substantially all of the documents requested in the Due Diligence Request List which are in the Company's possession and which the Company considers, in good faith, to be readily available to the Company;
 - (ii) promptly provide Bain Capital and its Representatives with access to any other information concerning the Company and its business which is reasonably requested by Bain Capital for the purposes of conducting Confirmatory Due

- Diligence, including information requested via further due diligence request lists or a 'request for information' process;
- (iii) at the request of Bain Capital, to arrange for such presentations by, and discussions with, the Company's senior management as Bain Capital considers appropriate (acting reasonably) and on the basis that Representatives of the Company will be entitled to attend and observe such presentations and discussions; and
 - (iv) provide reasonable access to the Representatives of the Company and instruct them to cooperate with Bain Capital in relation to Confirmatory Due Diligence.
- (c) During the Exclusivity Period and subject to clause 3.2(d):
- (i) the Company will, following the Virtual Data Room Confirmation Date, notify Bain Capital as soon as reasonably practicable after it becomes aware of any documents or information requested in the Due Diligence Request List which have not been included in the Virtual Data Room and which are either not in the Company's possession or not readily available to the Company (**Delayed Information**) together with the expected timeframes within which, where it is possible to make such Delayed Information available, it will be able to make the Delayed Information available to Bain Capital; and
 - (ii) the Company and its Representatives will use their best endeavours to procure any Delayed Information is provided to Bain Capital and its Representatives as soon as reasonably practicable.
- (d) The Company has no obligation to provide Bain Capital or its Representatives with access to materials, premises or personnel if that access would result in unreasonable disruptions to the Company's business, would breach an existing confidentiality obligation owed to a third party or any applicable law, require the Company to make any disclosure that would compromise legal privilege, or require the Company to provide information relating to the consideration by the Board or the Company's management of previous control transactions in relation to the Company, the Indicative Offer Letter (or any of its predecessors), the Potential Transaction or, without limiting clause 5.7, any Competing Proposal (including those that emerge during the Exclusivity Period).

3.3 No restrictions on other arrangements

- (a) Neither Bain Capital nor the Company has any obligation to proceed with the Potential Transaction following completion of the Confirmatory Due Diligence.
- (b) Nothing in this Deed:
 - (i) is to be taken as constraining Bain Capital from requesting other arrangements, terms or conditions to implement the Proposed Transaction if Bain Capital determines to proceed with the Potential Transaction and nothing in this Deed is to be taken as any agreement by the Company to agree to such request; and
 - (ii) constitutes an obligation or commitment on the part of either party to proceed with the Potential Transaction, it being acknowledged and agreed that neither party will be obliged or committed to proceed with the Potential Transaction until and unless a Scheme Implementation Deed is executed.

4 Negotiation of Potential Transaction

4.1 Negotiation of Potential Transaction

- (a) Bain Capital and the Company agree that, during the Exclusivity Period, they will negotiate in good faith a Scheme Implementation Deed and any other transaction documents required to implement the Potential Transaction.
- (b) Bain Capital and the Company each acknowledge and agree that:
 - (i) the Potential Transaction remains indicative and incomplete and subject to the Confirmatory Due Diligence, investment committee and board approvals (as applicable) and negotiations between the parties;
 - (ii) the Potential Transaction is expected to proceed by way of a scheme of arrangement, but may proceed by way of takeover bid or other agreed transaction structure;
 - (iii) this Deed is not intended to, and does not, impose any binding obligations on the parties to give effect to the Potential Transaction; and
 - (iv) the Potential Transaction will not become binding on the parties until such time as the Scheme Implementation Deed (and any other transaction documents required to implement the Potential Transaction) are approved by the Board and the investment committee of Bain Capital and is duly executed.

4.2 Further obligations

- (a) The parties agree during the Exclusivity Period to commit all reasonably necessary resources (including management, financial, legal and other professional advisory resources) at their own cost to enable:
 - (i) Bain Capital to complete the Confirmatory Due Diligence in relation to the Company Group; and
 - (ii) the preparation, negotiation and finalisation of the Scheme Implementation Deed (and any other transaction documents required to implement the Potential Transaction),as expeditiously as possible.
- (b) The Company will provide a first draft of the Scheme Implementation Deed as soon as practicable and in any event within 5 Business Days of the date of this Deed.
- (c) For the purposes of the Confidentiality Deed, the Company consents to the use and disclosure of Confidential Information (as that term is defined in the Confidentiality Deed) in an application to the Foreign Investment Review Board for approval under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (via the issuance of a no-objection notice) in connection with the Potential Transaction and will provide reasonable assistance requested by Bain Capital in connection with the preparation and submission of such application, subject to Bain Capital:
 - (i) informing the Company prior to approaching or making any notification or application to the Foreign Investment Review Board;
 - (ii) consulting with the Company as reasonably requested about the content of its application to the Foreign Investment Review Board and related material correspondence to the extent it includes information about the Company so that

Company has a reasonable opportunity to comment on such information before submission, and, prior to submitting each such document, Bain Capital must:

- (A) correct any factual inaccuracy in such information identified by the Company and notified to Bain Capital; and
 - (B) consider in good faith any other comments notified to it by the Company; and
 - (C) keep the Company reasonably informed of the status of its application to the Foreign Investment Review Board.
- (d) The parties will in good faith agree to protocols which will provide for Bain Capital and its Representatives to, in consultation with the Company, engage with any applicable Government Agency (other than the Foreign Investment Review Board) in connection with the Potential Transaction.

4.3 Intention to recommend and Scheme Consideration

- (a) The Company represents and warrants that as at the date of this Deed, each of its directors has confirmed that he or she intends, upon, and subject to, entry into the Scheme Implementation Deed to:
- (i) unanimously recommend to Shareholders to vote; and
 - (ii) vote or procure that any ordinary shares in the Company in which they have a Relevant Interest are voted,
- in favour of any resolutions to implement a scheme of arrangement in relation to the Potential Transaction where the consideration is equal to \$3.20 cash per ordinary share (**Scheme Consideration**), in the absence of a Superior Proposal and subject to an independent expert concluding (and continuing to conclude) that the scheme of arrangement is in the best interests of Shareholders.
- (b) The parties acknowledge and agree that the Scheme Consideration is inclusive of a permitted dividend (**Permitted Dividend**), being a dividend determined by the Company:
- (A) for an amount of up to \$0.12 cash per ordinary share; (B) that is paid prior to the Implementation Date; (C) that may be franked to the maximum extent possible, subject to the franking account of the Company not being in deficit after the payment of the Permitted Dividend; and (D) that is paid in accordance with the Corporations Act. For the avoidance of doubt, to the extent that a Permitted Dividend is paid, the Scheme Consideration will be reduced by the cash amount of the Permitted Dividend.

5 Exclusivity

5.1 No current discussions regarding a Competing Proposal

The Company represents and warrants that, as at the date of this Deed, neither the Company nor any of its Representatives, is in negotiations or discussions in respect of any Competing Proposal with any person (other than, for the avoidance of doubt, the discussions with Bain Capital and its Representatives in respect of the Potential Transaction).

5.2 No shop

During the Exclusivity Period, the Company must not, and must ensure that each of its Representatives do not, directly or indirectly:

- (a) solicit, invite, encourage or initiate any enquiries, expressions of interest, offers, proposals, negotiations or discussions by any person in relation to a Competing Proposal; or
- (b) communicate to any person any intention to do any of those things referred to in paragraph (a).

5.3 No talk

Subject to clause 5.5, during the Exclusivity Period, the Company must not, and must ensure that each of its Representatives do not, directly or indirectly:

- (a) negotiate or enter into; or
- (b) participate in negotiations or discussions with any Third Party regarding, a Competing Proposal or any agreement, understanding or arrangement that may be reasonably expected to lead to a Competing Proposal, even if that Third Party's Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by the Company or any of its Representatives or the Third Party has publicly announced the Competing Proposal.

5.4 No due diligence

Subject to clause 5.5, during the Exclusivity Period, the Company must not, and must ensure that each of its Representatives do not, directly or indirectly:

- (a) enable any Third Party to undertake due diligence investigations on any member of the Company Group, any of the operations or assets of the Company Group's businesses or any part thereof;
- (b) make available to any Third Party, or permit any Third Party to receive any Non-public Information; or
- (c) make available to any Third Party, or permit any Third Party to have access to, any officers or employees of, or premises used, leased, licenced or owned by, any member of the Company Group,

with a view to obtaining from such Third Party, or for the purpose of such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.

5.5 Limitation to no-talk and no-due diligence

From the date which is 20 Business Days after the Virtual Data Room Confirmation Date, each of clauses 5.3 and 5.4 do not apply to the extent that the relevant clause restricts the Company, the Board or a Representative of the Company from taking or refusing to take any action in relation to a genuine written Competing Proposal (which was not solicited, invited, encouraged or initiated in contravention of clause 5.2) provided that the Board has determined, acting in good faith, that:

- (a) after consultation with its financial advisors, such a genuine written Competing Proposal is, or could be considered to become, a Superior Proposal; and
- (b) after receiving written legal advice from its external legal advisers, failing to respond to such a genuine written Competing Proposal would be likely to constitute a breach of the Board's fiduciary or statutory obligations.

5.6 Notification by the Company of a Competing Proposal

- (a) During the Exclusivity Period, the Company must as soon as practicable and in any case within one Business Day notify Bain Capital in writing if:

- (i) it or any of its Representatives is approached by any Third Party requesting or proposing that it take any action of a kind referred to in clauses 5.3 and 5.4 where the Board reasonably believes (at the time that the approach is made) that such request or proposal is in connection with such Third Party formulating, developing or finalising a Competing Proposal; or
- (ii) it or any of its Representatives proposes to take any action of a kind referred to in clauses 5.3 and 5.4,

in which case the Company must give Bain Capital all material details of the proposed action.

- (b) During the Exclusivity Period, as soon as practicable and in any case within one Business Day after the Company receives any Competing Proposal, the Company must give Bain Capital notice in writing of:
 - (i) the existence of the Competing Proposal; and
 - (ii) the name and identity of the Third Party who has made the applicable Competing Proposal (and any other Third Party involved in the Competing Proposal) and all other material terms of the applicable Competing Proposal (including details of the proposed price or implied value (including details of the consideration if not cash alone), conditions, timing and break fee (if any)), in each case, to the extent known by the Company, together with a copy of any material confidential information concerning the operations of the Company Group provided to any person associated with the Competing Proposal not previously provided to Bain Capital.

5.7 Matching right

- (a) If during the Exclusivity Period any Competing Proposal is made, announced, or received, the Company must:
 - (i) not, and must ensure that no member of the Company Group enters into any legally binding agreement to give effect to or implement any Competing Proposal (which, for the avoidance of doubt, excludes a confidentiality agreement entered into with a Third Party for the purpose of facilitating a Competing Proposal, to the extent permitted by this clause 5 and subject to clause 13.6 of the Confidentiality Deed); and
 - (ii) must use its reasonable endeavours to seek to ensure that no member of the Board publicly recommends a Competing Proposal or a proposed or potential Competing Proposal,
 unless:
 - (iii) the Company provided Bain Capital, in accordance with clause 5.6(b), with the material terms and conditions of the actual, proposed or potential Competing Proposal, including price and the identity of the Third Party making the actual, proposed or potential Competing Proposal;
 - (iv) the Board, acting in good faith in order to satisfy what the Board considers to be its statutory and fiduciary duties (having received written advice from its external legal advisers), determines that the Competing Proposal is a Superior Proposal;
 - (v) the Company has given Bain Capital (or any of its Related Entities) until the Matching Date the ability to provide a matching or superior proposal to the terms of the Competing Proposal (a **Counter Proposal**); and

- (vi) either:
- (A) Bain Capital has not announced or provided to the Company a Counter Proposal by the end of the Matching Date; or
 - (B) Bain Capital has, by the end of the Matching Date, announced or provided to the Company a Counter Proposal and:
 - (1) the Board has reviewed the Counter Proposal in good faith and concluded that the Counter Proposal does not provide an equivalent or superior outcome for Shareholders compared with the Competing Proposal; and
 - (2) the Company has notified Bain Capital of that conclusion in writing stating reasons for the conclusion.
- (b) The Board agrees that a modification to the proposed price of any Competing Proposal will constitute a new Competing Proposal for the purposes of the requirements under clauses 5.6 and 5.7.
- (c) If, by the end of the Matching Date, Bain Capital has announced or provided to the Company a Counter Proposal, the Company must procure that the Board reviews the Counter Proposal in good faith. If the Board, acting in good faith, determines that the Counter Proposal provides an equivalent or superior outcome for Shareholders as a whole compared with the applicable Competing Proposal, then the Company and Bain Capital must use their best endeavours to agree the amendments to this Deed and any other transaction documentation that is reasonably necessary to reflect the Counter Proposal.

5.8 Non-public information

Without limiting clause 13.6 of the Confidentiality Deed:

- (a) If any Non-public Information is provided or made available to any person in connection with an actual, proposed or potential Competing Proposal which has not previously been provided or made available to Bain Capital, the Company must promptly, and in any event within 24 hours, provide such information to Bain Capital:
- (i) in the case of written materials, a copy of; and
 - (ii) in any other case, a written statement of,
- that Non-public Information.
- (b) If the Company is permitted by virtue of clause 5.5 to engage in any activity that would otherwise breach either of clauses 5.3 or 5.4, the Company must enter into a confidentiality agreement with the Third Party who has made the applicable actual, proposed or potential Competing Proposal that contains obligations on that person that are, when assessed on an overall basis, on terms no less onerous in any material respect than the obligations of Bain Capital under the Confidentiality Deed.

5.9 Exclusivity exceptions

Nothing in this clause 5 prevents the Company 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) engaging with its Shareholders (in their capacity as a shareholder), in the ordinary course and consistent with past practice and provided that such engagement does not relate to the Company soliciting, inviting, encouraging or initiating an actual, proposed or potential Competing Proposal;
- (e) 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;
- (f) making presentations or providing information to, or responding to enquiries from, or engaging with, brokers, portfolio investors, analysts and other Third Parties in the ordinary course of business; or
- (g) responding to queries or discussion points raised by a Shareholder with the Company in respect of that Shareholder's shareholding (including in relation to that shareholder's future intentions regarding its shareholding), provided that these queries or discussion points were not initiated by the Company and that the Company's responses to these queries or discussion points do not result in a breach of clause 5.2, 5.3 and 5.4.

5.10 Company legal advice

- (a) The Company acknowledges that it has received legal advice on this Deed and the operation of this clause 5.
- (b) The parties must not make or cause or permit to be made, any application to a court or the Takeovers Panel for or in relation to a determination in relation to this clause 5.

6 Term and Termination

6.1 Termination

- (a) This Deed, and the parties' obligations under it, will terminate on the occurrence of the earlier of:
 - (i) the expiry of the Exclusivity Period;
 - (ii) the parties executing a Scheme Implementation Deed; and
 - (iii) the Company giving Bain Capital written notice of termination with immediate effect if:
 - (A) the Company has received a Competing Proposal and after following the procedure under clause 5.7, the Board has determined that such Competing Proposal is a Superior Proposal; or
 - (B) Bain Capital or any of its Related Entities breach any of their material obligations under this Deed or the Confidentiality Deed.
- (b) No party may terminate or rescind this Deed except as permitted under this clause 6.

6.2 Effect of termination

Notwithstanding anything to the contrary in this Deed, if this Deed is terminated in accordance with clause 6.1:

- (a) each party will be released from its obligations under this deed, except that this clause 6.2, and clauses 1, 7, 9, and 10, will survive termination and remain in force; and

- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this Deed.

7 Remedies

Each party acknowledges that any breach of this Deed will cause material damage to the other party and that damages may not be a sufficient remedy for such breach. Accordingly, the other party has the right to seek injunctive relief or specific performance as a remedy for any actual or threatened breach, in addition to any other remedies available at law or in equity under or independently of this Deed.

8 Agreed announcements

Subject to any obligations of either party under law, each party agrees to notify and consult with the other party prior to making any public announcement to the ASX in connection with the Potential Transaction (including any announcement in connection with a Competing Proposal).

9 Limitation of Liability

- (a) Notwithstanding any other provision of this Deed, the Company acknowledges and agrees that:
 - (i) Bain Capital enters into and performs this Deed and the transactions it contemplates in its capacity as manager or adviser to the Bain Capital Fund Entities and in no other capacity. This applies also in respect of any past and future conduct (including omissions) relating to this Deed or those transactions;
 - (ii) Bain Capital is not liable to pay or satisfy any of its obligations under and in connection with this Deed and those transactions and will have no liability to the other parties except to the extent of Bain Capital's right of indemnity out of the assets of the Bain Capital Fund Entities;
 - (iii) if those assets are insufficient, the other parties will not seek to recover any shortfall by bringing proceedings against Bain Capital personally and may not seek the appointment of a liquidator, administrator, receiver or similar person to Bain Capital or prove in any liquidation, administration or arrangement of or affecting Bain Capital; and
 - (iv) the other parties waive their rights and release Bain Capital from any personal liability whatsoever in respect of any loss or damage which cannot be paid or satisfied out of the assets of the Bain Capital Fund Entities.
- (b) The limitation of liability under clause 9(a) will not apply to the extent that Bain Capital's right of indemnity from the Bain Capital Fund Entities of which Bain Capital is a manager or adviser is reduced or lost as a result of the operation of law or as a result of any fraud, negligence, wilful misconduct or breach of trust by Bain Capital.

10 General

10.1 Benefit of Deed

- (a) Bain Capital holds the benefit of each promise and obligation in this Deed expressed to be for the benefit of the Bain Capital Fund Entities on trust for the benefit of each Bain Capital Fund Entity.
- (b) Each Bain Capital Fund Entity can enforce this Deed directly against the Company.

10.2 Valuable consideration

Each party acknowledges entering into this Deed and incurring obligations and giving rights under this Deed for valuable consideration received from each other party.

10.3 Amendment

No amendment or variation of this Deed is valid or binding on a party unless made in writing and executed by all parties.

10.4 Assignment

- (a) Bain Capital may not assign any of its rights or obligations under this Deed, or attempt or purport to do so, without the prior written consent of the Company (acting reasonably).
- (b) The Company may not assign, charge, create a security interest over, encumber or otherwise deal with any of its rights or obligations under this Deed, or attempt or purport to do so, without the prior written consent of Bain Capital (acting reasonably).

10.5 Notices

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

- (a) must be in writing and signed by the sender or a person duly authorised by the sender (or in the case of email, set out the full name and position or title of the sender or person duly authorised by the sender);
- (b) subject to paragraph (c), must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or email to the address or email address below or the address or email address last notified by the intended recipient to the sender:
 - (i) to the Company: Address: Level 9, 227 Elizabeth Street, Sydney NSW 2000
Email: sean.bilton@estiahealth.com.au / leanne.ralph@BelleV.com.au
Attention: The Directors
With copy to (which by itself does not constitute a Notice): daniel.scotti@minterellison.com / nicole.sloggett@minterellison.com
 - (ii) to Bain Capital: Address: c/o Bain Capital Private Equity (Australia) Pty Limited, Level 28, 88 Phillip Street Sydney, NSW 2000
Email: M.Murphy@baincapital.com / CLawson@baincapital.com / Spayne@BainCapital.com
Attention: Michael Murphy / Charles Lawson / Samuel Payne
With copy to (which by itself does not constitute a Notice): Tom.Story@allens.com.au / Noah.Obradovic@allens.com.au / Joy.Yoon@allens.com.au
- (c) will be deemed to satisfy the obligations in paragraph (b) if:

- (i) where a party changes its address and fails to formally notify the other parties of the new address, the Notice is delivered to the intended recipient at that new address; and
 - (ii) where an individual named in paragraph (b) ceases to work in the relevant role or ceases to work for the relevant party and the relevant party fails to formally notify the other parties of an alternative individual to whom Notices should be marked to the attention of (and, if relevant, an alternative email address to which Notices should be sent), the Notice is marked to the attention of (and, if relevant, delivered to the email address of) an individual in the same or equivalent role at the intended recipient; and
 - (d) 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 express post, to an address in the same country, two Business Days after the date of posting;
 - (iii) in the case of delivery by any other method of post, six Business Days after the date of posting (if posted to an address in the same country) or 10 Business Days after the date of posting (if posted to an address in another country); and
 - (iv) in the case of email, at the earliest 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 intended recipient confirms receipt of the email by reply email; and
 - (C) three hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that three-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:
- (v) on a day that is not a Business Day, or at a time that is later than 5:00pm, in the place specified by the intended recipient as its postal address under paragraph (b), then it will be conclusively taken to have been duly given or made at the start of business on the next Business Day in that place; or
 - (vi) before 9:00am on a Business Day in the place specified by the intended recipient as its postal address under paragraph (b), it will be conclusively taken to have been duly given or made at 9:00am on that Business Day in that place.

10.6 Entire Agreement

- (a) This Deed and the Confidentiality Deed contain the entire agreement between the parties with respect to its subject matter. This Deed and the Confidentiality Deed set out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) relied on by the parties and supersedes all earlier Conduct by or between the parties in connection with their subject matter. No party has relied on or is relying on any other Conduct in entering into this Deed and completing the transactions contemplated by it.
- (b) In the event of there being any inconsistency between the terms of this Deed and the Indicative Offer Letter, the terms of this Deed will prevail.

10.7 Governing law and jurisdiction

This Deed is governed by the laws of New South Wales, Australia. 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.

10.8 Severability of provisions

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

10.9 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.

10.10 No merger

The rights and obligations of the parties will not merge on 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.

10.11 Costs and duty

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Deed. All duty (including stamp duty and any fines, penalties and interests) payable on or in connection with this Deed and any instrument executed under or any transaction evidenced by this Deed must be borne equally by the parties.

10.12 Execution and counterparts

This Deed may be executed electronically and in any number of counterparts.

Executed and Delivered as a Deed

Company

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



Director

Dr Gary Weiss AM



Company Secretary

Leanne Ralph

For personal use only

Process Deed

[Allens](#) > < [Linklaters](#)

Bain Capital

Executed as a deed by **Bain Capital Private Equity, LP** by **Bain Capital Private Equity (GP), LLC**, its general partner:



Signature of witness

April Nardella

Print Name



Signature of authorised signatory

David Gross-Loh

Print Name