

27 July 2021

RECOMMENDED ACQUISITION OF JAPARA BY CALVARY

Japara Healthcare Limited (ASX: JHC) (**Japara**) today announced that it has entered into a Scheme Implementation Deed (**SID**) with Little Company of Mary Health Care Ltd (**Calvary**) for the acquisition of all of the issued shares in Japara by way of scheme of arrangement (**Scheme**).

- Japara shareholders will receive \$1.40 cash per share under the Scheme.
- Japara's Board of Directors (**Japara Board**) unanimously recommend the Scheme, in the absence of a superior proposal and subject to an Independent Expert concluding that the Scheme is fair and reasonable and in the best interests of shareholders.
- Japara shareholders do not need to take any action at the present time.

Background

As previously announced, Japara received conditional, non-binding indicative proposals to acquire 100% of the shares in Japara from both Calvary and another party. The Japara Board agreed to provide both parties with confirmatory due diligence in order to develop binding proposals capable of being recommended to shareholders. This period of confirmatory due diligence has recently concluded.

Details of the Scheme Consideration

If the Scheme is implemented, Japara shareholders will receive total cash consideration of \$1.40 per share (**Scheme Consideration**) on the date of implementation of the Scheme.

It is expected that the Scheme will be voted on at a meeting expected to be held in October 2021 (**Scheme Meeting**). Japara shareholders are advised that no action is required by them in relation to the Scheme at this time.

The Scheme Consideration implies an equity value of approximately \$380 million¹, and an enterprise value of approximately \$588 million², and represents:

- a premium of 75% to the last undisturbed closing price of Japara shares on 29 April 2021³ of \$0.80;
- a premium of 81% to the undisturbed 30 day volume weighted average price (**VWAP**) of \$0.77; and
- a premium of 87% to the undisturbed 90 day VWAP of \$0.75.

1. Implied equity value of \$380 million based on the Scheme Consideration of \$1.40 per share multiplied by 271,102,866 diluted shares on issue comprising 267,247,328 ordinary shares and 3,855,538 long-term incentive performance rights.
2. Enterprise value calculated as equity value plus 31 December 2020 net debt of \$208 million.
3. The last trading date before Japara announced that it had received an indicative non-binding acquisition proposal from Calvary.

Japara Board unanimously recommend the Scheme

The Japara Board unanimously recommend that shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to an Independent Expert concluding (and continuing to conclude) that the Scheme is fair and reasonable and in the best interests of Japara shareholders. Subject to those same qualifications, Japara's Directors each intend to vote all Japara shares held or controlled by them in favour of the Scheme at the Scheme Meeting.

Japara Chairman, Linda Bardo Nicholls AO, said: "The Japara Board is pleased to unanimously recommend this proposal to shareholders. The Board has concluded that this proposal is in the best interests of Japara shareholders. In making this assessment, the Board considered a number of alternatives including a competing proposal and standalone value creation from the execution of our existing strategy. After careful consideration of the future opportunities for Japara, along with sector and regulatory uncertainty, and execution risks, the Board has determined that the Scheme delivers compelling value to Japara shareholders".

Details of the Scheme Implementation Deed

The implementation of the Scheme is subject to Japara shareholders approving the Scheme by the requisite majorities at the Scheme Meeting expected to be held in October 2021.

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

- Court approval;
- no Material Adverse Change; and
- no Prescribed Occurrences.

The SID contains customary exclusivity provisions, including no shop, no talk, notification obligations and matching rights. A break fee will be payable by Japara to Calvary in certain circumstances and a reverse break fee will be payable by Calvary to Japara in certain circumstances.

The Scheme is not subject to a due diligence or financing condition.

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

Scheme timing and next steps

A Scheme Booklet containing information relating to the Scheme, the reasons for the Japara Board's recommendation, an Independent Expert's Report and details of the Scheme Meeting is currently anticipated to be dispatched to shareholders in September 2021.

Japara has appointed Deloitte Corporate Finance Pty Limited as the Independent Expert to determine whether, in its opinion, the Scheme is fair and reasonable and in the best interests of shareholders. The Independent Expert's report will be provided to shareholders as part of the Scheme Booklet.

Japara shareholders will be given the opportunity to vote on the Scheme at a Scheme Meeting, which is currently expected to be held in October 2021 and, if approved, would be implemented shortly thereafter. An indicative timetable for the Scheme is set out below, these dates are indicative and subject to change.

Indicative timetable

Event	Expected Date
First Court Hearing	Early September 2021
Dispatch of Scheme Booklet	Early September 2021
Scheme Meeting	Early-mid October 2021
Second Court Hearing	Mid-October 2021
Effective Date	Mid-October 2021
Record Date	Late-October 2021
Implementation Date	Early November 2021

Macquarie Capital (Australia) Limited is acting as financial adviser and Herbert Smith Freehills as legal adviser to Japara.

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This document was authorised for release by the Board of Japara

About Japara

Japara is one of Australia's largest providers and developers of residential aged care, with an extensive footprint across five Australian states. Our unique approach to aged care is based on respect for the individual in delivering a better standard of residential living for elderly Australians.

With an exceptional team of around 6,000 nurses, carers and other support staff, we care for more than 4,000 valued residents across 50 homes located throughout Eastern Australia. We operate five retirement villages co-located to our homes, providing attractive senior living unit and apartment accommodation.

About Calvary

Calvary is a charitable Catholic not-for-profit organisation with more than 12,000 staff and volunteers, 14 public and private hospitals, 17 retirement and aged care facilities, and a national network of Community Care centres. Calvary operates across six states and territories within Australia. Established in Sydney in 1885, by the arrival of the Sisters of the Little Company of Mary in Australia, Calvary's mission is to provide health care to the most vulnerable, including those reaching the end of their life.

For further information about Calvary, visit: www.calvarycare.org.au.



HERBERT
SMITH
FREEHILLS

Deed

Execution version

Scheme implementation deed

Japara Healthcare Limited

Little Company of Mary Health Care Limited

rodd.levy@hsf.com

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Scheme implementation deed

Date ► 26 July 2021

Between the parties

Japara

Japara Healthcare Limited

ABN 54 168 631 052

of Q1 Building Level 4, 1 Southbank Boulevard, Southbank VIC 3006

Bidder

Little Company of Mary Health Care Limited

ABN 11 079 815 697

of Level 12, 135 King Street, Sydney, NSW 2000

Recitals

- 1 The parties have proposed that Bidder will acquire all of the ordinary shares in Japara by means of a scheme of arrangement under Part 5.1 of the Corporations Act between Japara and the Scheme Shareholders.
 - 2 The parties have agreed to propose and, if approved, to implement the scheme of arrangement on the terms of this deed.
-

This deed witnesses as follows:

1 Definitions and interpretation

1.1 Definitions

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

Term	Meaning
Accounting Standards	<ol style="list-style-type: none">1 the accounting standards required under the Corporations Act (including the Approved Accounting Standards issued by the Australian Accounting Standards Board) and other mandatory professional reporting requirements issued by the joint accounting bodies (including the Australian Accounting Standards issued either jointly by CPA Australia and Chartered Accountants Australia & New Zealand or by the Australian Accounting Research Foundation on behalf of CPA Australia and Chartered Accountants Australia & New Zealand); and2 if no accounting standard applies under the Corporations Act or other mandatory professional reporting requirements, the principles set out in Australian Statements of Accounting Concepts.
Additional Amount	has the meaning given in clause 17.
Adviser	any person who is engaged to provide professional advice of any type (including legal, accounting, consulting, regulatory, insurance, or financial advice) to Japara or to Bidder, as the case requires.
Aged Care Act	<i>Aged Care Act 1997</i> (Cth).
Alternative Financing	debt financing in connection with the Scheme to be provided by one or more debt financing sources other than pursuant to the Debt Commitment Letter as at the date of this deed.
ASIC	the Australian Securities and Investments Commission.
Associate	has the meaning set out in section 12 of the Corporations Act.
ASX	ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.



Term	Meaning
Authorisation	any approval, licence, consent, authority, registration, filing, agreement, notice of non-objection, notarisation, certificate, authorisation, exemption from or permit, issued by a Government Agency.
Bidder	has the meaning given in the "Parties" section.
Bidder Counterproposal	has the meaning given in clause 12.5(a)(5).
Bidder Group	Bidder and each of its Related Bodies Corporate, and a reference to a ' Bidder Group Member ' or a ' member of the Bidder Group ' is to Bidder or any of its Related Bodies Corporate.
Bidder Indemnified Parties	Bidder, its Related Bodies Corporate and their respective directors, officers and employees.
Bidder Information	information regarding the Bidder Group provided by or on behalf of Bidder to Japara in writing for inclusion in the Scheme Booklet, being: <ol style="list-style-type: none">1 information about the Bidder, other Bidder Group Members, the businesses of the Bidder Group and the Bidder's interests and dealings in Japara Shares and Bidder's intentions for Japara and Japara's employees and the Bidder's funding for the Scheme; and2 any other information required under the Corporations Act, Corporations Regulations or RG 60 to enable the Scheme Booklet to be prepared that the parties agree is 'Bidder Information' and that is identified in the Scheme Booklet as such.
Bidder Representations and Warranties	the representations and warranties of Bidder set out in Schedule 1.
Business Day	a day that is not a Saturday, Sunday or a public holiday or bank holiday in Sydney, Canberra or Melbourne.
CCA	the <i>Competition and Consumer Act 2010</i> (Cth).



Term	Meaning
Claim	<p>any claim, demand, legal proceedings or cause of action, including any claim, demand, legal proceedings or cause of action:</p> <ol style="list-style-type: none">1 based in contract (including breach of warranty);2 based in tort (including misrepresentation or negligence);3 under common law or equity; or4 under statute (including the Australian Consumer Law (being Schedule 2 of the CCA or Part VI of the CCA, or like provision in any state or territory legislation)), <p>in any way relating to this deed or the Transaction, and includes a claim, demand, legal proceeding or cause of action arising under an indemnity in this deed.</p>
Competing Proposal	<p>any proposal, offer, expression of interest, agreement, arrangement or transaction which, if entered into or completed substantially in accordance with its terms, would result in a Third Party (either alone or together with any Associate(s)):</p> <ol style="list-style-type: none">1 directly or indirectly acquiring or having the right to acquire (a) a Relevant Interest in; (b) a legal, beneficial or economic interest (including by way of an equity swap, contract for difference or similar transaction or arrangement) in; (c) or control of, 20% or more of the Japara Shares;2 acquiring Control of Japara;3 directly or indirectly acquiring or become 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 Japara's business or assets or the business or assets of the Japara Group;4 otherwise directly or indirectly acquiring or merging with Japara; or5 requiring Japara to abandon, or otherwise fail to proceed with, the Transaction, <p>whether by way of takeover bid, scheme of arrangement, reverse takeover, shareholder approved acquisition, capital reduction, buy-back, sale or purchase of shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement recapitalisation, refinancing or other transaction or arrangement.</p> <p>Each successive material modification or variation of any proposal, agreement, arrangement or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.</p>
Condition Precedent	<p>each of the conditions set out in clause 3.1.</p>



Term	Meaning
Confidentiality Deed	the confidentiality deed between Bidder and Japara dated 10 June 2021.
Consideration	has the meaning given in clause 17.
Construction Contracts	<ol style="list-style-type: none">1 Kingston Gardens Aged Care Redevelopment Agreement between Principal and Ireland Brown Constructions Pty Ltd dated 20 November 2016;2 Robina Aged Care Project Agreement between Principal and T.F. Woollam & Son Pty Ltd dated 2 June 2018;3 Mount Waverley ACF Project Agreement between Principal and J Hutchinson Pty Ltd dated 11 December 2018;4 Rye Age Care Development Agreement between Principal and APM Group (Aust) Pty Ltd dated 26 June 2017;5 Japara Newport Lakes Aged Care Development Agreement between Principal and Hansen Yuncken Pty Ltd undated; and6 Belrose Aged Care Development Agreement between Principal and Richard Crookes Construction Pty Limited dated 16 April 2020.
Control	has the meaning given in section 50AA of the Corporations Act, disregarding subsection 50AA(4).
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Corporations Regulations	the <i>Corporations Regulations 2001</i> (Cth).
Court	the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Japara and Bidder.
Data Room	the online data room established by Japara which is accessed at: https://dataroom.ansarada.com/_mvc/Proj.Venice%7C75637/3893867/spa/documents .
Debt Commitment Letter	the binding, credit-approved, executed commitment letter and accompanying term sheet from certain banks or other financial institutions addressed to one or more Bidder Group Members and dated on or about the date of this deed.

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Term	Meaning
Debt Documents	the definitive agreements related to the Debt Financing on terms contemplated by the Debt Commitment Letter.
Debt Financing	the debt financing incurred or intended to be incurred pursuant to the Debt Commitment Letter.
Deed Poll	a deed poll to be entered into by Bidder substantially in the form of Attachment 2 under which Bidder covenants in favour of the Scheme Shareholders to perform the obligations attributed to Bidder under the Scheme.
Development Sites	each of the following developments sites owned by a Japara Group Member: <ol style="list-style-type: none">1 George Vowell at Corner Nepean Highway and Cobb Road, Mt Eliza, Victoria;2 Elanora at 7 Mair Street and 13-15 and 17 New Street, Brighton Victoria;3 Barongarook Gardens at 8-32 Murray Street, East Colac, Victoria;4 Oaklands Park at 2 Jean Street, Oaklands Park, South Australia; and5 Cosgrove Cottages at 25 Waveney Street, South Launceston, Tasmania.
Disclosure Materials	<ol style="list-style-type: none">1 the documents and information contained in the Data Room made available by Japara to Bidder and its Related Persons prior to 6pm on the date of this deed, the index of which has been initialled by, or on behalf of, the parties for identification;2 written responses from Japara and its Related Persons to requests for further information made by Bidder and its Related Persons via the Data Room prior to 6pm on the date of this deed; and3 any other information made available by Japara or its Related Persons to Bidder Group or its Related Persons prior to execution of this deed which is agreed between the parties in writing on the date of this deed.
EBITDA	earnings before interest, taxes, depreciation and amortisation for the consolidated Japara Group, as adjusted by applying the following principles:



Term	Meaning
	<ol style="list-style-type: none">including in the calculation of EBITDA the financial impact of the operating lease expenses incurred by any Japara Group Member and reported in accordance with AASB 16;excluding from the calculation of EBITDA the financial impact of the following on the consolidated Japara Group:<ol style="list-style-type: none">(contemplated transaction) costs or expenses incurred by a Japara Group Member in relation to the Scheme (including advisor fees, consulting, legal, financial or accounting costs);(revenue or profit from non-operating activities) revenue or profit from non-operating activities limited to gains or losses on sales of assets, insurance gains and donations received;(costs or losses from non-operating activities) costs or losses arising from non-operating activities limited to losses on any sale of assets; and(unrealised fair value gains or losses) any unrealised gains or losses on any hedge or swap arrangements and in relation to investment properties,without double-counting an amount which may fall within one or more of the items in subparagraphs (2)(A) to (2)(D); andwhen calculating EBITDA, revenue and expense items are to be reported in accordance with the Account Standards.
Effective	when used in relation to the Scheme, the coming into effect, under subsection 411(10) of the Corporations Act, of the order of the Court made under paragraph 411(4)(b) of the Corporations Act in relation to the Scheme.
Effective Date	the date on which the Scheme becomes Effective.
End Date	<ol style="list-style-type: none">the date that is 6 months after the date of this deed; orsuch other date as agreed in writing by the parties.
Enterprise Agreement	<ol style="list-style-type: none">Aged Care Services Australia Group Pty Ltd, Australian Nursing and Midwifery Foundation and Health Workers Union (Victoria) Enterprise Agreement 2017; andthe amendment, termination or replacement of the agreement in paragraph (1).
Exclusivity Period	the period from and including the date of this deed to the earliest of: <ol style="list-style-type: none">the date of termination of this deed;



Term	Meaning
	<ol style="list-style-type: none">2 the End Date; and3 the Effective Date.
Existing Facility Agreements	<ol style="list-style-type: none">1 the syndicated facility agreement between, among others, Japara and National Australia Bank Limited (as agent and security trustee) originally dated 12 June 2014, as amended from time to time (including most recently on 3 June 2020);2 the multi-option facility agreement between, among others, Japara and Commonwealth Bank of Australia (as lender) originally dated 30 September 2015, as amended from time to time (including most recently on 21 December 2018); and3 the bilateral letter of offer between Japara and National Australia Bank Limited (as lender), dated 12 June 2014.
Existing Facility Default	a “default”, “event of default” or “review event” (in each case, howsoever described) under the Existing Facility Agreements.
Fairly Disclosed	disclosed in sufficient detail and context to enable a reasonable and sophisticated recipient of the relevant information who is experienced in transactions similar to the Scheme to identify the nature and potential impact of the relevant fact, matter, circumstance or event.
Financial Adviser	any financial adviser retained by a Japara Group Member in relation to the Transaction from time to time.
Financial Indebtedness	<p>any debt or other monetary liability (whether present or future, actual or contingent), together with all interest, fees and penalties accrued thereon, in respect of monies borrowed or raised or any financial accommodation including under or in respect of any:</p> <ol style="list-style-type: none">1 interest or non-interest-bearing loan or other financing liability or obligation, including an overdraft or any other liability in the nature of borrowed money (whether secured or unsecured);2 bill, bond, debenture, note or similar instrument;3 acceptance, endorsement or discounting arrangement;4 guarantee or letter of credit or other instrument issued by a bank or financial institution in respect of financial liabilities;5 finance or capital lease or hire purchase contract;6 redeemable share or security;7 agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or service;

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Term	Meaning
	<p>8 obligation to deliver goods or provide services paid for in advance by any financier;</p> <p>9 recourse or non-recourse liability (whether conditional or unconditional, present or future) arising from any transaction(s) related to the assignment or securitisation of receivables for financing purposes to any third party, including a factoring agreement or a similar agreement executed for the purpose of obtaining financing and including any amount raised pursuant to such agreement but which, in accordance with Accounting Standards, has not otherwise been recognised on the balance sheet as a liability; or</p> <p>10 all interest and non-interest bearing loans, advances or other financing liabilities or obligations, including overdrafts and any other liabilities in the nature of borrowed money (whether secured or unsecured).</p>
First Court Date	the first day on which an application made to the Court for an order under subsection 411(1) of the Corporations Act convening the Scheme Meeting is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.
Government Agency	any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including any stock or other securities exchange), or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian (including the Aged Care Quality and Safety Commission, the Fair Work Ombudsman, the Fair Work Commission, ASIC and the Takeovers Panel).
Health Event	any infectious or contagious disease including the Coronavirus or Covid-19 pandemic, including the outbreak, escalation or impact of, or recovery from, the disease, including as a result of preventing, identifying, treating, lockdowns, travel restrictions, social distancing, vaccination programs, requirement or restrictions and other obligations on healthcare and aged care providers.
Implementation Date	the fifth Business Day after the Scheme Record Date, or such other date after the Scheme Record Date as the parties agree in writing or is ordered by the Court or required by ASX.
Independent Expert	the independent expert in respect of the Scheme appointed by Japara to prepare the Independent Expert's Report.

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Term	Meaning
Independent Expert's Report	the report to be issued by the Independent Expert in connection with the Scheme, such report to be included in or to accompany the Scheme Booklet, and including any subsequent, updated or supplementary report, setting out the Independent Expert's opinion whether or not the Transaction is in the best interests of Japara Shareholders and the reasons for holding that opinion.
Insolvency Event	<p>in relation to an entity:</p> <ol style="list-style-type: none">1 the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity;2 a Controller (as defined in the Corporations Act), liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official being appointed to the entity or in relation to the whole, or a substantial part, of its assets;3 an application is made to a court, a meeting is convened or a resolution is passed for the entity to be wound up or dissolved or for the appointment of a Controller (as defined in the Corporations Act), liquidator, provisional liquidator or administrator to the entity of any of its assets;4 the entity seeks or obtains protection from its creditors under any statute or any other law;5 the entity executing, or resolving to execute, a scheme of arrangement, a deed of company arrangement or other compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;6 the entity ceases, or threatens to cease to, carry on substantially all the business conducted by it as at the date of this deed;7 the entity is or becomes unable to pay its debts when they fall due, is insolvent within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation) or is otherwise presumed to be insolvent under the Corporations Act or any analogous circumstances arises under any other statute or law;8 the entity being deregistered as a company or otherwise dissolved (whether pursuant to Chapter 5A of the Corporations Act or otherwise) or9 any other like event, matter or circumstance occurring in relation to an entity in another jurisdiction or which has a substantially similar effect.
Japara	has the meaning given in the "Parties" section.
Japara Board	the board of directors of Japara.



Term	Meaning
Japara Board Member	any director of Japara comprising part of the Japara Board.
Japara Equity Incentive	any rights to Japara Shares issued under employee incentive arrangements of the Japara Group existing as at the date of this deed.
Japara Group	Japara and each of its Related Bodies Corporate, and a reference to a ' Japara Group Member ' or a ' member of the Japara Group ' is to Japara or any of its Related Bodies Corporate.
Japara Indemnified Parties	Japara and its Related Bodies Corporate and their respective directors, officers and employees.
Japara Information	information regarding the Japara Group prepared by Japara for inclusion in the Scheme Booklet, which for the avoidance of doubt comprises the entirety of the Scheme Booklet other than the Bidder Information, the Independent Expert's Report (or references to the Independent Expert's analysis or conclusions), any investigating accountant's report or other report or opinion prepared by an Adviser to Japara.
Japara Registry	Link Market Services Limited, Tower 4, 727 Collins Street, Melbourne.
Japara Representations and Warranties	the representations and warranties of Japara set out in Schedule 2.
Japara Share	a fully paid ordinary share in the capital of Japara.
Japara Share Register	the register of members of Japara maintained by the Japara Registry in accordance with the Corporations Act.
Japara Shareholder	a person who is registered as the holder of a Japara Share in the Japara Share Register.
Listing Rules	the official listing rules of ASX.



Term	Meaning
Matching or Superior Proposal	has the meaning given in clause 12.5(b).
Material Adverse Change	<p>an event, matter, change, condition or circumstance that (i) occurs or is reasonably likely or is announced after the date of this deed or (ii) occurs on or before the date of this deed but which only becomes known to Bidder after the date of this deed (each a Specified Event) which whether individually or when aggregated with all events, matter or circumstance has, or would be reasonably likely to have, the effect of:</p> <ol style="list-style-type: none">1 diminishing the total assets of the Japara Group, taken as a whole, by at least \$30,000,000 against what it would reasonably have been expected to have been but for such Specified Event;2 diminishing the recurring or prospective EBITDA of the Japara Group, taken as a whole, of at least \$5,000,000 against what it would reasonably have been expected to have been but for such Specified Event, <p>in each case, disregarding an event, matter, change, condition or circumstance:</p> <ol style="list-style-type: none">3 arising from Health Event;4 required or expressly permitted by this deed, the Scheme or the transactions contemplated by any of them;5 that was Fairly Disclosed: (A) in the Disclosure Materials, including any consequences reasonably foreseeable from the matters disclosed; (B) that was disclosed in documents that were publicly available prior to the date of this deed from public filings with ASX or ASIC;6 agreed to in writing by Bidder;7 arising as a result of any generally applicable change in law or governmental policy;8 arising from changes in economic or business conditions;9 arising from any act of terrorism, outbreak or escalation of war (whether or not declared) or major hostilities, an act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide, other natural disaster or adverse weather conditions; or10 arising out of the announcement of the Transaction or the Scheme (including any loss of or adverse change in the relationship of Japara or its Related Bodies Corporate with their respective employees, customers, creditors, suppliers, lessors or any Government Agency).
Notice	has the meaning given in clause 18



Term	Meaning
Notifiable Proposal	has the meaning given in clause 12.4(a).
Operating Rules	the official operating rules of ASX.
PPS Register	the register established under the PPSA.
PPSA	the <i>Personal Property Securities Act 2009</i> (Cth).
Prescribed Occurrence	<p>other than:</p> <ol style="list-style-type: none">1 as required or permitted by this deed, the Scheme or the transactions contemplated by either;2 as Fairly Disclosed in the Disclosure Materials;3 as agreed to in writing by Bidder; or4 as Fairly Disclosed by Japara in an announcement made by it to ASX, or a publicly available document lodged by it with ASIC, (which would be disclosed in a search of ASIC's records that are open to public inspection) prior to the date of this deed, <p>the occurrence of any of the following after the date of this deed:</p> <ol style="list-style-type: none">5 Japara converting all or any of its shares into a larger or smaller number of shares;6 Japara resolving to reduce its share capital in any way;7 a Japara Group Member entering into a buy-back agreement or resolving to approve the terms of a buy-back agreement under the Corporations Act;8 a member of the Japara Group issuing shares or granting a performance right or an option over its shares, or agreeing to make such an issue or grant such an option, other than on vesting or exercise of, or in respect of, a Japara Equity Incentive as agreed between the Bidder and Japara in accordance with clause 5.11;9 any member of the Japara Group issues, or agrees to issue, securities convertible into shares (including any issue or agreement to issue performance rights or options or debt securities);10 a Japara Group Member making any change to its constitution other than where a Japara Group Member that is not material in the context of the Japara Group (taken as a whole) makes a change to its constitution that does not materially affect the Transaction or the Japara Group (or its business);11 any member of the Japara Group:<ol style="list-style-type: none">(A) reclassifying, combining, splitting or redeeming or repurchasing director or indirectly any of its shares; or



Term	Meaning
	<p>(B) announcing, making, declaring, determining as payable paying or distributing any distribution dividend, bonus or other share of its profits or assets, or returning or agreeing to return any capital to its members (whether in cash or specie);</p> <p>12 a member of the Japara Group disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property (whether by way of a single transaction or series of related transactions);</p> <p>13 a Japara Group Member granting a Security Interest, or agreeing to grant a Security Interest, in the whole, or a substantial part, of its business, assets or property or of Japara Group other a lien securing an obligation that is not yet due which arises by operation of law, legislation or which arises than in the ordinary course of the Japara Group's business;</p> <p>14 a Existing Facility Default occurs;</p> <p>15 any Japara Group Member creates any new security-based (or phantom security-based) incentive plan or scheme, modifies the Japara Equity Incentive, or issues or makes any offers to participate in the Japara Equity Incentive;</p> <p>16 Japara Shares cease to be quoted, or are suspended from quotation, on ASX;</p> <p>17 an Insolvency Event occurs in relation to a material Japara Group Member;</p> <p>18 any material Japara Group Member ceasing, or threatening to cease, the whole or a material part of its business; or</p> <p>19 any Japara Group Member authorises, agrees, commits or resolves to do any of the matters set out above.</p>
Principal	Japara Developments Pty Ltd (ACN 110 645 773).
Recipient	has the meaning given in clause 17.
Recommendation	has the meaning given to that term in clause 5.4(a).
Regulated Event	other than: <ol style="list-style-type: none">1 as Fairly Disclosed in:<ul style="list-style-type: none">– the Disclosure Materials;– an announcement made by Japara to the ASX prior to the date of this deed;

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Term	Meaning
	<ul style="list-style-type: none">– a publicly available document lodged by Japara or a Japara Group Member with ASIC (which would be disclosed in a search of ASIC's records that are open to public inspection) prior to the date of this deed; or
	2 which is required by any applicable law, regulation, generally accepted accounting standards or generally accepted accounting principles, contract (but only to the extent such contract was entered into, and a copy of which was Fairly Disclosed to Bidder, before the date of this deed or otherwise in accordance with this deed) or by a Government Agency;
	3 which is within the actual knowledge of a Bidder Group Member before the date of this deed;
	4 as required or expressly permitted to be done or procured by the Japara Group in connection with this deed or the Scheme; or
	5 which the Bidder had requested or to which the Bidder has consented in writing (not to be unreasonably withheld),
	the occurrence of any of the following:
	1 acquisitions and disposals: a Japara Group Member acquiring, leasing, licensing or disposing (or entering into negotiations, soliciting proposal, agreeing, proposing or offering to acquire, lease, licence or dispose) of any business, assets, property, entity or undertaking (whether by way of a single transaction or series of related transactions), the value of which exceeds \$2,000,000 (individually or in aggregate);
	2 material contracts: a Japara Group Member entering into any contract or commitment (or series of related contracts or commitments), or materially varying any contract or commitment (or series of related contracts or commitments) in existence at the date of this deed (excluding any contract or commitment in respect of Financial Indebtedness): <ul style="list-style-type: none">(A) requiring (or which could reasonably be expected to require) annual payments by the Japara Group in excess of \$2,000,000; or(B) that generates, or is expected to generate, in each case, \$2,000,000 or more in gross annual revenue for the Japara Group;
	3 disputes: a Japara Group Member commencing, compromising, settling or offering to settle any legal proceedings, Claim, investigation, arbitration, unfair dismissal application or like proceeding (or series of related legal proceedings, Claims, investigations, arbitrations or like proceedings) where the Claimed or settlement amount (or, in the case of a series of related legal proceedings, Claims, investigations, arbitrations or like proceedings, aggregate claimed or settlement amount) is in excess of \$2,000,000, other than as claimant in respect of the collection of trade debts arising in the ordinary course of the Japara Group's business or where such settlement amount is covered by insurance (excluding any excess);

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Term	Meaning
	<p>4 financing: Japara increases the facility limit under any Japara Group debt facilities existing as at the date of this deed or establishes a new debt facility;</p> <p>5 financial accommodation: provides financial accommodation to, or guarantees or indemnifies the obligations of, any person other than a Japara Group Member (irrespective of what form that financial accommodation, guarantee or indemnity takes), other than in the ordinary course of business;</p> <p>6 accounting: a Japara Group Member changing any accounting method, practice or principle used by it, other than as a result of changes in generally accepted accounting standards or generally accepted accounting principles or the interpretation of any of them;</p> <p>7 employees: a Japara Group Member entering into any new employment or service agreement, or materially varying any employment or service agreement in existence at the date of this deed, with an individual in respect of which the total fixed remuneration is greater than \$250,000;</p> <p>8 remuneration, compensation and benefits: any Japara Group Member:</p> <ul style="list-style-type: none">(A) increases the remuneration, compensation or benefits of, or pays any bonus or issues any securities to, or otherwise varies the employment arrangements with, any of its directors, officers or other members of the executive leadership team;(B) accelerates the rights of any of its directors, officers, or other members of the executive leadership team to benefits of any kind (other than any vesting of Japara Equity Incentives granted by Japara before the date of this deed); or(C) pays or agrees to pay a director, officer or other member of the executive leadership team a termination payment (including a 'golden parachute'), <p>other than only as provided for in an employment or services agreement in existence as at the date of this deed that is Fairly Disclosed in the Disclosure Materials or any vesting or cancellation of Japara Equity Incentives in accordance with clause 5.11,</p> <p>9 plant and equipment: any Japara Group Member incurring or entering into any new commitment(s) involving the purchase of plant and equipment or for other like capital expenditure of more than \$5,000,000 (individually or in aggregate), other than as set out in the Disclosure Materials;</p> <p>10 Financial Advisers: any Japara Group Member materially amends any agreement or arrangement with a Financial Adviser which has been disclosed to Bidder before the date of this deed or enters into an agreement or arrangement with a new Financial Adviser or enters into a new agreement or arrangement with an existing Financial Adviser;</p>



Term	Meaning
	<p>11 Tax elections: a Japara Group Member makes any material Tax elections or changes any material Tax methodologies applied by it in the 12 months prior to the date of this deed;</p> <p>12 related party transactions: any Japara Group Member entering into, or resolving to enter into, a transaction with a related party of Japara, including giving or agreeing to give a financial benefit to a related party (other than a related party that is a Japara Group Member) as defined in section 228 of the Corporations Act, except on arms-length terms;</p> <p>13 Third Party defaults: a Japara Group Member waives any Third Party default where the financial impact of the waiver on the Japara Group as a whole will, or is reasonably likely to be, in excess of \$2,000,000 (individually or in aggregate); or</p> <p>14 authorisation: a Japara Group Member authorises, agrees, commits or resolves to do any of the matters set out above.</p>
Regulator's Draft	the draft of the Scheme Booklet in a form which is provided to ASIC for review pursuant to subsection 411(2) of the Corporations Act.
Reimbursement Fee	an amount equal to 1% of the value of the aggregate Scheme Consideration.
Related Bodies Corporate	has the meaning set out in section 50 of the Corporations Act.
Related Person	in respect of a person, including each party or its Related Bodies Corporate: <ol style="list-style-type: none">1 a director, officer, employee of that person;2 an Adviser of that person (and each director, officer, employee or contractor of that Adviser);3 an agent or representative of that person; and4 a Related Body Corporate of that person.
Relevant Interest	has the meaning given in sections 608 and 609 of the Corporations Act.
Reverse Break Fee	an amount equal to 1% of the value of the aggregate Scheme Consideration.
Replacement Financing Letters	has the meaning given to that term in clause 5.10(c).



Term	Meaning
RG 60	Regulatory Guide 60 issued by ASIC in September 2011.
Scheme	the scheme of arrangement under Part 5.1 of the Corporations Act between Japara and the Scheme Shareholders under which all of the Scheme Shares will be transferred to the Bidder and the Scheme Shareholders will receive the Scheme Consideration, the form of which is attached as Attachment 1 (or such other form as agreed in writing by the Bidder and Japara), subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by Bidder and Japara.
Scheme Booklet	<p>the scheme booklet to be prepared by Japara in respect of the Transaction in accordance with clause 5.2(a) to be dispatched to the Japara Shareholders and which must include or be accompanied by:</p> <ol style="list-style-type: none">1 a copy of the Scheme;2 an explanatory statement complying with the requirements of the Corporations Act, the Corporations Regulations and RG 60;3 the Independent Expert's Report;4 a copy or summary of this deed;5 a copy or summary of the executed Deed Poll;6 a notice of meeting; and7 a proxy form.
Scheme Consideration	the consideration to be provided by Bidder to each Scheme Shareholder for the transfer to Bidder of each Scheme Share, being \$1.40 cash for each Japara Share held by a Scheme Shareholder as at the Scheme Record Date.
Scheme Meeting	the meeting of Japara Shareholders ordered by the Court to be convened under subsection 411(1) of the Corporations Act to consider and vote on the Scheme and includes any meeting convened following any adjournment or postponement of that meeting.
Scheme Record Date	the time and date for determining entitlements to receive the Scheme Consideration, 5.00pm on the third Business Day after the Effective Date or such other time and date as the parties agree in writing.
Scheme Shareholder	a Japara Shareholder as at the Scheme Record Date.



Term	Meaning
Scheme Shares	all Japara Shares held by the Scheme Shareholders as at the Scheme Record Date.
Second Court Date	the first day on which an application made to the Court for an order under paragraph 411(4)(b) of the Corporations Act approving the Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.
Security Interest	any mortgage, charge, pledge, lien, assignment or other security interest or any other arrangement (including a right of set off or combination) entered into for the purpose of conferring a priority, including any security interest as defined in section 51A of the Corporations Act or in section 12 of the PPSA.
Subsidiaries	has the meaning given in Division 6 of Part 1.2 of the Corporations Act.
Superior Proposal	<p>a bona fide written Competing Proposal:</p> <ol style="list-style-type: none">1 of the kind referred to in any of paragraphs 2, 3 or 4 of the definition of 'Competing Proposal'; and2 not resulting from a breach by Japara of any of its obligations under clause 12), <p>which the Japara Board, acting in the best interests of Japara Shareholders and in good faith, and after receiving written advice from its external Australian legal advisers and Financial Advisers, determines;</p> <ol style="list-style-type: none">3 is reasonably capable of being valued and completed within a reasonable timeframe in accordance with its terms, taking into account all terms, conditions and other aspects of the Competing Proposal, including, but not limited to:<ol style="list-style-type: none">(A) the identity, reputation and financial condition of the Third Party making the Competing Proposal;(B) the ability of the party making the Competing Proposal to consummate the transactions contemplated by the Competing Proposal; and(C) all relevant legal, financial, regulatory and other matters; and4 would, if completed substantially in accordance with its terms, be more favourable to Japara Shareholders (as a whole) than the Transaction (as completed), taking into account all terms and conditions and other aspects of:<ol style="list-style-type: none">(D) the Competing Proposal (including the value and type of consideration, funding, any timing considerations, any conditions precedent, the identity, reputation and



Term	Meaning
	financial condition of the proponent, the ability of the proponent to complete the transactions contemplated by the Competing Proposal and other matters affecting the probability of the Competing Proposal being completed compared to the Transaction and relevant legal, financial, regulatory and other matters); and (E) the Transaction.
Supplier	has the meaning given in clause 17.
Tax	any tax, levy, charge, impost, fee, deduction, goods and services tax, compulsory loan or withholding, stamp, transaction or registration duty or similar charge that is assessed, levied, imposed or collected by any Governmental Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of, any of the above.
Tax Act	the <i>Income Tax Assessment Act 1997</i> (Cth).
Third Party	a person other than Japara, Bidder or their respective Related Bodies Corporate or Associates.
Timetable	the indicative timetable for the implementation of the Transaction agreed between and initialled by the parties' lawyers for the purposes of identification on or about the date of this deed.
Trading Day	has the meaning given in the Listing Rules.
Transaction	the acquisition of the Scheme Shares by Bidder through implementation of the Scheme in accordance with the terms of this deed.

1.2 Interpretation

In this deed:

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



- (d) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency, as well as an individual;
- (f) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to this deed;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them (whether passed by the same or another Government Agency with legal power to do so);
- (h) a reference to a document (including this deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to a document includes that party's successors and permitted assignees;
- (j) a reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (k) a reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure;
- (l) no provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision;
- (m) a reference to a body (including an institute, association or authority), other than a party to this deed, whether statutory or not:
- (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,
- is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (n) a reference to '\$', 'A\$' or 'dollar' is to the lawful currency of Australia;
- (o) a reference to any time, unless otherwise indicated, is to the time in Melbourne, Australia;
- (p) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (q) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (r) if an act prescribed under this deed to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (s) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1.1, has the same meaning when used in this deed; and
- (t) a reference to the Listing Rules and the Operating Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.



1.3 Interpretation of inclusive expressions

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

1.4 Awareness

If a representation or warranty is given so far as Japara is "aware" or with a similar qualification as to awareness or knowledge, the awareness or knowledge of Japara is limited to and deemed only to comprise the facts, matters and circumstances of which the chief executive officer, chief financial officer or company secretary of Japara is actually aware as at the date of this deed.

1.5 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.

1.6 Deed components

This deed includes any schedule.

2 Agreement to propose the Transaction

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

3 Conditions Precedent and pre-implementation steps

3.1 Conditions Precedent

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the parties under clauses 4 and 5 are not binding, until each of the following Conditions Precedent is satisfied or waived to the extent and in the manner set out in this clause 3.

- (a) **Restraints:** no law, rule, regulation, restraining order, temporary restraining order, preliminary or permanent injunction or other order or decree, in each case issued by a court of competent jurisdiction in Australia in a proceeding brought by a Government Agency which restrains, prohibits, impedes or otherwise materially adversely impacts on (or could reasonably be expected to restrain, prohibit or otherwise materially adversely impede or impact on) implementation of the Transaction, unless such order or injunction has been



disposed of to the reasonable satisfaction of Japara and Bidder acting reasonably and in good faith, is in effect at 8.00am on the Second Court Date.

- (b) **Shareholder approval:** Japara Shareholders approve to the Scheme at the Scheme Meeting by the requisite majorities under subparagraph 411(4)(a)(ii) of the Corporations Act) either unconditionally and without modification or with modifications or conditions consented to by the Bidder in accordance with clause 4.3).
- (c) **Court approval:** the Court approves the Scheme in accordance with paragraph 411(4)(b) of the Corporations Act (either unconditionally and without modification or with modifications or conditions consented to by the Bidder in accordance with clause 4.3).
- (d) **No Prescribed Occurrence:** no Prescribed Occurrence occurs between (and including) the date of this deed and 8.00am on the Second Court Date.
- (e) **No Material Adverse Change:** no Material Adverse Change occurs or is discovered, announced, disclosed or otherwise becomes known to Bidder, between (and including) the date of this deed and 8.00am on the Second Court Date.
- (f) **Japara Representations and Warranties:** the Japara Representations and Warranties are true and correct in all material respects as at the date of this deed and as at 8.00am on the Second Court Date.
- (g) **Bidder Representations and Warranties:** the Bidder Representations and Warranties are true and correct in all material respects as at the date of this deed and as at 8.00am on the Second Court Date.

3.2 Reasonable endeavours

- (a) Japara must, to the extent it is within its power to do so, use reasonable endeavours to procure that each of the Conditions Precedent in clauses 3.1(d) and 3.1(f) is satisfied as soon as practicable after the date of this deed.
- (b) Bidder must, to the extent it is within its power to do so, use reasonable endeavours to procure that the Conditions Precedent in 3.1(g) are satisfied as soon as practicable after the date of this deed.
- (c) Each party must, to the extent it is within their power to do so, use its reasonable endeavours to procure that there is no occurrence within its control or the control of any of its Subsidiaries that would prevent any of the Conditions Precedent being or remaining satisfied.
- (d) For the avoidance of doubt, Japara will not be in breach of its obligations to use all reasonable endeavours under clause 3.2(a) to the extent that it takes an action or omits to take an action:
 - (1) as is expressly required, permitted or permitted not to be done under or in accordance with this deed;
 - (2) in response to a Competing Proposal which is not a breach of clause 12 of this deed;
 - (3) which has been disclosed to Bidder in the Disclosure Materials or to ASX prior to the date of this deed; or
 - (4) which has been consented to by Bidder (such consent not to be unreasonably withheld).



3.3 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a), 3.1(b) and 3.1(c) cannot be waived.
- (b) The Conditions Precedent in clauses 3.1(d), 3.1(e) and 3.1(f) are for the sole benefit of Bidder and may only be waived by Bidder (in its absolute discretion) in writing.
- (c) The Condition Precedent in clause 3.1(g) is for the sole benefit of Japara and may only be waived by Japara (in its absolute discretion) in writing.
- (d) Waiver of a breach or non-satisfaction in respect of one Condition Precedent does not constitute:
 - (1) a waiver of breach or non-satisfaction of any other Condition Precedent resulting from the same event; or
 - (2) a waiver of breach or non-satisfaction of that Condition Precedent resulting from any other event.

3.4 Termination on failure of Conditions Precedent

- (a) If:
 - (1) there is an event or occurrence that would, or does, prevent any of the Conditions Precedent being satisfied;
 - (2) there is an event or occurrence that would, or does, prevent any of the Conditions Precedent being satisfied by the time and date specified in this deed for the satisfaction of that Condition Precedent or such Condition Precedent is otherwise not satisfied by that time and date; or
 - (3) it becomes more likely than not that the Scheme will not become Effective on or before the End Date,the parties must consult in good faith to:
 - (4) consider and, if agreed, determine whether the Transaction may proceed by way of alternative means or methods;
 - (5) consider and, if agreed, change the date of the application made to the Court for an order under paragraph 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed to in writing by Bidder and Japara (being a date no later than 5 Business Days before the End Date); or
 - (6) consider extending and, if agreed, extend the relevant date, provided that neither party shall be under any obligation to extend the End Date.
- (b) Subject to clauses 3.4(d) and 3.4(e), if the parties are unable to reach agreement under clause 3.4(a) by the earliest of:
 - (1) 10 Business Days after becoming aware of the relevant event or occurrence that would, or does, prevent a Condition Precedent being satisfied;
 - (2) 5 Business Days after the time and date specified in this deed for the satisfaction of a Condition Precedent; or



(3) the End Date,

as appropriate, then, unless that Condition Precedent has been waived in accordance with clause 3.3, either party may terminate this deed without any liability to the other party because of that termination. However, a party may not terminate this deed pursuant to this clause 3.4(b) if the relevant occurrence or event, the failure of the Condition Precedent to be satisfied, or the failure of the Scheme to become Effective, arises out of a breach of clauses 3.2 or 3.5 by that party, although in such circumstances the other party may still terminate this deed. For the avoidance of doubt, nothing in this clause 3.4(b) affects the obligation of Japara to pay the Reimbursement Fee, if it is required to do so under clause 12.6(b).

- (c) Subject to any rights or obligations arising under or pursuant to clauses that are expressed to survive termination (including by virtue of clause 15.3), 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.
- (d) If the Condition Precedent in clause 3.1(b) (Shareholder Approval) is not satisfied only because of a failure to obtain the majority required by sub-subparagraph 411(4)(a)(ii)(A) of the Corporations Act, then either party may by written notice to the other within 3 Business Days after the date of the conclusion of the Scheme Meeting require the approval of the Court to be sought, pursuant to the Court's discretion in that sub-subparagraph, provided the party has, in good faith, reasonably formed the view that the prospect of the Court exercising its discretion in that way is reasonable. If such a notice is given, Japara must make such submissions to the Court and file such evidence as counsel engaged by Japara to represent it in Court proceedings related to the Scheme, in consultation with Bidder, considers is reasonably required to seek to persuade the Court to exercise its discretion under sub-subparagraph 411(4)(a)(ii)(A) of the Corporations Act. If approval is given, the Condition Precedent in clause 3.1(b) is deemed to be satisfied for all purposes.
- (e) If the Court refuses to make an order approving the Scheme which satisfies the Condition Precedent in clause 3.1(c), at Bidder's request Japara must appeal the Court's decision to the fullest extent possible (except to the extent that the parties agree otherwise, or an independent senior counsel indicates that, in his or her view, an appeal would have negligible prospects of success before the End Date). Japara may bring an appeal even if not requested by Bidder.

3.5 Certain notices relating to Conditions Precedent

- (a) Japara and Bidder (as the case may be) must promptly advise each other, orally and in writing, of satisfaction of a Condition Precedent or of any material progress towards such satisfaction.
- (b) If a Condition Precedent is not satisfied by the time and date specified for satisfaction of that Condition Precedent, then, unless there is no reasonable prospect that the Condition Precedent will be satisfied before the End Date, Japara must, if requested by Bidder, make an application to defer the Second Court Date until such time (being not later than the Business Day before the End Date) as is reasonably required to enable the relevant Condition Precedent to be satisfied.
- (c) If, before the time and date specified for satisfaction of a Condition Precedent, an event or occurrence that will prevent that Condition Precedent being satisfied



occurs, the party with knowledge of that event must give the other party written notice of that event or occurrence as soon as possible.

- (d) Japara and Bidder (as the case may be) must promptly advise each other, orally and in writing, of any fact, matter, change, event or circumstance causing, or which, so far as can reasonably be foreseen, would cause:
- (1) a representation or warranty provided in this deed by the relevant party to be false or misleading in any material respect;
 - (2) a breach or non-satisfaction of any of the Conditions Precedent; or
 - (3) a material breach of this deed by the relevant party.

4 Transaction steps

4.1 Scheme

Japara must propose the Scheme to Japara Shareholders.

4.2 Scheme Consideration

- (a) Each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder in accordance with the terms of this deed and the Scheme.
- (b) Subject to the terms of the Scheme, Bidder undertakes and warrants to Japara that, in consideration of the transfer to Bidder of each Japara Share held by a Scheme Shareholder under the terms of the Scheme, on the Implementation Date Bidder will:
- (1) accept that transfer; and
 - (2) provide to each Scheme Shareholder the Scheme Consideration for each Scheme Share in accordance with the terms of this deed and the Scheme.

4.3 No amendment to the Scheme without consent

Japara must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of Bidder.

5 Implementation

5.1 Timetable

- (a) Subject to clause 5.1(b), the parties must use reasonable endeavours to:
- (1) comply with their respective obligations under this clause 5; and
 - (2) take all necessary steps and exercise all rights necessary to implement the Transaction,



in accordance with the Timetable.

- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 5.1(a) to the extent that such failure is due to circumstances and matters outside the party's control.
- (c) Each party must keep the other informed about their progress against the Timetable and notify each other if it believes that any of the dates in the Timetable are not achievable.
- (d) To the extent that any of the dates or timeframes set out in the Timetable become not achievable due to matters outside of a party's control, the parties will consult in good faith to agree any necessary extension to ensure such matters are completed within the shortest possible timeframe.

5.2 Japara's obligations

Subject to any change of recommendation by the Japara Board as permitted by clause 5.4, Japara must take all necessary steps to implement the Scheme in accordance with the Timetable, including each of the following:

- (a) **preparation of Scheme Booklet:** subject to clauses 5.3(a) and 5.3(b), prepare and dispatch the Scheme Booklet in accordance with all applicable laws (including the Corporations Act and the Corporations Regulations), RG 60 and the Listing Rules;
- (b) **directors' recommendation:** include in the Scheme Booklet a statement by the Japara Board:
 - (1) recommending that Japara Shareholders vote in favour of the Scheme in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is fair and reasonable and in the best interests of Japara Shareholders; and
 - (2) that each Japara Board Member will (in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is fair and reasonable and in the best interests of Japara Shareholders) vote, or procure the voting of, any Japara Shares held or controlled by them or held on their behalf at the time of the Scheme Meeting in favour of the Scheme at the Scheme Meeting,unless there has been a withdrawal, change, modification or qualification of recommendation permitted by clause 5.4;
- (c) **paragraph 411(17)(b) statement:** apply to ASIC for the production of:
 - (1) an indication of intent letter stating that it does not intend to appear before the Court on the First Court Date; and
 - (2) a statement under paragraph 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (d) **Court direction:** apply to the Court for orders pursuant to subsection 411(1) of the Corporations Act directing Japara to convene the Scheme Meeting;
- (e) **Scheme Meeting:** convene the Scheme Meeting to seek Japara Shareholders' agreement to the Scheme in accordance with the orders made by the Court pursuant to subsection 411(1) of the Corporations Act;
- (f) **Court documents:** consult with Bidder in relation to the content of the documents required for the purpose of each of the Court hearings held for the



purpose of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act in relation to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) and consider in good faith comments from Bidder and its Related Persons on those documents prior to filing those documents with the Court;

- (g) **Court approval:** (subject to all Conditions Precedent in clause 3.1, other than the Condition Precedent in clause 3.1(c), being satisfied or waived in accordance with this deed) apply to the Court for orders approving the Scheme as agreed to by the Japara Shareholders at the Scheme Meeting;
- (h) **Certificate:** at the hearing on the Second Court Date provide to the Court a certificate confirming whether or not the Conditions Precedent in clause 3.1 (other than the Condition Precedent in clause 3.1(c)) have been satisfied or waived in accordance with this deed. A draft of such certificate must be provided by Japara to Bidder by 4.00pm on the date that is 2 Business Days prior to the Second Court Date;
- (i) **lodge copy of Court order:** lodge with ASIC an office copy of the Court order in accordance with subsection 411(10) of the Corporations Act approving the Scheme by no later than the Business Day after the date on which the Court order was made (or such later date as agreed in writing by Bidder);
- (j) **Scheme Consideration:** if the Scheme becomes Effective, finalise and close the Japara Share Register as at the Scheme Record Date, and determine entitlements to the Scheme Consideration, in accordance with the Scheme and the Deed Poll;
- (k) **transfer and registration:** if the Scheme becomes Effective and subject to Bidder having provided the Scheme Consideration in accordance with the Scheme and Deed Poll:
- (1) execute, on behalf of Scheme Shareholders, instruments of transfer of Japara Shares held by Scheme Shareholders to Bidder; and
 - (2) register all transfers of Japara Shares held by Scheme Shareholders to Bidder on the Implementation Date;
- (l) **consultation with Bidder in relation to Scheme Booklet:** consult with Bidder as to the content and presentation of the Scheme Booklet including:
- (1) providing to Bidder drafts of the Scheme Booklet and the Independent Expert's Report for the purpose of enabling Bidder to review and comment on those draft documents provided that in relation to the Independent Expert's Report, Bidder's review is to be limited to a factual accuracy review;
 - (2) taking all timely and reasonable comments made by Bidder into account in good faith when producing a revised draft of the Scheme Booklet; and
 - (3) obtaining written consent from Bidder for the form and content in which the Bidder Information appears in the Scheme Booklet (such consent must not unreasonably withheld or delayed by Bidder);
- (m) **due diligence and verification:** undertake appropriate due diligence and verification processes in relation to the Japara Information;
- (n) **lodgement of Regulator's Draft:** as soon as practicable, but by no later than 14 days before the First Court Date, provide the Regulator's Draft to ASIC for its review for the purposes of subsection 411(2) of the Corporations Act (except that Japara must not lodge a copy of the Regulator's Draft with ASIC that



includes any Bidder Information unless Bidder has provided its consent under clause 5.3(a), such consent not to be unreasonably withheld or delayed), and provide a copy of the Regulator's Draft to Bidder as soon as practicable thereafter;

- (o) **ASIC and ASX review:** keep Bidder informed of any material matters raised by ASIC or ASX in relation to the Scheme Booklet or the Transaction, and use reasonable endeavours to take into consideration any reasonable comments made by Bidder in relation to such matters raised by ASIC or ASX;
- (p) **registration of Scheme Booklet:** if the Court directs Japara to convene the Scheme Meeting, use reasonable endeavours to cause ASIC to register the Scheme Booklet under subsection 412(6) of the Corporations Act on the first Business Day after such Court orders are made or as soon as reasonably practicable thereafter;
- (q) **despatch:** as soon as reasonably practicable following the receipt of the Bidder's written consent to the inclusion of the Bidder Information in the form and context in which the Bidder Information appears in such version of the Scheme Booklet (which must not be unreasonably withheld or delayed) and the subsequent registration of the Scheme Booklet by ASIC, despatch the Scheme Booklet to Japara Shareholders;
- (r) **representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act;
- (s) **Independent Expert:** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by them in connection with the preparation of the Independent Expert's Report for inclusion in the Scheme Booklet (including any updates to such report) and any other materials to be prepared by them for inclusion in the Scheme Booklet (including any updates thereto);
- (t) **compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations;
- (u) **listing:** subject to clause 5.2(w), not do anything to cause Japara Shares to cease being quoted on ASX or to become permanently suspended from quotation prior to implementation of the Transaction, unless Bidder has agreed in writing;
- (v) **update Scheme Booklet:** until the date of the Scheme Meeting, promptly update the Scheme Booklet with, or where appropriate otherwise inform the market by way of announcement of, any information that arises after the Scheme Booklet has been dispatched that is necessary to ensure that the Scheme Booklet:
 - (1) contains all information that is required to be disclosed to Japara Shareholders under any applicable law or RG 60;
 - (2) does not contain any statement that is or has become false or misleading in a material respect or is not misleading or deceptive in a material respect including because of any material omission from that statement and, subject to compliance with this clause 5.2(v) seek the Court's approval for the despatch of any updated or supplementary Scheme Booklet. Japara must consult with Bidder in good faith as to the need for, form of, and if, applicable, content and presentation of the updated or supplementary Scheme Booklet, or the market



announcement, in the manner contemplated by clause 5.2(l). To the extent that the supplementary disclosure relates to (or constitutes) Bidder Information, it may only be made with Bidder's prior written consent (not to be unreasonably withheld or delayed);

- (w) **suspension of trading:** apply to ASX to suspend trading in Japara Shares with effect from the close of trading on the Effective Date;
- (x) **removal from quotation:** if the Scheme becomes Effective, apply to ASX to have Japara removed from the official list of ASX, and quotation of Japara Shares on the ASX terminated, with effect on and from the close of trading on the Trading Day immediately following the Implementation Date (unless otherwise directed by the Bidder in writing);
- (y) **Bidder Information:** without the prior written consent of Bidder, not use the Bidder Information for any purposes other than those expressly contemplated by this deed or the Scheme;
- (z) **conduct in dealings with Japara Shareholders:** act in a manner (and use its best endeavours to procure that the Japara Board Members act in a manner) that is consistent with Recommendation in any and all dealings with Japara Shareholders before the Scheme Meeting; and
- (aa) **proxy reports:** keep Bidder reasonably informed of the status of proxy forms received for the Scheme Meeting, including over the period commencing 10 Business Days before the Scheme Meeting and ending on the deadline for receipt of proxy appointments.

5.3 Bidder's obligations

Bidder must take all necessary steps to implement the Scheme as soon as is reasonably practicable in accordance with the Timetable, including doing each of the following:

- (a) **Bidder Information:** prepare and promptly provide to Japara the Bidder Information for inclusion in the Scheme Booklet, including all information regarding the Bidder Group and the Scheme Consideration, required by all applicable laws (including the Corporations Act and the Corporations Regulations), RG 60, applicable Takeovers Panel guidance notes and the Listing Rules, and consent to the inclusion of that information in the Scheme Booklet;
- (b) **review of Scheme Booklet:** review the drafts of the Scheme Booklet prepared by Japara and provide comments on those drafts promptly and in good faith;
- (c) **Independent Expert's Report:** provide any assistance or information reasonably requested by Japara or by the Independent Expert in connection with the preparation of the Independent Expert's Report to be sent together with the Scheme Booklet;
- (d) **representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act;
- (e) **Deed Poll:** by no later than five Business Days prior to the First Court Date, execute and deliver to Japara the Deed Poll;
- (f) **accuracy of Bidder Information:** confirm in writing to Japara the accuracy of the Bidder Information in the Scheme Booklet, including that it does not contain any material statement that is false or misleading in a material respect, whether because of any material omission from that statement or otherwise;



- (g) **share transfer:** if the Scheme becomes Effective:
- (1) accept a transfer of the Scheme Shares as contemplated by clause 4.2(b)(1); and
 - (2) execute instruments of transfer in respect of the Scheme Shares;
- (h) **Scheme Consideration:** if the Scheme becomes Effective, provide the Scheme Consideration in the manner and amount contemplated by clause 4 and the terms of the Scheme and the Deed Poll;
- (i) **Certificate:** before the commencement of the hearing on the Second Court Date provide to Japara for provision to the Court at that hearing a certificate (signed for and on behalf of Bidder) confirming whether or not the Conditions Precedent in clause 3.1 (other than the Condition Precedent in clause 3.1(c)) have been satisfied or waived in accordance with this deed, a draft of which certificate must be provided by Bidder to Japara by 4.00pm on the date that is 2 Business Days prior to the Second Court Date;
- (j) **update Bidder Information:** until the date of the Scheme Meeting, provide to Japara any information that arises after the Scheme Booklet has been dispatched that is necessary to ensure that the Bidder Information contained in the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (k) **assistance:** up to (and including) the Implementation Date and subject to obligations of confidentiality owed to third parties and undertakings to Government Agencies, provide Japara and its Related Persons with reasonable access during normal business hours to information and personnel of Bidder Group that Japara reasonably requests for the purpose of preparation of the Scheme Booklet and implementation of the Transaction; and
- (l) **compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations.

5.4 Japara Board recommendation

- (a) Japara represents and warrants to Bidder that, as at the date of this deed, each Japara Board Member has confirmed that:
- (1) his or her recommendation in respect of the Scheme is that Japara Shareholders vote in favour of the Scheme at the Scheme Meeting; and
 - (2) he or she intends to vote, or cause to be voted, all Japara Shares which he or she controls in favour of the Scheme at the Scheme Meeting,
- in each case, in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report that the Scheme is in the best interests of Scheme Shareholders (**Recommendation**).
- (b) Japara represents and warrants to Bidder that, as at the date of this deed, each Japara Board Member has confirmed that he or she does not intend to change, withdraw, qualify or modify his or her recommendation as set out in clause 5.4(a) unless:



- (1) the Independent Expert's Report concludes that, or is amended or updated so as to conclude that, the Scheme is not in the best interests of Scheme Shareholders;
- (2) Japara has received a Superior Proposal;
- (3) the change, withdrawal, modification or qualification occurs because of a requirement or request by a court or Government Agency that he or she abstain from making a recommendation that Japara Shareholders vote in favour of the Scheme after the date of this deed; or
- (4) the Japara Board or a Japara Board Member has determined after receiving written advice from Japara's external Australian legal advisers specialising in the area of corporate law that, by virtue of the fiduciary or statutory duties of the Japara Board or relevant Japara Board Member, is required to change, withdraw, qualify or modify its or their recommendation.
- (c) For the purposes of this clause 5.4, customary qualifications and explanations contained in the Scheme Booklet in relation to a recommendation to vote in favour of the Scheme, including to the effect that:
- (1) the recommendation is made in the absence of a Superior Proposal;
- (2) the recommendation is made subject to the Independent Expert concluding and continuing to conclude in the Independent Expert's Report (including in any amendment of it) that the Scheme is fair and reasonable and in the best interests of Japara Shareholders,
- will not be regarded as a failure to make or a withdrawal of a recommendation in favour of the Scheme.
- (d) Despite anything to the contrary in this clause 5.4, a statement made by Japara, the Japara Board or any Japara Board Member, to the effect that no action should be taken by Japara Shareholders pending the assessment of a Competing Proposal by the Japara Board shall not contravene this clause 5.4.
- (e) For the avoidance of doubt, Japara will not be in breach of any term of this deed, and will not be liable to Bidder under this deed, solely as a result of a Japara Board Member publicly (or otherwise) adversely changing, withdrawing, adversely modifying or adversely qualifying his or her recommendation to vote in favour of the Scheme as permitted by 5.4(b)(4).

5.5 Responsibility statements

- (a) The Scheme Booklet will contain a responsibility statement to the effect that:
- (1) Bidder is responsible for the Bidder Information contained in the Scheme Booklet;
- (2) Japara is responsible for the Japara Information contained in the Scheme Booklet; and
- (3) the Independent Expert is responsible for the Independent Expert's Report, and none of Japara, Bidder or their respective directors or officers assumes any responsibility for the accuracy or completeness of the Independent Expert's Report.
- (b) If Japara and Bidder disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form of the Scheme



Booklet. If after 5 Business Days of consultation, Japara and Bidder are unable to agree on the form or content of the Scheme Booklet:

- (1) where the determination relates to Bidder Information, Bidder will make the final determination, acting reasonably, as to the form and content of the Bidder Information; and
- (2) in any other case, the final determination as to the form and content of the Scheme Booklet will be made by Japara, acting reasonably.

5.6 Conduct of Court proceedings

In respect of Court proceedings under Part 5.1 of the Corporations Act:

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

5.7 Appeal process

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

- (a) consult with each other in good faith as to whether to appeal the Court's decision; and
- (b) appeal the Court's decision unless the parties agree otherwise under clause 5.7(a) or an independent senior counsel opines that, in his or her view, an appeal would have no reasonable prospect of success.

5.8 Cooperation with financing

- (a) During the period from the date of this Deed to the earlier to the Implementation Date and termination of this Deed in accordance with its terms:
 - (1) each Japara Group Member will furnish at least 10 Business Days prior to the Implementation Date all documentation and other information which respect of the Japara Group Members required by bank regulatory authorities under the applicable 'know-your-customer' and anti-money laundering rules and regulations;
 - (2) Japara must use reasonable endeavours to:
 - (A) make appropriate officers and employees available for participation in a reasonable number of meeting with prospective financing sources at reasonable times and upon reasonable notice;
 - (B) make available to the Bidder and its financing sources such historical financial and operating data and other information with respect of each Japara Group Member as is reasonably requested by Bidder or the financiers in respect of the Debt



Financing, to the extent such information or document already exists as at the date such request is made;

- (C) reasonably cooperating with marketing efforts of the Bidder and its financing sources for any portion of the Debt Financing,

provided, in each case that no member of the Japara Group will be required to incur any liability in connection with any Debt Financing prior to implementation of the Scheme.

- (b) The Bidder must indemnify and hold harmless Japara (in its own right and separately as trustee or nominee for each of the other Japara Indemnified Parties) and each other Japara Indemnified Parties from and against any and all Losses suffered or incurred by any of them in connection with the Debt Financing or the Debt Financing and any information utilised in connection with in each case other than to the extent any for the foregoing arises from any fraud or wilful misconduct by that Japara Indemnified Party.
- (c) No Japara Group Member or Japara Indemnified Party will be required to execute, other than subject to the Scheme becoming Effective, any credit agreements, pledge or security documents or legal opinions in connection with the Debt Financing.
- (d) Nothing in this clause 5.8 will require Japara's cooperation or take any action to the extent that it would:
- (1) unreasonably interfere with the ongoing business or operations of the Japara Group (having regard to, among other things, the reasonableness of the notice given to the Japara of any requested assistance or cooperation);
 - (2) cause any Condition in clause 3.1 to not be satisfied or otherwise cause any breach of this Deed;
 - (3) require any member of the Japara Group to take any action that would reasonably be expected to conflict with or violate any member of the Japara Group's constituent documents or any Law or regulation; or
 - (4) require any member of the Japara Group to take any action that would breach any existing contractual obligations or result in the loss of legal privilege.
- (e) The Bidder agrees to reimburse Japara for reasonable fees, costs and expenses reasonably incurred in complying with this clause 5.8 on provision of written evidence of the payment of such fees, costs and expense.

5.9 Existing financing and security

- (a) Japara must use reasonable endeavours to cooperate with Bidder in connection with any replacement of existing Financial Indebtedness of the Japara Group as may be reasonably required in connection with the Transaction, including:
- (1) liaising with Bidder in good faith in relation to the using of the existing cash reserves of the Japara Group for this purpose;
 - (2) issuing prepayment, cancellation and other notices or consent requests in relation to existing Japara Group debt facilities and closing out any hedging positions;
 - (3) using all reasonable endeavours to procure:



- (A) deeds of release, discharges of real property mortgages and registrations on the PPS Register (or any other relevant security register in other jurisdictions as applicable) from secured parties in relation to any Security Interest grant a Japara Group Member in favour of that party and procuring the return of any title documents held by a secured party; and
- (B) the termination or replacement of any letters of credit, bank guarantees, financial undertakings or similar instruments outstanding in connection with such repayment, discharge or termination,

subject always to:

- (4) Japara not being required to actually effect such repayment until the Implementation Date;
 - (5) no Japara Group Member being required to take any action that would breach any existing contractual obligations or result in the loss of legal privilege.
- (b) Bidder agrees to reimburse Japara for reasonable fees, costs and expenses reasonably incurred in complying with this clause 5.9 on provision of written evidence of the payment of such fees, costs and expenses.

5.10 Bidder's obligations in respect of Debt Financing

- (a) Bidder must use all reasonable endeavours to obtain the proceeds of the Debt Financing on the terms and conditions described in the Debt Commitment Letter) on or prior to the Implementation Date, including by using reasonable endeavours to:
- (1) maintain in effect the Debt Commitment Letter (for so long as the Debt Commitment Letter has not been replaced by the Debt Documents);
negotiate Debt Documents with respect to the Debt Financing on terms which do not reduce the aggregate amount of the Debt Financing such that the aggregate funds available to Bidder on the Implementation Date would not be sufficient to satisfy Bidder's obligations to pay the Scheme Consideration; or
 - (2) satisfy on a timely basis all conditions precedent to funding of the Debt Financing.
- (b) Bidder must give Japara prompt written notice of:
- (1) execution of the Debt Documents;
 - (2) any termination or repudiation, or the triggering of any right of termination or repudiation, of the Debt Commitment Letter (or Debt Documents) of which Bidder has knowledge and that will, or is reasonably likely to, materially and adversely prejudice Bidder's ability to pay the Scheme Consideration; or
 - (3) any breach of or default under the Debt Commitment Letter (or Debt Documents) by any party of which Bidder has knowledge and that will, or is reasonably likely to, materially and adversely prejudice Bidder's ability to pay the Scheme Consideration.



- (c) Notwithstanding any other provision to the contrary in this deed, a Debt Commitment Letter may be superseded at the option of the Bidder after the date of this deed but prior to the Implementation Date by Alternative Financing under instruments (the **Replacement Financing Letters**) that replace the existing Debt Commitment Letters or contemplate co-investment by or financing from one or more debt financing sources or other or additional parties, provided that:
- (1) the terms of any Replacement Financing Letter must not:
 - (A) reduce the aggregate amount of the Debt Financing below an amount, when taken together with the aggregate amount of the Equity Financing, that is equal to the Scheme Consideration payable by Bidder in accordance with this deed and the Deed Poll;
 - (B) include any conditions precedent to the Alternative Financing that are materially more onerous than the conditions precedent in the Debt Commitment Letter; and
 - (2) neither the arrangement nor negotiation of any Replacement Financing Letters, nor the terms thereof, will or will be likely to solely cause a delay to the Implementation Date.
- (d) If any part of the Debt Financing becomes unavailable, regardless of the reason, Bidder must:
- (1) promptly notify Japara of such unavailability and the reason for it; and
 - (2) by no later than the date which is 15 Business Days after the date that the part of the Debt Financing became unavailable (or such shorter period ending at 8.00 am on the Second Court Date) obtain Alternative Financing equal to or greater than the Scheme Consideration payable by Bidder and will enable Bidder to fully perform its obligations in accordance with this deed and the Deed Poll.
- (e) Bidder must enforce its rights under the Debt Commitment Letter and the Debt Documents.

5.11 Japara Equity Incentives

Despite any other provision of this deed:

- (a) subject to clause 5.11(b), the parties agree that the Japara Equity Incentives and any other Japara equity incentives (including future grants of incentives) will be treated in the manner agreed between the parties in writing on or before the date of this deed; and
- (b) Japara must ensure that all Japara Equity Incentives which are not Japara Shares have either lapsed or vested and converted into Japara Shares such that there are no outstanding Japara Equity Incentives which are not Japara Shares on issue as at the Scheme Record Date.

For the avoidance of doubt, the exercise of any discretion by the Japara Board, or any other action, which is in accordance with this clause 5.11, will not be a Material Adverse Change, a Prescribed Occurrence or a Regulated Event or a breach of any provision of this deed, or give rise to any right to terminate this deed, and will be disregarded when assessing the operation of any other part of this deed.



5.12 Appointment of directors

Japara must, as soon as practicable on the Implementation Date, after the Scheme Consideration has been dispatched to Scheme Shareholders, take all reasonable steps to:

- (a) cause the appointment of the nominees of Bidder to the Japara Board;
- (b) procure that all directors on the Japara Board specified in writing by Bidder (not less than 3 Business Days before the Implementation Date):
 - (1) resign; and
 - (2) acknowledge in the notice of resignation that each such director has no outstanding claims against Japara or another Japara Group Member (other than in respect of any unpaid employment entitlements or directors' fees); and
- (c) procure that all directors on the boards of Japara' Subsidiaries specified in writing by Bidder (not less than 3 Business Days before the Implementation Date):
 - (1) resign or are removed; and
 - (2) acknowledge in the notice of resignation that each such director has no outstanding claims against Japara or another Japara Group Member (other than in respect of any unpaid employment entitlements or directors' fees),

and to cause the appointment of nominees of Bidder to those boards.

6 Conduct of business

- (a) Subject to clause 6(b), from the date of this deed up to and including the Implementation Date, for so long as the Japara Board recommends that Japara Shareholders vote in favour of the Scheme, and without limiting any other obligations of Japara under this deed, Japara must:
 - (1) conduct, and procure that each Japara Group Member conducts its businesses and operations (including the business of the Japara Group as a whole), in the ordinary and usual course generally consistent with past practice;
 - (2) use reasonable endeavours to comply, and must procure that each Japara Group Member complies:
 - (A) in all material respects with all applicable Authorisations; and
 - (B) with all applicable laws and regulations (including the Aged Care Act and all associated regulations and the Listing Rules);
 - (3) comply, and must procure that each Japara Group Member complies in all material respects, with all material contracts to which it is a party (including the Construction Contracts);
 - (4) ensure that no Prescribed Occurrence or Regulated Event occurs;
 - (5) keep Bidder fully and promptly informed of, provide all correspondence, notices, sanctions and claims received from or sent



to a Government Agency after the date of this deed and consult with Bidder and have regard to the Bidder's recommendations, in respect of matters arising out of or in connection with:

- (A) any existing or future investigation or proceeding commenced or conducted by a Government Agency; or
 - (B) any other matter that the parties may agree in writing.
- (6) use, and must procure that each Japara Group Member uses, reasonable endeavours to:
- (A) maintain its businesses and assets in the ordinary course and consistent with past practice;
 - (B) keep available the services of the directors, officers, and employees;
 - (C) maintain (and, where necessary, use reasonable efforts to renew) each of its material authorisations, accreditations and licenses applicable to each Japara Group Member and promptly notify Bidder if any renewal is not accepted by the relevant Government Agency;
 - (D) maintain (and, where necessary, use reasonable efforts to renew) the policies of insurance held by the Japara Group that are in force as at the date of this deed and promptly notify Bidder if any renewal proposal is not accepted by the relevant insurer; and
 - (E) maintain and preserve its relationships with Government Agencies, material customers, suppliers, landlords, and others having business dealings with Japara.
- (b) From the date of this deed up to and including the Implementation Date, without limiting any other obligations of Japara under this deed, Japara must:
- (1) continue to seek the planning approvals for the Development Sites;
 - (2) consult with Bidder and have regard to the Bidder's recommendations with respect to any negotiation, proposed amendments or finalisation of the terms of the Enterprise Agreement.
- (c) Nothing in clauses 6(a) and 6(b) restricts the ability of Japara (or any Japara Group Member) to take any action:
- (1) which is required by any applicable law, regulation, accounting standards or principles, contract or by a Government Agency;
 - (2) which is required or permitted by this deed (including, for the avoidance of doubt, actions to give effect to a Superior Proposal) or the Scheme;
 - (3) which has been agreed to in writing by Bidder (such agreement not to be unreasonably withheld or delayed);
 - (4) to reasonably and prudently respond to changes in market and operating conditions affecting the business of Japara or a Japara Group Member to a material extent including any response which arises from a Health Event;
 - (5) to reasonably and prudently respond to regulatory or legislative changes (including without limitation changes to subordinate



legislation) affecting the business of Japara or a Japara Group Member to a material extent;

- (6) to reasonably and prudently respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property, or a Health Event);
- (7) which is Fairly Disclosed:
 - (A) in the Disclosure Materials;
 - (B) to ASX or in a document lodged with ASIC prior to the date of this deed; or
- (8) in connection with an actual, proposed or potential Competing Proposal as permitted by clause 12.3,

provided that, in the case of paragraphs (4), (5) and (6), where the response is in relation to a Health Event, Japara must, only to the extent practicable to do so, notify and consult with Bidder in good faith in respect of the proposal to take such action or not take such action and consider any reasonable comments or requests of Bidder in relation to such proposal in good faith.

7 Integration planning

7.1 Access to information

- (a) Between (and including) the date of this deed and the Implementation Date for so long as a majority of Japara Board Members recommend that Japara Shareholders vote in favour of the Scheme, Japara must afford to Bidder and a reasonable number of their respective representatives (in accordance with the terms of the Confidentiality Deed) reasonable access to information, premises and such senior executives of any Japara Group Member as reasonably requested by Bidder at mutually convenient times, and afford Bidder reasonable co-operation, for the sole purpose of:
 - (1) implementation of the Scheme;
 - (2) Bidder developing and implementing plans for integration of the parties' businesses following implementation of the Scheme; and
 - (3) any other purpose agreed between the parties.
- (b) Without limiting anything in clause 7.1(a), the chief executive officer of the Bidder Group may with reasonable notice request meetings with the chief executive officer the Japara Group.
- (c) In carrying out these investigations:
 - (1) nothing in this clause will require Japara to provide information concerning its directors' and management's consideration of a Competing Proposal;
 - (2) information need not be provided if that would result in unreasonable disruptions to Japara' business, is (in the reasonable opinion of Japara) commercially sensitive, would breach a confidentiality obligation owed to a Third Party or any applicable law or require Japara to make any disclosure that would compromise legal privilege; and



- (3) the parties acknowledge that their investigations and obligations under this clause 7.1 are subject to the Confidentiality Deed.

7.2 Change of control provisions

- (a) As soon as practicable after the date of this deed, Japara and Bidder must seek to identify any change of control or unilateral termination rights in material contracts to which Japara or another Japara Group Member is party which may be triggered by or exercised in response to the implementation of the Transaction.
- (b) In respect of those leases and contracts:
- (1) the parties will agree a proposed course of action and then Japara will initiate contact with the relevant counterparties and request that they provide any consents or confirmations required or appropriate. Bidder and its Related Persons must not contact any counterparties without Japara being present or without Japara's prior written consent (which is not to be unreasonably withheld or delayed);
 - (2) Japara must use reasonable endeavours to obtain such consents or confirmations as expeditiously as possible, including by providing any information reasonably required by counterparties (but nothing in this clause requires Japara to incur material expense); and
 - (3) Bidder must cooperate with, and provide all reasonable assistance to, Japara to obtain such consents or confirmations, including by:
 - (A) providing any information required and entering into such form of guarantee or security as counterparties may require; and
 - (B) making officers and employees available where necessary to meet with counterparties to deal with any issues arising in relation to the relevant consent or waiver.
- (c) A failure by Japara to obtain any third party consent or waiver will not constitute a breach of this deed by Japara and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this deed.

8 Representations and warranties

8.1 Bidder's representations and warranties

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

8.2 Bidder's indemnity

Bidder agrees with Japara (in its own right and separately as trustee or nominee for each of the other Japara Indemnified Parties) to indemnify Japara and each of the Japara Indemnified Parties against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Japara or any of the other Japara



Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Bidder Representations and Warranties.

8.3 **Japara's representations and warranties**

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

8.4 **Japara's indemnity**

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

8.5 **Qualifications on Japara's representations, warranties and indemnities**

The Japara Representations and Warranties in clause 8.3 and the indemnity in clause 8.4, are each subject to matters that:

- (a) are within the knowledge of a Bidder Group Member or its Advisers in relation to the Transaction or the Scheme; or
- (b) have been Fairly Disclosed in the Disclosure Materials or Japara's announcements to ASX, or a publicly available document lodged with ASIC prior to the date of this deed.

8.6 **Survival of representations and warranties**

Each representation and warranty in clauses 8.1 and 8.3:

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

8.7 **Survival of indemnities**

Each indemnity in this deed (including those in clauses 8.2 and 8.4):

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



8.8 Timing of representations and warranties

Each representation and warranty made or given under clause 8.1 or 8.3 is given at the date of this deed and repeated continuously thereafter until 8.00am on the Second Court Date, unless that representation or warranty is expressed to be given at a particular time, in which case it is given at that time.

8.9 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it, are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed.

9 Releases

9.1 Japara and Japara directors and officers

- (a) Bidder releases its rights, and agrees with Japara that it will not make any Claim against any Japara Indemnified Party (other than Japara and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:
 - (1) any breach of any representations and warranties of Japara or any other member of the Japara Group in this deed; or
 - (2) any disclosures containing any statement which is false or misleading whether in content or by omission,whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Japara Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. For the avoidance of doubt, nothing in this clause 9.1(a) limits Bidder's rights to terminate this deed under clause 15.2(a).
- (b) This clause 9.1 is subject to any Corporations Act restriction and will be read down accordingly.
- (c) Japara receives and holds the benefit of this clause 9.1 to the extent it relates to each Japara Indemnified Party as trustee for each of them.

9.2 Bidder and Bidder directors and officers

- (a) Japara releases its rights, and agrees with Bidder that it will not make a Claim (including any Claim), against any Bidder Indemnified Party (other than Bidder and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:



- (1) any breach of any representations and warranties of Bidder or any other member of the Bidder Group in this deed; or
- (2) any disclosure containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Bidder Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. For the avoidance of doubt, nothing in this clause 9.2(a) limits Japara's rights to terminate this deed under clause 15.2(b).

- (b) This clause 9.2 is subject to any Corporations Act restriction and will be read down accordingly.
- (c) Bidder receives and holds the benefit of this clause 9.2 to the extent it relates to each Bidder Indemnified Party as trustee for each of them.

9.3 Deeds of indemnity and insurance

- (a) Subject to the Scheme becoming Effective and the Transaction completing, Bidder undertakes in favour of Japara and each other person who is a Japara Indemnified Party that it will:
 - (1) for a period of 7 years from the Implementation Date, ensure that those constitutions of Japara and each other Japara Group Member continue to contain such rules as are contained in those constitutions at the date of this deed that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a Japara Group Member; and
 - (2) procure that Japara and each Japara Group Member complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and without limiting the foregoing, ensure that directors' and officers' run-off insurance cover for such directors and officers is maintained for a period of 7 years from the retirement date of each director and officer so long as it is available on commercially reasonable terms (and Japara may, at its election, pay any amounts necessary to ensure such maintenance upfront prior to or upon the implementation of the Scheme).
- (b) The undertakings contained in clause 9.3(a) are subject to any Corporations Act restriction and will be read down accordingly.
- (c) Japara receives and holds the benefit of clause 9.3(a), to the extent it relates to the other Japara Indemnified Parties, as trustee for them.

10 Public announcement

10.1 Announcement of the Transaction

Immediately after the execution of this deed, Japara and Bidder must issue public announcements in a form previously agreed to in writing between them.



10.2 Subsequent announcements and disclosure

Where a party proposes to make any public announcement in connection with the Transaction or the Scheme, it must to the extent practicable and lawful to do so, consult with the other party prior to making the relevant disclosure and take account of any reasonable comments received from the other parties in relation to the form and content of the announcement or disclosure, provided that this clause 10.2 does not apply to any announcement or disclosure by Japara in connection with an actual, proposed or potential Competing Proposal.

11 Confidentiality

Japara and Bidder continue to be bound by the confidentiality and use obligations in the Confidentiality Deed after the date of this deed. The rights and obligations of the parties under the Confidentiality Deed survive termination of this deed. To the extent of any inconsistency between the Confidentiality Deed and this deed, the terms of this deed shall prevail.

12 Exclusivity

12.1 No shop

During the Exclusivity Period, Japara must not, and must ensure that each of its Related Persons does not directly or indirectly solicit, invite or initiate (including by the provision of non-public information to any Third Party) any inquiry, expression of interest, offer, proposal or discussion by any person in relation to, or which would reasonably be expected to lead to the making of or with a view to obtain, any actual, proposed or potential Competing Proposal or communicate to any person an intention to do anything referred to in this clause 12.

12.2 No talk

- (a) During the Exclusivity Period, and subject to clause 12.3, Japara must not, and must ensure that each of its Related Persons does not, directly or indirectly:
- (1) facilitate, participate in or continue any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal, negotiation discussion or other communication by any person which would reasonably be expected to lead to the making of, a Competing Proposal;
 - (2) negotiate, accept or enter into any agreement, arrangement or understanding regarding a Competing Proposal;
 - (3) communicate to any person an intention to do anything referred to in clause 12.2(a)(1) and 12.2(a)(2); or
 - (4) disclose or otherwise provide any non-public information about the business or affairs of the Japara Group to a Third Party (other than a Government Agency) with a view to obtaining, or which would reasonably be expected to lead to receipt of, a Competing Proposal



(including providing such information for the purposes of the conduct of due diligence investigations in respect of the Japara Group) whether by that Third Party or another person,

but nothing in this clause 12.2 prevents Japara from making normal presentations to brokers, portfolio investors and analysts in the ordinary course of business or promoting the merits of the Transaction.

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

12.3 **Fiduciary exception**

Clause 12.2 and clause 12.4 do not prohibit any action or inaction by Japara, any Japara Group Member or any of their Related Persons in relation to a bona fide, actual, proposed or potential Competing Proposal, which the Japara Board acting in good faith determines:

- (a) after consultation with Japara's Financial Advisers and external Australian legal advisers specialising in corporate law, that the Competing Proposal could reasonably expect to lead to a Superior Proposal; or
- (b) after receiving written notice from Japara's advisers specialising in corporate law, that the failure to take or not take such action would constitute, or would be likely to constitute, a breach of the fiduciary or statutory duties of the Japara Board Members,

provided that the actual, proposed or potential Competing Proposal was not brought about by a breach of clause 12.1.

12.4 **Notification of approaches**

- (a) During the Exclusivity Period, Japara must as soon as reasonably practicable (and in any event within 48 hours) notify Bidder in writing if it, or any of its Related Persons, becomes aware of any:
 - (1) negotiations, discussions or other communications, or approach, in relation to a Competing Proposal;



- (2) proposal made to Japara or any of its Related Persons, in connection with, or in respect of any exploration or completion of, a Competing Proposal; or
- (3) any request made by a Third Party for any non-public information about the business or affairs of the Japara Group (other than where the Japara Board reasonably believes that such request is not in connection with such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, any actual, proposed or potential Competing Proposal); and
- (4) provision by Japara or any of its Related Persons of any material non-public information concerning the business or operations of Japara or the Japara Group to any Third Party (other than a Government Agency) in connection with a Competing Proposal,

whether direct or indirect, solicited or unsolicited, and in writing or otherwise (**Notifiable Proposal**).

- (b) A notification given under clause 12.4(a) must include:
 - (1) all material terms and conditions of the Notifiable Proposal, including but not limited to, price form of consideration, proposed deal protections provisions, any break or reimbursement fee, proposed timing and conditions precedent, to the extent known by Japara or its Related Persons; and
 - (2) the identity of the Third Party making the Notification Proposal or any Third Party stated to be involved in, the Notifiable Proposal.

12.5 Matching right

- (a) Without limiting clause 12.1, during the Exclusivity Period, Japara:
 - (1) must not, and must procure that each of its Related Bodies Corporate do not, enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which one or more of a Third Party, Japara or any Related Body Corporate of Japara proposes or propose to undertake, implement or give effect to any actual, proposed or potential Competing Proposal; and
 - (2) must use its best endeavours to procure that, in relation to a Competing Proposal none of:
 - (A) the Japara Board Members withdraw, adversely change, adversely modify or adversely qualify their Recommendation; or
 - (B) the Japara Board Members publicly recommend, support or endorse any actual, proposed or potential Competing Proposal (or recommend against the Transaction),or make any public statement to the effect that they may do so at a future point (subject to any change of Recommendation by the Japara Board Members that is permitted by clauses 5.2(b)(1) and 5.2(b)(2) and provided that a statement that no action should be taken by Japara Shareholders pending the assessment of the Competing Proposal by the Japara Board or the completion of the matching right process set out in this clause 12.5 shall not, by that statement alone, contravene this clause 12.5),



unless:

- (3) the Japara Board has made the determination contemplated by clause 12.3;
 - (4) Japara has provided Bidder with a notice stating that it is given for the purposes of this clause 12.5 and setting out:
 - (A) all material terms and conditions of the Competing Proposal; and
 - (B) the identity of the Third Party that made, and/or any Third Party stated to be involved in, the Competing Proposal;
 - (5) Japara has given Bidder 5 days after the date of the provision of the notice referred to in clause 12.5(a)(4) to announce or otherwise propose or provide to Japara a counter-proposal to the Competing Proposal (**Bidder Counterproposal**); and
 - (6) Bidder has not announced or otherwise proposed or provided to Japara such a Bidder Counterproposal by the expiry of the 5 day period in clause 12.5(a)(5).
- (b) If the Bidder announces or otherwise proposes or provides to Japara a Bidder Counterproposal by the expiry of the 5 day period in clause 12.5(a)(5), Japara must procure that the Japara Board promptly considers the Bidder Counterproposal and determines, acting in good faith, after consulting with Japara's Financial Advisers and external Australian legal advisers specialising in corporate law, whether the Bidder Counterproposal would provide an outcome that is no less favourable (or more favourable) for Japara Shareholders (as a whole) than the Competing Proposal, taking into account all terms and conditions and other aspects of:
- (1) the Bidder Counterproposal (including the value and type of consideration, funding, any timing considerations, any conditions precedent, the identity, reputation and financial condition of the proponent, the views of Japara Shareholders in relation to the Bidder Counterproposal compared to the Competing Proposal, the ability of the proponent to complete the transactions contemplated by the Bidder Counterproposal, the probability of the Bidder Counterproposal being completed compared to the Competing Proposal and other relevant legal, financial, regulatory and other matters); and
 - (2) the Competing Proposal (including the matters set out in paragraphs (3) and (4) of the definition of "Superior Proposal"),
- (Matching or Superior Proposal).**
- (c) If the Japara Board determines that a Bidder Counterproposal is a Matching or Superior Proposal, then:
- (1) Japara must promptly, and in any event within 48 hours, notify Bidder of the determination in writing, stating reasons for that determination; and
 - (2) Japara and Bidder must use their best endeavours to agree any amendments to this deed (and any other transaction documents required) and the contents of the Scheme Booklet which are reasonably necessary to reflect the Bidder Counterproposal as soon as reasonably practicable.



- (d) If the Japara Board determines that a Bidder Counterproposal is not a Matching or Superior Proposal, then Japara must promptly, and in any event within 48 hours, notify Bidder of the determination in writing, stating reasons for that determination.
- (e) Despite any other provision in this deed, a statement by Japara, Japara Board, or any Japara Board Member only to the effect that:
- (1) the Japara Board has determined that a Competing Proposal is a Superior Proposal and has commenced the matching right process set out in this clause 12.5; or
 - (2) Japara Shareholders should take no action pending the completion of the matching right process set out in this clause 12.5,
- does not by itself:
- (3) constitute an adverse change, withdrawal, adverse modification or adverse qualification of the recommendation by the Japara Board or an endorsement of a Competing Proposal;
 - (4) contravene this deed;
 - (5) give rise to an obligation to pay the Reimbursement Fee under clause 13.2; or
 - (6) give rise to a termination right under clause 15.1(a).

12.6 Compliance with law

- (a) If it is determined by a court, or the Takeovers Panel, that the agreement by the parties under this clause 12 or any part of it:
- (1) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the Japara Board;
 - (2) constituted, or constitutes, or would constitute, 'unacceptable circumstances' within the meaning of the Corporations Act; or
 - (3) was, or is, or would be, unlawful for any other reason,
- then, to that extent (and only to that extent) Japara will not be obliged to comply with that provision of clause 12.
- (b) The parties:
- (1) must not make or cause to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in this clause 12.5;
 - (2) agree that if a Third Party makes an application to the Takeovers Panel or a court for or in relation to a declaration or determination regarding any provision of this clause 12 then each party must make submissions in the course of those proceedings supporting (to the fullest extent reasonably practicable) that no such declaration or determination should be made.



13 Reimbursement Fee

13.1 Background to Reimbursement Fee

- (a) Each party acknowledges that, if they enter into this deed and the Scheme is subsequently not implemented, Bidder will incur significant costs, including those set out in clause 13.4.
- (b) In these circumstances, the parties have agreed that provision be made for the payment outlined in clauses 13.2, without which Bidder would not have entered into this deed or otherwise agreed to implement the Scheme.
- (c) Japara and the Japara Board believe, having taken advice from its external legal adviser, that the implementation of the Scheme will provide benefits to it and the Japara Shareholders, and that it is reasonable that Japara agree to the payments referred to in clauses 13.2 in order to secure Bidder's participation in the Transaction.

13.2 Reimbursement Fee triggers

Subject to clauses 13.5, 13.6 and 13.9, Japara must pay the Reimbursement Fee to Bidder, if, before the earlier of the Second Court Date and the End Date:

- (a) any Japara Board Member withdraws, adversely revises or adversely qualifies their support of the Scheme or their recommendation that Japara Shareholders vote in favour of the Scheme or fail to recommend that Japara Shareholders vote in favour of the Scheme in the manner described in clause 5.4:
 - (1) unless the Independent Expert concludes in the Independent Expert's Report (or in any update of, or revision, amendment or addendum to that report), that the Scheme is not fair and reasonable and in the best interests of Scheme Shareholders (other than where the conclusion is due to the existence of a Competing Proposal);
 - (2) unless Japara is entitled to terminate this deed pursuant to clause 15.1(a)(1);
 - (3) the adverse change, withdrawal, adverse modification or adverse qualification occurs because of a requirement or request by a court or Government Agency that one or more Japara Board Members abstain from making a recommendation that Japara Shareholders vote in favour of the Scheme after the date of this deed; or
 - (4) other than as a result of the non-satisfaction of a Condition Precedent in clause 3.1(a) (Restrictions), 3.1(b) (Shareholder approval), 3.1(c) (Court approval), 3.1(g) (Bidder Representations and Warranties), except where such non-satisfaction is a result of a breach by Japara of clause 3.2;
- (b) a Competing Proposal of any kind is announced by a Third Party (whether or not such proposal is stated to be subject to any pre-conditions) and, within 9 months of the date of such announcement, a Third Party:
 - (1) directly or indirectly acquires a Relevant Interest in, or becomes the holder of or otherwise acquires, directly or indirectly, 50% or more of Japara Shares and that acquisition is unconditional;
 - (2) acquires Control of Japara;



- (3) directly or indirectly acquires or become the holder of, or otherwise acquires, control of, all or a substantial part of Japara's business or assets or the business or assets of the Japara Group; or
- (4) otherwise directly or indirectly acquires or merges with Japara; or
- (c) Bidder has terminated this deed pursuant to clauses 15.1(a)(1) or 15.2(a) and the Transaction does not complete.

13.3 Timing of payment of Reimbursement Fee

- (a) A demand by Bidder for payment of the Reimbursement Fee under clause 13.2 must:
 - (1) be in writing;
 - (2) be made after the occurrence of the event in that clause giving rise to the right to payment and termination of this deed;
 - (3) state the circumstances which give rise to the demand; and
 - (4) nominate an account into which Japara is to pay the Reimbursement Fee.
- (b) Japara must pay the Reimbursement Fee into the account nominated by Bidder, without set-off or withholding, within 20 Business Days after receiving a demand for payment where Bidder is entitled under clause 13.2 to the Reimbursement Fee.

13.4 Basis of Reimbursement Fee

The Reimbursement Fee has been calculated to reimburse Bidder for costs including the following:

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

and the parties agree that:

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

13.5 Compliance with law

- (a) This clause 13 does not impose an obligation on Japara to pay the Reimbursement Fee to the extent (and only to the extent) that the obligation to pay the Reimbursement Fee:



(1) is declared by the Takeovers Panel to constitute 'unacceptable circumstances'; or

(2) is determined to be unenforceable or unlawful by a court,

and Bidder will refund to Japara within 5 Business Days any amount in excess of its obligation under this clause that Japara has already paid to Bidder when that declaration or determination is made (unless otherwise required by the Takeovers Panel or a court).

(b) For the avoidance of doubt, any part of the Reimbursement Fee that would not constitute unacceptable circumstances or that is not unenforceable or unlawful (as applicable) must be paid by Japara.

(c) The parties must not make or cause to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in clause 13.5(a).

13.6 Reimbursement Fee payable only once

Where the Reimbursement Fee becomes payable to Bidder under clause 13.2 and is actually paid to Bidder, Bidder cannot make any claim against Japara for payment of any subsequent Reimbursement Fee.

13.7 Other Claims

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

13.8 Exclusive remedy

Where the Reimbursement Fee is paid to Bidder under this deed (or would be payable if a demand was made), Bidder cannot make any Claim against Japara or the Japara Indemnified Parties in relation to the event or occurrence referred to in clause 13.2.

13.9 No Reimbursement Fee if Scheme Effective

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

(a) the Scheme becomes Effective; or

(b) at the time that the Reimbursement Fee becomes payable under clause 13.2, Japara was entitled to terminate this deed under clauses 15.1(a)(1) or 15.2(b) and has given the appropriate termination notice to Bidder,

notwithstanding the occurrence of any event in clause 13.2 and, if any amount or part of the Reimbursement Fee has already been paid it must be refunded by Bidder:

(c) where clause 13.9(a) applies, within 5 Business Days after the Scheme becomes Effective; or

(d) where clause 13.9(b) applies, within 3 Business Days after the date Japara notifies Bidder that, at the time that the Reimbursement Fee became payable under clause 13.2, Japara was entitled to terminate this deed under clauses 15.1(a)(1) or 15.2(b).



14 Reverse Break Fee

14.1 Background to Reverse Break Fee

- (a) Japara and Bidder acknowledge that, if they enter into this deed and the Transaction is subsequently not implemented, Japara will incur significant costs, including those set out in clause 14.4.
- (b) In the circumstances referred to in clause 14.1(a), Japara has requested that provision be made for the payments outlined in clause 14.3, without which Japara would not have entered into this deed or otherwise agreed to implement the Scheme.
- (c) Bidder believes, having taken advice from its external legal adviser, that the implementation of the Scheme will provide benefits to Bidder and that it is appropriate for Bidder to agree to the payments referred to in clause 14.3 in order to secure Japara's participation in the Transaction.
- (d) Bidder and Japara must not make or cause or permit to be made any application to the Takeovers Panel or a court for or in relation to a declaration or determination that the Reverse Break Fee is invalid or unenforceable.

14.2 Reverse Break Fee triggers

Bidder must pay the Reverse Break Fee to Japara if:

- (a) Japara has terminated this deed pursuant to clauses 15.1(a)(1) or 15.2(b) and the Transaction does not complete; or
- (b) the Scheme becomes Effective but Bidder does not pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll.

14.3 Payment of Reverse Break Fee

- (a) A demand by Japara for payment of the Reverse Break Fee under clause 14.2 must:
 - (1) be in writing;
 - (2) be made after the occurrence of the event in that clause giving rise to the right to payment;
 - (3) state the circumstances which give rise to the demand; and
 - (4) nominate an account in the name of Japara into which Bidder is to pay the Reverse Break Fee.
- (b) Bidder must pay the Reverse Break Fee into the account nominated by Japara, without set-off or withholding, within 20 Business Days after receiving a demand for payment where Japara is entitled under clause 14.2 to the Reverse Break Fee.

14.4 Basis of Reverse Break Fee

The Reverse Break Fee has been calculated to reimburse Japara for costs including the following:



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

and Japara and Bidder agree that:

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

14.5 **Reverse Break Fee payable only once**

Where the Reverse Break Fee becomes payable to Japara under clause 14.2 and is actually paid to Japara, Japara cannot make any claim against Bidder for payment of any subsequent Reverse Break Fee.

14.6 **Other Claims**

Despite anything to the contrary in this deed, the maximum aggregate liability of Bidder for any claims under this deed is the Reverse Break Fee and in no event will the aggregate liability of Bidder for Claims under this deed exceed the Reverse Break Fee.

14.7 **Exclusive remedy**

Where the Reverse Break Fee is paid to Japara under this deed (or would be payable if a demand was made), Japara cannot make any Claim against Bidder or the Bidder Indemnified Parties in relation to the event or occurrence referred to in clause 14.2.

14.8 **Claims under the Deed Poll**

Nothing in this clause limits the liability of Bidder under the Deed Poll.

15 **Termination**

15.1 **Termination for material breach**

- (a) Either party may terminate this deed by written notice to the other party:
 - (1) other than in respect of a breach of either a Bidder Representation and Warranty or a Japara Representation and Warranty (which are dealt with in clause 15.2), at any time before 8.00am on the Second Court Date if the other party has materially breached this deed, the



party entitled to terminate has given written notice to the party in breach of this deed setting out the relevant circumstances and stating an intention to terminate this deed, and the other party has failed to remedy the breach within 10 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given;

- (2) in the circumstances set out in, and in accordance with, clause 3.4;
 - (3) if Japara Shareholders have not agreed to the Scheme at the Scheme Meeting by the requisite majorities and notice is not given under clause 3.4(d); or
 - (4) if the Effective Date for the Scheme has not occurred, or will not occur, on or before the End Date.
- (b) Bidder may terminate this deed by written notice to Bidder at any time before 8.00am on the Second Court Date if, any Japara Board Member:
- (1) fails to recommend the Scheme in the manner described in clause 5.4(a);
 - (2) withdraws the Recommendation vote in favour of the Scheme in the manner described in clause 5.4(a); or
 - (3) makes a public statement indicating that they no longer recommend the Transaction or recommend a Competing Proposal (but excluding a statement that no action should be taken by Japara Shareholders pending the assessment of a Competing Proposal by the Japara Board) in accordance with this deed.
- (c) Japara may terminate this deed by written notice to Bidder at any time before 8.00am on the Second Court Date if, a majority of the members of the Japara Board:
- (1) fails to recommend the Scheme in the manner described in clause 5.4(a);
 - (2) withdraws their recommendation that Japara Shareholders vote in favour of the Scheme in the manner described in clause 5.4(a); or
 - (3) makes a public statement indicating that they no longer recommend the Transaction or recommend a Competing Proposal (but excluding a statement that no action should be taken by Japara Shareholders pending the assessment of a Competing Proposal by the Japara Board) in accordance with this deed.

15.2 Termination for breach of representations and warranties

- (a) Bidder may, at any time prior to 8.00am on the Second Court Date, terminate this deed for breach of a Japara Representation and Warranty only if:
- (1) Bidder has given written notice to Japara setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse; and
 - (2) the relevant breach continues to exist 10 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 15.2(a)(1).



- (b) Japara may, at any time before 8.00am on the Second Court Date, terminate this deed for breach of a Bidder Representation and Warranty only if:
- (1) Japara has given written notice to Bidder setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse; and
 - (2) the relevant breach continues to exist 10 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 15.2(b)(1).

15.3 Effect of termination

If this deed is terminated by either party under clauses 3.4, 15.1 or 15.2:

- (a) each party will be released from its obligations under this deed, except that this clause 15.3, and clauses 8.5 - 8.9, 9, 11, 12.6(b), 16, 17, 18 and 19 (except 19.8), will survive termination and remain in force;
- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this deed; and
- (c) in all other respects, all future obligations of the parties under this deed will immediately terminate and be of no further force and effect including any further obligations in respect of the Scheme.

15.4 Termination

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

15.5 No other termination

Neither party may terminate or rescind this deed, except as permitted under clauses 3.4, 15.1 or 15.2.

16 Duty, costs and expenses

16.1 Stamp duty

Bidder:

- (a) must pay all stamp duties and any fines and penalties with respect to stamp duty in respect of this deed or the Scheme or the steps to be taken under this deed or the Scheme; and
- (b) indemnifies Japara against any liability arising from its failure to comply with clause 16.1(a).

16.2 Costs and expenses

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with the negotiation, preparation, execution, delivery and



performance of this deed and the proposed, attempted or actual implementation of this deed and the Transaction.

17 GST

- (a) Any consideration or amount payable under this deed, including any non-monetary consideration (as reduced in accordance with clause 17(f) if required) (**Consideration**) is exclusive of GST.
- (b) All monetary amount specified in this deed are specified exclusive of GST.
- (c) If GST is or becomes payable on a Supply made under or in connection with this deed, an additional amount (**Additional Amount**) is payable by the party providing Consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with the GST Law.
- (d) The Additional Amount payable under clause 17(b) is payable at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a Tax Invoice. However, the Additional Amount is only payable on receipt of a valid Tax Invoice.
- (e) If for any reason (including the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under clause 17(b):
- (1) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
 - (2) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
 - (3) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within 7 days after receiving such notification, as appropriate. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note within 14 days after becoming aware of the occurrence of the Adjustment Event.
- (f) Despite any other provision in this deed if an amount payable under or in connection with this deed (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred.
- (g) Any reference in this clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of a GST Group of which the party is a member is entitled.
- (h) Any term starting with a capital letter that is not defined in this deed has the same meaning as the term has in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).



18 Notices

18.1 Form of Notice

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

- (a) in writing and in English; and
- (b) addressed to that party as nominated below (or any alternative details nominated to the sending party by Notice):

Party	Address	Addressee	Email
Japara	Q1 Building Level 4, 1 Southbank Boulevard, Southbank VIC 3006	Chris Price	chris.price@japara.com.au
		Anthony Rice	anthony.rice@japara.com.au
Bidder	Level 12, 135 King Street, Sydney, NSW 2000	Martin Bowles	Martin.Bowles@calvarycare.org.au
		Philip Maloney	philip.maloney@calvarycare.org.au
		With copy to:	
		Peter Cook	pcook@gtlaw.com.au

18.2 How Notice must be given and when Notice is received

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

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

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address.

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By email to the nominated email address

When the party sending the email receives notification that the email was successfully transmitted and read by the receiving party, or if no such notification is received, four hours after the email was sent, unless the party sending the email receives notification that the email was not successfully transmitted.

19 General

19.1 Governing law and jurisdiction

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

19.2 Service of process

Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of Notices under clause 18.

19.3 No merger

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

19.4 Invalidity and enforceability

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

19.5 Waiver

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

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



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

19.6 **Variation**

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

19.7 **Assignment of rights**

- (a) A party may not assign, novate, declare a trust over or otherwise transfer or deal with any of its rights or obligations under this deed without the prior written consent of the other party or as expressly provided in this deed.
- (b) A breach of clause 19.7(a) by a party shall be deemed to be a material breach for the purposes of clause 15.1(a)(1).
- (c) Clause 19.7(b) does not affect the construction of any other part of this deed.

19.8 **Further action to be taken at each party's own expense**

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

19.9 **Entire agreement**

This deed, together with the Confidentiality Deed and all other documents referred to herein or initialled by or on behalf of the parties on or about the date hereof, states all the express terms agreed by the parties in respect of its subject matter. These supersede all prior discussions, negotiations, understandings and agreements in respect of its subject matter (other than the Confidentiality Deed (excluding any inconsistent provisions)).

19.10 **Counterparts**

This deed may be executed in any number of counterparts.

19.11 **Relationship of the parties**

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

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19.12 Remedies cumulative

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

19.13 Exercise of rights

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



Schedules

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Schedule 1

Bidder Representations and Warranties

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

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



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

- (h) **deed binding:** this deed is a valid and binding obligation of Bidder, enforceable in accordance with its terms;
- (i) **Insolvency Event or regulatory action:** no Insolvency Event has occurred in relation to it or another Bidder Group Member, nor has any regulatory action of any nature been taken that would reasonably be likely to prevent or restrict its ability to fulfil its obligations under this deed, under the Deed Poll or under the Scheme;
- (j) **other dealings:** other than:
- (1) as disclosed to Japara in writing by or on behalf of Bidder on or before the date of this deed; or
 - (2) as contemplated by this deed or the Scheme,
- no Bidder Group Member has any agreement, arrangement or understanding (whether written or oral) in relation to the securities, business, operations or assets of a Japara Group Member (including in relation to the securities, business or operations or assets of a Japara Group Member at the Implementation Date) or any other commercial or other arrangements related to Japara or another Japara Group Member, any territory or jurisdiction in which the Japara Group operates or the performance or conduct of the business of the Japara Group (in whole or in part), the Transaction or the Scheme;
- (k) **no dealings with Japara directors or employees:** neither it nor any of its associates has any agreement, arrangement or understanding with any director or employee of Japara relating in any way to the Transaction or operations of Japara after the Effective Date;
- (l) **no regulatory approvals:** it does not require any approval, consent, clearance, waiver, ruling, relief, confirmation, exemption, declaration or notice from any Government Agency in order to execute and perform this deed;
- (m) **Debt Commitment Letter:** the Debt Commitment Letter has been duly executed by Bidder and constitutes a legally valid and binding obligation of Bidder that is enforceable in accordance with its terms and the Debt Commitment Letter has not been terminated;
- (n) **amendment of Debt Commitment Letter:** as a continuing obligation, without the prior written consent of Japara:
- (1) Bidder will not amend the Debt Commitment Letter in any respect which will, or is reasonably likely to, materially prejudice Bidder's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll; and
 - (2) Bidder will not waive any of its rights under the Debt Commitment Letter in any respect which will, or is reasonably likely to, materially prejudice Bidder's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll;
- (o) **no default under Debt Commitment Letter:** Bidder is not in default under the Debt Commitment Letter and no event has occurred which with notice, lapse of time or both, would result in a default under such letter;
- (p) **sufficient cash amounts – reasonable expectation at date of this deed:** at all times between the date of this deed and 8.00am on the Second Court Date Bidder has a reasonable basis to expect that it will have available to it sufficient



cash amounts (whether from internal cash resources or external funding arrangements, including debt and equity financing, or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll;

- (q) **sufficient cash amounts – unconditional at Second Court Date:** by 8.00am on the Second Court Date, Bidder will have available to it on an unconditional basis sufficient cash amounts (whether from internal cash resources or external funding arrangements, including debt and equity financing, or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll;
- (r) **sufficient cash amounts – available on Implementation Date:** Bidder will have available to it on the Implementation Date sufficient cash amounts (whether from internal cash resources or external funding (including debt and equity financing) arrangements or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll;
- (s) **no other financing arrangements:** no Bidder Group Member nor any Associate of a Bidder Group Member is or will be a party to any agreement, arrangement or understanding (whether written or oral) with a debt financier or equity financier in connection with the Transaction other than in connection with a Debt Commitment Letter, and Bidder has fully disclosed to Japara all agreements, arrangements or understandings (whether written or oral) with any debt financier or equity financier in connection with the Transaction; and
- (t) **dealings in Japara securities:** as at the date of this deed:
- (1) Bidder and its Related Bodies Corporates do not have a Relevant Interest in any Japara Shares, and neither Bidder nor any Related Bodies Corporate of Bidder has a Relevant Interest in, or a right to acquire, any other Japara Shares (whether issued or not or held by Bidder or not); and
 - (2) Bidder and each of its Related Bodies Corporate have not entered into any agreement or arrangement that confers rights the economic effect of which is equivalent or substantially equivalent to holding, acquiring, or disposing of securities in Japara or any of its Related Bodies Corporates or of any assets of Japara or any of its Related Bodies Corporates (including cash-settled derivative contract, contracts for difference or other derivative contracts).



Schedule 2

Japara Representations and Warranties

Japara represents and warrants to Bidder that:

- (a) **Japara Information:** the Japara Information contained in the Scheme Booklet, as at the date the Scheme Booklet is dispatched to Japara Shareholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission from that statement;
- (b) **basis of Japara Information:** the Japara Information:
 - (1) will be prepared and included in the Scheme Booklet in good faith and on the understanding that Bidder and each other Bidder Indemnified Party will rely on that information for the purpose of determining to proceed with the Transaction; and
 - (2) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules,

and all information provided by Japara to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;

- (c) **new information:** it will, as a continuing obligation (but in respect of the Bidder Information, only to the extent that Bidder provides Japara with updates to the Bidder Information), ensure that the Scheme Booklet is updated to include all further or new information which arises after the Scheme Booklet has been dispatched to Japara Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Scheme Booklet is not misleading or deceptive (including by way of omission) in any material respect;
- (d) **validly existing:** it is a validly existing corporation registered under the laws of its place of incorporation;
- (e) **authority:** the execution and delivery of this deed has been properly authorised by all necessary corporate action of Japara and Japara has taken or will take all necessary corporate action to authorise the performance by Japara of this deed and the transactions contemplated by this deed;
- (f) **power:** it has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
- (g) **no default:** the execution and performance of this deed does not conflict with or result in the breach of or a default under:
 - (1) any provision of Japara's constitution;
 - (2) any material contract or any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it or any other Japara Group Member is bound,

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



- (h) **deed binding:** this deed is a valid and binding obligation of Japara, enforceable in accordance with its terms;
- (i) **continuous disclosure:** as at the date of this deed, Japara has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and, other than for this Transaction, it is not relying on the carve-out in Listing Rule 3.1A to withhold any material information from public disclosure;
- (j) **capital structure:** its capital structure, including all issued securities as at the date of this deed, is as set out in Schedule 3 and it has not issued or granted (or agreed to issue or grant) any other securities (including Japara Shares and Japara Equity Incentives), options, warrants, performance rights or other instruments which are still outstanding and may convert into (or give the holder the right to be issued) Japara Shares other than as set out in Schedule 3 and it is not under any obligation to issue or grant, and no person has any right to require, or call for, the issue or grant of, any Japara Shares, options, warrants, performance rights or other securities or instruments in which are still outstanding and may convert (or give the holder the right to be issued) into Japara Shares;
- (k) **interest:** the Disclosure Materials set out the details of any company, partnership, trust, joint venture or other enterprise in which Japara or another Japara Group Member owns or otherwise holds any interest;
- (l) **Insolvency Event or regulatory action:** no Insolvency Event has occurred in relation to it or another Japara Group Member, nor, as far as Japara is aware, has any regulatory action of any nature been taken that would prevent or restrict its ability to fulfil its obligations under this deed;
- (m) **Disclosure Materials:** it has collated and prepared all of the Disclosure Materials in good faith for the purposes of a due diligence process and in this context, as far as Japara is aware, the Disclosure Materials are accurate in all material respects and not materially misleading (including by omission). For the purpose of this clause (m), the Disclosure Materials are deemed not to include any information, document, representation, statement, view or opinion to the extent that it contains or expresses a forecast, prediction or projection or is otherwise forward looking at the date of this deed;
- (n) **compliance:** so far as Japara is aware, the Japara Group has complied in all material respects with all Australian laws and regulations applicable to them and all orders, notices and sanctions issued to a Japara Group Member by a Government Agency.
- (o) **material licences and authorisations:** so far as Japara is aware, the Japara Group has all Authorisations necessary for it to conduct the business of the Japara Group as it has been conducted in the 12 months prior to the date of this deed; and
- (p) **financing arrangements:** there is no existing or unremedied material breach of, nor any default, event of default, breach of covenant, cancellation event, review event, prepayment event or similar event currently subsisting under, any financing or security arrangements and so far as Japara is aware:
- (1) no action has been taken or threatened by any person to enforce any Security Interest of any kind over any assets of any member of the Japara Group; and
 - (2) there are no facts, matters or circumstances that would or may entitle any person to take such action.



Schedule 3

Japara details

Security	Number on issue
Japara Shares	267,247,328
Japara Equity Incentives	3,855,538 performance rights



Signing page


Executed as a deed

Signed sealed and delivered by
Japara Healthcare Limited
by

sign here ▶ 

Company Secretary/~~Director~~

print name Bruce Craig Paterson

sign here ▶ 

Director

print name Christopher Murray Price

Signed sealed and delivered by
Little Company of Mary Health Care Limited
by its attorney under the power of attorney with registered book number
BK 4784 No 70 and dated 28 February 2021, who has no notice of revocation of that
power of attorney in the presence of:

sign here ▶ _____
Signature of witness

print name _____

sign here ▶ _____
Signature of attorney

print name Martin Bowles

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Signing page

Executed as a deed

Signed sealed and delivered by
Japara Healthcare Limited
by

sign here ► _____
Company Secretary/Director

print name _____

sign here ► _____
Director

print name _____

Signed sealed and delivered by
Little Company of Mary Health Care Limited
by its attorney under the power of attorney with registered book number
BK 4784 No 70 and dated 28 February 2021, who has no notice of
revocation of that power of attorney in the presence of:

sign here ► DM Bowles
Signature of witness

print name DEIDRE BOWLES

sign here ► M Bowles
Signature of attorney

print name Martin Bowles

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Attachment 1

Scheme of arrangement

For personal use only



HERBERT
SMITH
FREEHILLS

Scheme of arrangement

Japara Healthcare Limited

Scheme Shareholders

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Scheme of arrangement

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

Between the parties

Japara Healthcare Limited (**Japara**)

ABN 54 168 631 052 of Q1 Building Level 4, 1 Southbank Boulevard,
Southbank, VIC 3006

The Scheme Shareholders

1 Definitions, interpretation and scheme components

1.1 Definitions

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

Term	Meaning
Bidder	Little Company of Mary Health Care Limited (ABN 11 079 815 697).
ADI	authorised deposit-taking institution (as defined in the <i>Banking Act 1959</i> (Cth)).
ASIC	the Australian Securities and Investments Commission.
ASX	ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.
Business Day	a day that is not a Saturday, Sunday or public holiday or bank holiday in Melbourne or Sydney, Australia.
CHESS	the Clearing House Electronic Subregister System operated by ASX Settlement Pty Ltd and ASX Clear Pty Limited.



Term	Meaning
CHES Holding	has the meaning given in the Settlement Rules.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Court	the Federal Court of Australia, Victoria Registry, or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Bidder and Japara.
Deed Poll	the deed poll under which Bidder covenants in favour of the Scheme Shareholders to perform the obligations attributed to Bidder under this Scheme.
Effective	when used in relation to this Scheme, the coming into effect, under subsection 411(10) of the Corporations Act, of the Court order made under paragraph 411(4)(b) of the Corporations Act in relation to this Scheme.
Effective Date	the date on which this Scheme becomes Effective.
End Date	has the meaning given in the Implementation Deed.
Government Agency	any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including any stock or other securities exchange), or any minister of the Crown in right of the Commonwealth of Australia or any state, or any other federal, state, provincial, local or other government, whether foreign or Australian (including the Aged Care Quality and Safety Commission, ASIC and the Takeovers Panel).
Implementation Date	the fifth Business Day after the Scheme Record Date, or such other date after the Scheme Record Date as agreed in writing by Japara and Bidder or is ordered by the Court or required by ASX.
Implementation Deed	the scheme implementation deed dated [insert date] between Japara and Bidder relating to the implementation of this Scheme.
Issuer Sponsored Holding	has the meaning given in the Settlement Rules.



Term	Meaning
Listing Rules	the official listing rules of ASX.
Operating Rules	the official operating rules of ASX.
Registered Address	in relation to a Japara Shareholder, the address shown in the Share Register as at the Scheme Record Date.
Scheme	this scheme of arrangement under Part 5.1 of the Corporations Act between Japara and the Scheme Shareholders subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by Japara and Bidder.
Scheme Consideration	for each Japara Share held by a Scheme Shareholder as at the Scheme Record Date, an amount of [insert \$ amount] , subject to the terms of this Scheme.
Scheme Meeting	the meeting of the Japara Shareholders ordered by the Court to be convened under subsection 411(1) of the Corporations Act to consider and vote on this Scheme and includes any meeting convened following any adjournment or postponement of that meeting.
Scheme Record Date	5.00pm on the third Business Day after the Effective Date or such other date as agreed in writing by Japara and Bidder.
Scheme Shares	all Japara Shares held by the Scheme Shareholders as at the Scheme Record Date.
Scheme Shareholder	a holder of Japara Shares recorded in the Share Register as at the Scheme Record Date.
Scheme Transfer	a duly completed and executed proper instrument of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, in favour of Bidder as transferee, which may be a master transfer of all or part of the Scheme Shares.
Second Court Date	the first day on which an application made to the Court for an order under paragraph 411(4)(b) of the Corporations Act approving this Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application or appeal is heard.



Term	Meaning
Settlement Rules	the ASX Settlement Operating Rules, being the official operating rules of the settlement facility provided by ASX Settlement Pty Ltd.
Share Register	the register of members of Japara maintained by Japara or the Japara Registry in accordance with the Corporations Act.
Subsidiary	has the meaning given in Division 6 of Part 1.2 of the Corporations Act.
Japara	Japara Healthcare Limited ABN 54 168 631 052.
Japara Registry	Link Market Services Limited, Tower 4, 727 Collins Street, Melbourne.
Japara Share	a fully paid ordinary share in the capital of Japara.
Japara Shareholder	each person who is registered as the holder of a Japara Share in the Share Register.
Trust Account	has the meaning given in clause 5.1(a).

1.2 Interpretation

In this Scheme:

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



- (i) a reference to '\$', 'A\$' or 'dollar' is to Australian currency;
- (j) a reference to any time is, unless otherwise indicated, a reference to that time in Melbourne, Victoria;
- (k) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1.1, has the same meaning when used in this Scheme;
- (l) a reference to a party to a document includes that party's successors and permitted assignees;
- (m) no provision of this Scheme will be construed adversely to a party because that party was responsible for the preparation of this Scheme or that provision;
- (n) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (o) a reference to a body, other than a party to this Scheme (including an institute, association or authority), whether statutory or not:
- (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,
- is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (p) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (q) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (r) if an act prescribed under this Scheme to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day; and
- (s) a reference to the Listing Rules and the Operating Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

1.3 Interpretation of inclusive expressions

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

1.4 Business Day

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

2 Preliminary matters

- (a) Japara is a public company limited by shares, registered in Victoria and has been admitted to the official list of the ASX.
- (b) As at the date of the Implementation Deed, there were on issue:
- (1) 267,247,328 Japara Shares, which are quoted for trading on the ASX; and



- (2) 3,855,538 performance rights issued pursuant to the Japara Equity Incentive Plan which are not quoted for trading on any stock exchange.
- (c) Bidder is an unlisted company limited by guarantee registered in New South Wales and is registered as a charity with the Australian Charities and Not-for-Profits Commission.
- (d) If this Scheme becomes Effective:
- (1) Bidder must provide or procure the provision of the Scheme Consideration to the Scheme Shareholders in accordance with the terms of this Scheme and the Deed Poll; and
- (2) all the Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, must be transferred to Bidder and Japara will enter the name of Bidder in the Share Register in respect of the Scheme Shares.
- (e) Japara and Bidder have agreed, by executing the Implementation Deed, to implement this Scheme.
- (f) This Scheme attributes actions to Bidder but does not itself impose an obligation on it to perform those actions. Bidder has agreed, by executing the Deed Poll, to perform the actions attributed to it under this Scheme, including the provision or procuring the provision of the Scheme Consideration to the Scheme Shareholders.

3 Conditions

3.1 Conditions precedent

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

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



3.2 Certificate

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

3.3 End Date

This Scheme will lapse and be of no further force or effect if:

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

unless Japara and Bidder otherwise agree in writing.

4 Implementation of this Scheme

4.1 Lodgement of Court orders with ASIC

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

4.2 Transfer of Scheme Shares

On the Implementation Date:

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



5 Scheme Consideration

5.1 Provision of Scheme Consideration

- (a) Bidder must, and Japara must use its best endeavours to procure that Bidder does, by no later than the Business Day before the Implementation Date, deposit, or procure the deposit, in cleared funds an amount equal to the aggregate amount of the Scheme Consideration payable to all Scheme Shareholders, into an Australian dollar denominated trust account with an ADI operated by Japara as trustee for the Scheme Shareholders (**Trust Account**), (provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to Bidder's account).
- (b) On the Implementation Date, subject to funds having been deposited in accordance with clause 5.1(a), Japara must pay or procure the payment of the Scheme Consideration to each Scheme Shareholder from the Trust Account referred to in clause 5.1(a).
- (c) The obligations of Japara under clause 5.1(b) will be satisfied by Japara (in its absolute discretion, and despite any election referred to in clause 5.1(c)(1) or authority referred to in clause 5.1(c)(2) made or given by the Scheme Shareholder):
- (1) if a Scheme Shareholder has, before the Scheme Record Date, made a valid election in accordance with the requirements of the Japara Registry to receive dividend payments from Japara by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election;
 - (2) paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Scheme Shareholder by an appropriate authority from the Scheme Shareholder to Japara; or
 - (3) dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Scheme Shareholder by prepaid post to their Registered Address (as at the Scheme Record Date), such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 5.2).
- (d) To the extent that, following satisfaction of Japara's obligations under clause 5.1(b), there is a surplus in the amount held by Japara as trustee for the Scheme Shareholders in the Trust Account referred to in that clause, that surplus may be paid by Japara to Bidder.

5.2 Joint holders

In the case of Scheme Shares held in joint names:

- (a) subject to clause 5.1(c), the Scheme Consideration is payable to the joint holders and any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to either, at the sole discretion of Japara, the holder whose name appears first in the Share Register as at the Scheme Record Date or to the joint holders; and



- (b) any other document required to be sent under this Scheme, will be forwarded to either, at the sole discretion of Japara, the holder whose name appears first in the Share Register as at the Scheme Record Date or to the joint holders.

5.3 Fractional entitlements and splitting

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

5.4 Unclaimed monies

- (a) Japara may cancel a cheque issued under this clause 5 if the cheque:
- (1) is returned to Japara; or
 - (2) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Japara (or the Japara Registry) (which request may not be made until the date which is 10 Business Days after the Implementation Date), Japara must reissue a cheque that was previously cancelled under this clause 5.4.
- (c) The *Unclaimed Money Act 2008 (Vic)* will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 3 of the *Unclaimed Money Act 2008 (Vic)*).

5.5 Orders of a court or Government Agency

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

- (a) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable or required to be issued to that Scheme Shareholder by Japara in accordance with this clause 5, then Japara shall be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
- (b) prevents Japara from providing consideration to any particular Scheme Shareholder in accordance with this clause 5, or the payment or issuance of such consideration is otherwise prohibited by applicable law, Japara shall be entitled to retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Scheme Consideration until such time as provision of the Scheme Consideration in accordance with this clause 5 is permitted by that (or another) order or direction or otherwise by law.



6 Dealings in Japara Shares

6.1 Determination of Scheme Shareholders

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

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

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

6.2 Register

- (a) Japara must register registrable transmission applications or transfers of the Scheme Shares that are received in accordance with clause 6.1(b) before the Scheme Record Date provided that, for the avoidance of doubt, nothing in this clause 6.2(a) requires Japara to register a transfer that would result in a Japara Shareholder holding a parcel of Japara Shares that is less than a 'marketable parcel' (for the purposes of this clause 6.2(a) 'marketable parcel' has the meaning given in the Operating Rules).
- (b) If this Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of or otherwise deal with, or purport or agree to dispose of or otherwise deal with, any Scheme Shares or any interest in them on or after the Scheme Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and Japara shall be entitled to disregard any such disposal or otherwise deal with.
- (c) For the purpose of determining entitlements to the Scheme Consideration, Japara must maintain the Share Register in accordance with the provisions of this clause 6.2 until the Scheme Consideration has been paid to the Scheme Shareholders. The Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) All statements of holding for Japara Shares (other than statements of holding in favour of Bidder) will cease to have effect after the Scheme Record Date as documents of title in respect of those shares and, as from that date, each entry current at that date on the Share Register (other than entries on the Share Register in respect of Bidder) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Japara Shares relating to that entry.
- (e) As soon as possible on or after the Scheme Record Date, and in any event by 5.00pm on the first Business Day after the Scheme Record Date, Japara will ensure that details of the names, Registered Addresses and holdings of Japara Shares for each Scheme Shareholder as shown in the Share Register are available to Bidder in the form Bidder reasonably requires.



7 Quotation of Japara Shares

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

8 General Scheme provisions

8.1 Consent to amendments to this Scheme

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

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

8.2 Scheme Shareholders' agreements and warranties

- (a) Each Scheme Shareholder:
 - (1) agrees to the transfer of their Japara Shares together with all rights and entitlements attaching to those Japara Shares in accordance with this Scheme;
 - (2) agrees to the variation, cancellation or modification of the rights attached to their Japara Shares constituted by or resulting from this Scheme;
 - (3) agrees to, on the direction of Bidder, destroy any share certificates relating to their Japara Shares;
 - (4) who holds their Japara Shares in a CHESS Holding agrees to the conversion of those Japara Shares to an Issuer Sponsored Holding and irrevocably authorises Japara to do anything necessary or expedient (whether required by the Settlement Rules or otherwise) to effect or facilitate such conversion; and
 - (5) acknowledges and agrees that this Scheme binds Japara and all Scheme Shareholders (including those who do not attend the Scheme Meeting and those who do not vote, or vote against this Scheme, at the Scheme Meeting).
- (b) Each Scheme Shareholder is taken to have warranted to Japara and Bidder on the Implementation Date, and appointed and authorised Japara as its attorney and agent to warrant to Bidder on the Implementation Date, that:
 - (1) all their Japara Shares (including any rights and entitlements attaching to those shares) which are transferred under this Scheme will, at the date of transfer, be fully paid and free from all mortgages, charges,



liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to transfer their Japara Shares to Bidder together with any rights and entitlements attaching to those shares.

- (2) they have no existing right to be issued any Japara Shares, options or performance rights exercisable into Japara Shares, convertible in Japara or any other Japara securities.
- (c) Japara undertakes that it will provide such warranty in clause 8.2(b) to Bidder as agent and attorney of each Scheme Shareholder.

8.3 Title to and rights in Scheme Shares

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

8.4 Appointment of sole proxy

Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clauses 5.1(b) and 5.1(c), and until Japara registers Bidder as the holder of all Scheme Shares in the Share Register, each Scheme Shareholder:

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



8.5 Authority given to Japara

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

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

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

8.6 Binding effect of Scheme

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

9 General

9.1 Stamp duty

Bidder will:

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

9.2 Consent

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

9.3 Notices

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Japara, it will not be taken to be received in the ordinary course of post or on a date and time other than the date



and time (if any) on which it is actually received at Japara's registered office or at the office of the Japara Registry.

- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by a Japara Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

9.4 Governing law

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

9.5 Further action

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

9.6 No liability when acting in good faith

Each Scheme Shareholder agrees that neither Japara, Bidder nor any director, officer, secretary or employee of Japara shall be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.



Attachment 2

Deed Poll

For personal use only



HERBERT
SMITH
FREEHILLS

Deed

Deed poll

Little Company of Mary Health Care Limited

For personal use only



Deed poll

Date ►

This deed poll is made

By **Little Company of Mary Health Care Limited**
ABN 11 079 815 697 of Level 12, 135 King Street, Sydney, NSW
2000
(Bidder)

in favour of each person registered as a holder of fully paid ordinary shares in Japara Healthcare Limited in the Share Register as at the Scheme Record Date.

Recitals

- 1 Japara and Bidder entered into the Implementation Deed.
- 2 In the Implementation Deed, Bidder agreed to make this deed poll.
- 3 Bidder is making this deed poll for the purpose of covenanting in favour of the Scheme Shareholders to perform its obligations under the Implementation Deed and the Scheme.

This deed poll provides as follows:

1 Definitions and interpretation

1.1 Definitions

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

Term	Meaning
First Court Date	the first day on which an application made to the Court for an order under subsection 411(1) of the Corporations Act convening the Scheme Meeting is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

For personal use only



Term	Meaning
Implementation Deed	the scheme implementation deed entered into between Japara and Bidder dated [<i>insert.</i>]
Japara	Japara Healthcare Limited ABN 54 168 631 052 of Q1 Building Level 4, 1 Southbank Boulevard, Southbank, VIC 3006.
Scheme	the scheme of arrangement under Part 5.1 of the Corporations Act between Japara and the Scheme Shareholders under which all of the Scheme Shares will be transferred to the Bidder, substantially in the form attached to the Implementation Deed, subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by Bidder and Japara.

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

1.2 Interpretation

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

1.3 Nature of deed poll

Bidder acknowledges that:

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

2 Conditions to obligations

2.1 Conditions

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

2.2 Termination

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

- (a) the Implementation Deed is terminated in accordance with its terms; or



- (b) the Scheme is not Effective on or before the End Date, unless Japara and Bidder otherwise agree in writing.

2.3 Consequences of termination

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

- (a) Bidder is released from their obligations to further perform this deed poll except those obligations under clause 7.1; and
- (b) each Scheme Shareholder retains the rights they have against Bidder in respect of any breach of this deed poll which occurred before it was terminated.

3 Scheme obligations

3.1 Undertaking to pay Scheme Consideration

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

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

subject to and in accordance with the terms of the Scheme.

4 Warranties

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

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



5 Continuing obligations

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

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

6 Notices

6.1 Form of Notice

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

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

Attention Martin Bowles
Philip Maloney

With copy to
Peter Cook

Address Level 12, 135 King Street, Sydney NSW 2000

Email address martin.bowles@calvarycare.org.au
philip.maloney@calvarycare.org.au
pcook@gtlaw.com.au

6.2 How Notice must be given and when Notice is received

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

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



Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address
By email to the nominated email address	The first to occur of: <ol style="list-style-type: none">1 the sender receiving an automated message confirming delivery; or2 two hours after the time that the email was sent (as recorded on the device from which the email was sent) provided that the sender does not, within the period, receive an automated message that the email has not been delivered.

6.3 Notice must not be given by electronic communication

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

7 General

7.1 Stamp duty

Bidder:

- (a) will pay all stamp duty and any related fines and penalties in respect of the Scheme and this deed poll, the performance of this deed poll and each transaction effected by or made under or in connection with the Scheme and this deed poll; and
- (b) indemnifies each Scheme Shareholder against any liability arising from failure to comply with clause 7.1(a).

7.2 Governing law and jurisdiction

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

7.3 Waiver

- (a) Bidder may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.



- (b) No Scheme Shareholder may rely on words or conduct of Bidder as a waiver of any right unless the waiver is in writing and signed by Bidder. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (c) The meanings of the terms used in this clause 7.3 are set out below.

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

7.4 Variation

A provision of this deed poll may not be varied unless:

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

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

7.5 Cumulative rights

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

7.6 Assignment

- (a) The rights created by this deed poll are personal to Bidder and each Scheme Shareholder and must not be dealt with at law or in equity without the prior written consent of Bidder.
- (b) Any purported dealing in contravention of clause 7.6(a) is invalid.

7.7 Further action

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

For personal use only



Signing page

Executed as a deed poll

Signed sealed and delivered by

Little Company of Mary Health Care Limited

by its attorney under the power of attorney with registered book number

BK 4784 No 70 and dated 28 February 2021,

who has no notice of revocation of that power of attorney in the presence of:

sign here ►

Signature of witness

print name

sign here ►

Signature of attorney

print name Martin Bowles

For personal use only