

24 August 2021

Abano Healthcare to acquire 1300Smiles

Key Highlights

- 1300Smiles (ASX:ONT) (**1300Smiles**) has today entered into a Scheme Implementation Agreement with Adams Aus Bidco Pty Limited (**Abano Bidco**), a member of the Abano Healthcare Group (**Abano Healthcare**) under which Abano Bidco has agreed to acquire up to 84% of 1300Smiles by way of a Scheme of Arrangement.¹
- Shareholders other than the Founder Shareholders² (**Non-Founder Shareholders**) will receive total cash consideration of \$8.00 per share less any Special Dividend.
- The Founder Shareholders who together hold approximately 59.8% of 1300Smiles will receive cash consideration of up to \$6.33 per share (of which up to \$0.81 per share is contingent on certain events occurring³) less any Special Dividend. The Founder Shareholders will also have the right to make an election to retain 26.2% of their shares on the terms contained in a Retention and Co-Investment Deed. The Founder Shareholders have confirmed to 1300Smiles that they intend to make this election.
- The differential consideration to be provided to the Founder Shareholders unlocks additional value for the Non-Founder Shareholders.
- 1300Smiles intends to declare and pay to all shareholders before the Scheme Implementation Date a Special Dividend of up to \$0.80 per Share (reserving the right to increase this to up to \$1.10 per Share) fully franked (**Special Dividend**).⁴
- The Scheme is subject to certain conditions including 1300Smiles shareholder approvals, Australian Foreign Investment Review Board approval, the Founder Shareholders electing to retain 26.2% of their shares, no Material Adverse Effect or 1300 Smiles Prescribed Events occurring, certain change of control consents being obtained and other conditions precedent which are customary for comparable transactions of this size and type.
- 1300Smiles' Independent Board Committee (**IBC**) considers the proposed Scheme to be in the best interests of shareholders.

¹ Scheme implementation is conditional on the Founder Shareholders electing to retain 26.2% of their 1300Smiles shares on the terms and conditions contained in a Retention and Co-Investment Deed. The Founder Shareholders have confirmed to 1300Smiles that they intend to make this election.

² Founder Shareholders are Daryl Holmes as trustee for the TFD Hybrid Fixed Trust and Golden Arch (Qld) Pty Ltd as trustee for the Whistler Discretionary Trust.

³ Up to \$0.81 per share is payable under Contingent Notes to be issued to the Founder Shareholders under the Scheme on the basis of 1 Contingent Note for each share transferred by the Founder Shareholders under the Scheme.

⁴ It remains at the discretion of the 1300Smiles Board whether the Special Dividend is ultimately declared and paid and the amount of any Special Dividend. Whether shareholders will be able to realise the full benefit of the franking credits which may arise will depend on individual tax circumstances.

- In the absence of a Superior Proposal⁵ and subject to an Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of all 1300Smiles shareholders and fair and reasonable to the Non-Founder Shareholders:
 - 1300Smiles' IBC unanimously recommends shareholders vote in favour of the Scheme and each independent director comprising the IBC intends to vote all of the shares that they hold (directly or through associated interests) in favour of the Scheme; and
 - the Founder Shareholders intend to vote their shares in favour of the Scheme. Managing Director, Dr Daryl Holmes, does not make any recommendation to Non-Founder Shareholders due to his association with the Founder Shareholders.

Proposed transaction

1300Smiles Limited (ASX:1300Smiles) (**1300Smiles**) has entered into a Scheme Implementation Agreement with Adams Aus Bidco Pty Limited (**Abano Bidco**), a member of the Abano Healthcare Group under which Abano Bidco will acquire up to 84% of 1300Smiles by way of scheme of arrangement.⁶

Abano Healthcare is a highly complementary partner for 1300Smiles with a strong Australian footprint of 106 practices, largely operated under the Maven Dental brand, to which 1300Smiles' high quality portfolio of 33 practices will be added if the Scheme is successful. Abano Healthcare was acquired by BGH Capital and its institutional partners including Ontario Teachers' Pension Plan Board in 2020.

The Scheme Consideration comprises:

- **(Non-Founder Scheme Consideration)** for 1300Smiles shareholders (other than the Founder Shareholders comprising 1300Smiles' major shareholder, Dr Daryl Holmes and his wholly controlled entities) - cash consideration of \$8.00 per share less any Special Dividend; and
- **(Founder Scheme Consideration)** for Founder Shareholders who together hold approximately 59.8% of 1300Smiles will receive cash consideration of up to \$6.33 per share (of which up to \$0.81 per share is contingent on certain events occurring⁷) less any Special Dividend. It is a condition of the Scheme that the Founder Shareholders elect to retain 26.2% of their shares on the terms contained in a Retention and Co-Investment Deed. The Founder Shareholders have confirmed to 1300Smiles that they intend to make this election.

The Scheme Consideration when taken overall implies:

- an equity value of \$166 million⁸ for 1300Smiles and an estimated enterprise value of \$165 million⁹; and
- an EV / EBITDA multiple of 13.5x, based on FY21 underlying EBITDA pre AASB 16 of \$12.2m.

The differential consideration to be provided to the Founder Shareholders unlocks additional value for the Non-Founder Shareholders.

⁵ As defined in the Scheme Implementation Agreement.

⁶ See note 1.

⁷ See note 3.

⁸ Based on a blended consideration for Founder and Non-Founder Shareholders of \$7.00 per share and 23,678,384 issued shares.

⁹ Enterprise value implied by the Scheme Consideration when taken overall of \$165 million includes net cash of \$1 million as at 30 June 2021. Cash includes cash and equivalents of \$4.2 million, loans receivable of \$8.3 million, investments of \$0.4 million, investment property of \$1.6 million. Debt includes loans payable of \$13.3 million and contingent consideration of \$0.4 million.

The Non-Founder Scheme Consideration represents:

- A 14% premium to 1300Smiles' closing share price on the ASX of \$7.02 per share on Friday, 20 August 2021, being the last trading day prior to the announcement of the Scheme;
- A 14% premium to 1300Smiles' VWAP over the last 30-day period (\$6.99 per share) prior to Friday, 20 August 2021;
- An 18% premium to 1300Smiles' VWAP over the last 12 months (\$6.79 per share) prior to Friday, 20 August 2021;
- An implied EV / EBITDA multiple of 15.5x¹⁰ for Non-Founder Shareholders, based on FY21 underlying EBITDA pre AASB 16 of \$12.2 million.

The 100% cash consideration available under the Non-Founder Scheme Consideration provides Non-Founder Shareholders with certainty of value and the opportunity to realise their investment for cash, in full.

Special Dividend

1300Smiles intends to declare and pay to all shareholders before the Scheme Implementation Date a Special Dividend of up to \$0.80 per share (reserving the right to increase this to up to \$1.10 per share) fully franked.¹¹

Independent Expert

1300Smiles has appointed Grant Thornton to prepare an Independent Expert Report to assist shareholders assess the merits of the proposed Scheme. This will form part of the Scheme Booklet that will be sent to shareholders along with details of the scheme meetings at which shareholders will consider the Scheme.

Independent Board Committee unanimously recommends the Scheme

1300Smiles formed an Independent Board Committee (**IBC**) comprising 1300Smiles Independent Chairman Robert Jones and Independent Director Jason Smith to consider the proposal from Abano Healthcare.

The IBC considers the Scheme to be in the best interests of shareholders and unanimously recommends that all shareholders vote in favour of the Scheme, and each independent director comprising the IBC intends to vote all of the shares that they hold (directly or through associated interests) in favour of the Scheme, in both cases, in the absence of a Superior Proposal¹² and subject to an Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of all 1300Smiles shareholders and fair and reasonable to the Non-Founder Shareholders.

IBC Chairman Robert Jones said: "The IBC is unanimous in its view that the proposed Scheme is in the best interests of shareholders and represents compelling value. This transaction clearly validates the company's strong operational and financial performance, and recognises the commitment to high quality dental care displayed by the professionals across our network.

"The IBC believes that Abano Healthcare will be excellent custodians of 1300Smiles' business going forward, in terms of continuing strong dentist and patient outcomes and growing the business."

¹⁰ Enterprise value implied by the Non-Founder Scheme Consideration of \$188 million includes net cash of \$1 million as at 30 June 2021. Cash includes cash and equivalents of \$4.2 million, loans receivable of \$8.3 million, investments of \$0.4 million, investment property of \$1.6 million. Debt includes loans payable of \$13.3 million and contingent consideration of \$0.4 million.

¹¹ See note 4.

¹² See note 5.

Abano Healthcare CEO Sinead Ryan said: “The proposal we have developed in consultation with 1300Smiles delivers real value to shareholders, and recognises the impressive track record of the business over many years. With BGH Capital and Ontario Teachers' significant experience investing in healthcare businesses around the world, we look forward to supporting the highly skilled 1300Smiles team, supporting their clinicians to maintain strong outcomes for dentists, patients and driving the next phase of growth.”

Managing Director Dr Daryl Holmes and Founder Shareholders intend to vote in favour of the Scheme

Commenting on the transaction, Dr Daryl Holmes said: “1300Smiles is a company we have built from the ground up over many years. Abano Healthcare is a highly complementary partner for our business with a strong Australian footprint of 106 practices, largely via the Maven brand, to which 1300Smiles high quality portfolio of 33 practices will be added. The future for 1300Smiles is bright and as part of the Abano Healthcare group is well positioned to continue the proud legacy of high quality dental care we have provided to Australian communities for over 30 years.”

Due to the different scheme consideration being provided to Founder Shareholders and Non-Founder Shareholders, the Founder Shareholders and the Non-Founder Shareholders will be treated as separate classes of shareholder and there will be separate Scheme Meetings of each class of shareholder to vote on the Scheme. Both scheme meetings would need to pass a resolution approving the Scheme for the Scheme to become effective.

Dr Daryl Holmes, on behalf of the Founder Shareholders has stated they intend to:

- make a valid Election by the Election Date (each as defined in the Scheme Implementation Agreement) such that the condition in clause 3.1(e) of the Scheme Implementation Agreement is satisfied; and
- vote all their shares in favour of the Scheme at the meeting of Founder Shareholders,

in the absence of a Superior Proposal and subject to an Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of all 1300Smiles shareholders and fair and reasonable to the Non-Founder Shareholders.

The Founder Shareholders will not be entitled to vote at the meeting of Non-Founder Shareholders and, due to his association with the Founder Shareholders, Dr Holmes gives no recommendation to Non-Founder Shareholders in relation to how they should vote on the Scheme at the Non-Founder Shareholders Scheme Meeting.

Voting intention

Ellerston Capital Limited (**Ellerston**) and its associates have a relevant interest in approximately 1,680,628 shares representing approximately 7.1% of 1300Smiles. Ellerston intends to vote the shares that it holds and recommend that its associates vote the shares that they hold in favour of the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of 1300Smiles shareholders and fair and reasonable to Non-Founder Shareholders.

Scheme Implementation

A copy of the Scheme Implementation Agreement, which sets out all the terms and conditions of the Scheme is **attached** to this announcement. Capitalised terms used in this section has the same meaning given to those terms in the Scheme Implementation Agreement.

Scheme implementation is subject to various conditions including

- 1300Smiles Shareholder approval and Court approvals;
- Foreign Investment Review Board approval;
- an Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of all 1300Smiles shareholders and fair and reasonable to Non-Founder Shareholders;
- the Founder Shareholders electing to retain 26.2% of their 1300Smiles shares and executing a Retention and Co-Investment Deed with the parent Abano Healthcare entity; and
- no Material Adverse Effect or 1300 Smiles Prescribed Events occurring and certain change of control consents being obtained.

The Scheme is not subject to a financing condition. Abano Healthcare has obtained commitments to receive funding under a binding Debt Commitment Letter and binding Equity Commitment Letters, that when taken together with Abano Healthcare's existing cash reserves and undrawn debt facilities exceed the maximum amount of cash consideration payable under the Scheme.

1300Smiles is subject to customary exclusivity obligations, including "no shop" and "no talk" and notification obligations. The Scheme Implementation Agreement also contains a matching right regime in respect of any Superior Proposal received by 1300Smiles. The Scheme Implementation Agreement also details circumstances under which a break fee of \$1.7 million may be payable by 1300Smiles to Abano.

Under the Retention and Co-Investment Deed, the Abano Healthcare parent entity may (but is not obliged), at any time within the 24 months after the Scheme Implementation Date, acquire the 1300Smiles shares retained by the Founder Shareholders valued at \$6.33 per share (less the Special Dividend) in consideration for the issue of shares in the parent Abano Healthcare entity at an issue price of \$1.30 per parent share.

Abano Healthcare and shareholders

Abano Healthcare is the operator of one of the largest trans-Tasman dental groups, comprising Lumino The Dentists in New Zealand and Maven Dental Group in Australia.

Abano Healthcare's shareholders, BGH Capital and Ontario Teachers are experienced and committed investors with substantial experience in the dental sector and in Australia and New Zealand – as evidenced by the recent acquisition of Abano Healthcare.

Indicative Timetable and Next Steps

1300Smiles shareholders do not need to take any action at this stage.

A Scheme Booklet containing information relating to the Scheme, the reasons for the 1300Smiles Independent Board Committee recommendation, an Independent Expert's Report opining on whether the Scheme is in the best interests of all 1300Smiles shareholders and fair and reasonable to the Non-Founder Shareholders and details of the Scheme Meetings will be sent to shareholders in due course.

1300Smiles shareholders will be given the opportunity to vote on the Scheme at the Scheme Meetings and, if approved, the Scheme would be implemented shortly thereafter.

1300Smiles is being advised by Flagstaff Partners as financial adviser and Thomson Geer as legal adviser.

This announcement is authorised for release to ASX by the IBC.

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ENDS

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Scheme Implementation Agreement

Dated 23 August 2021

Adams Aus Bidco Pty Limited (ACN 637 090 996) ("**Abano**")
1300 Smiles Limited (ACN 094 508 166) ("**1300 Smiles**")

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Scheme Implementation Agreement

Contents

Details	1
General terms	2
1 Definitions and interpretation	2
1.1 Definitions	2
1.2 General interpretation	17
2 Agreement to propose and implement Scheme	18
2.1 1300 Smiles to propose Scheme	18
2.2 Nomination of acquirer Subsidiary	18
2.3 Agreement to implement Scheme	18
3 Conditions Precedent	18
3.1 Conditions Precedent	18
3.2 Reasonable endeavours	20
3.3 Regulatory matters	20
3.4 Waiver of Conditions Precedent	21
3.5 Notices in relation to Conditions Precedent	21
3.6 Consultation on failure of Condition Precedent	22
3.7 Failure to agree	22
4 Outline of Scheme	23
4.1 Scheme	23
4.2 Scheme Consideration	23
4.3 Payment of Scheme Consideration	23
4.4 Election mechanism	23
4.5 No amendment to the Scheme without consent	24
5 Implementation	24
5.1 General obligations	24
5.2 1300 Smiles' obligations	24
5.3 Abano's obligations	28
5.4 Scheme Booklet responsibility statement	29
5.5 Disagreement on content of Scheme Booklet	29
5.6 Verification	30
5.7 Conduct of Court proceeding	30
5.8 Appeal process	30
5.9 Financing co-operation	30
5.10 Transaction Implementation Committee	30
5.11 No partnership or joint venture	31
5.12 Payment of the Special Dividend	31
6 Recommendations and intentions	32
6.1 IBC Recommendation and Voting Intentions	32
6.2 Notification of withdrawal or change of recommendation	32
6.3 Confirmation	33

7	Directors and employees	33
7.1	Release of 1300 Smiles and 1300 Smiles directors and officers	33
7.2	Benefit for 1300 Smiles Indemnified Parties	33
7.3	Release of Abano and Abano directors and officers	33
7.4	Benefit for Abano Indemnified Parties	33
7.5	Appointment/retirement of 1300 Smiles directors	34
7.6	Directors' and officers' insurance	34
7.7	Other insurance policies notification and Run-Off Policies	35
7.8	Period of undertaking	35
7.9	Benefit of undertaking for 1300 Smiles Group	35
8	Conduct of business	36
8.1	Overview	36
8.2	Specific obligations	37
8.3	Prohibited actions	37
8.4	Exceptions to conduct of business provisions	39
8.5	Change of control	39
8.6	Access to people and 1300 Smiles Information	39
8.7	No amendment or waiver of Commitment Letters	40
9	Exclusivity	40
9.1	No existing discussions	40
9.2	No-shop	41
9.3	No-talk	41
9.4	Due diligence information	41
9.5	Exceptions	42
9.6	Further exceptions	42
9.7	Notice of unsolicited approach	42
9.8	Matching right	43
9.9	Abano counterproposal	43
9.10	Legal advice	44
10	Break Fee	44
10.1	Background	44
10.2	Payment by 1300 Smiles to Abano	44
10.3	No amount payable if Scheme becomes Effective	45
10.4	Timing of payment	45
10.5	Break Fee only payable once	45
10.6	Limitation of liability	45
10.7	Nature of payment	46
10.8	Compliance with law	46
11	Representations and warranties	47
11.1	1300 Smiles' representations and warranties	47
11.2	1300 Smiles' indemnity	50
11.3	Qualifications on the 1300 Smiles Representations and Warranties	50
11.4	Abano's representations and warranties	51
11.5	Abano's indemnity	53
12	Termination	53
12.1	Termination events	53

12.2	Termination	54
12.3	Effect of Termination	54
12.4	Damages	54
13	Public announcements	54
13.1	Public announcement of Scheme	54
13.2	Required disclosure	54
13.3	Other announcements	54
14	Confidential information	55
15	Notices and other communications	55
15.1	Form	55
15.2	Delivery	55
15.3	When effective	55
15.4	When taken to be received	55
15.5	Receipt outside business hours	56
16	GST	56
16.1	Definitions and interpretation	56
16.2	GST exclusive	56
16.3	Payment of GST	56
16.4	Adjustment events	56
16.5	Reimbursements	57
17	Costs	57
17.1	Costs	57
17.2	Stamp duty and registration fees	57
18	General	57
18.1	Variation and waiver	57
18.2	Consents, approvals or waivers	57
18.3	Discretion in exercising rights	57
18.4	Partial exercising of rights	58
18.5	Conflict of interest	58
18.6	Remedies cumulative	58
18.7	Indemnities and reimbursement obligations	58
18.8	Inconsistent law	58
18.9	Supervening law	58
18.10	Counterparts	58
18.11	Entire agreement	58
18.12	Further steps	59
18.13	No liability for loss	59
18.14	Severability	59
18.15	Rules of construction	59
18.16	Assignment	59
18.17	Enforceability	59
18.18	No representation or reliance	60
19	Governing law	60
19.1	Governing law and jurisdiction	60
19.2	Serving documents	60
Schedule 1	Timetable (clause 5.1)	61

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Signing page	62
Annexure A Scheme of Arrangement	63
Annexure B Deed Poll	1

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Scheme Implementation Agreement

Details

Parties

Abano	Name	Adams Aus Bidco Pty Limited
	ACN	637 090 996
	Formed in	Victoria, Australia
	Address	Level 26, 101 Collins Street Melbourne VIC 3000
	Email	Hmorfis@bghcapital.com
	Attention	Hari Morfis

1300 Smiles	Name	1300 Smiles Limited
	ACN	094 508 166
	Formed in	Queensland, Australia
	Address	Level G, 105 Denham St Townsville QLD 4810
	Email	md@1300smiles.com.au
	Attention	Daryl Holmes

Governing law New South Wales

Recitals	A	1300 Smiles and Abano have agreed to merge by means of a members' scheme of arrangement under Part 5.1 of the Corporations Act.
	B	At the request of Abano, 1300 Smiles intends to propose the Scheme and issue the Scheme Booklet.
	C	1300 Smiles and Abano have agreed to implement the Scheme on the terms and conditions of this document.

Scheme Implementation Agreement

General terms

1 Definitions and interpretation

1.1 Definitions

Unless the contrary intention appears, these meanings apply:

1300 Smiles Board means the board of directors of 1300 Smiles.

1300 Smiles Confidential Information means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, exchanged between the parties before, on or after the date of this document relating to the business, technology or other affairs of 1300 Smiles.

1300 Smiles Constitution means the constitution of 1300 Smiles.

1300 Smiles Facilities means each of the following:

- (a) the “Multi-Option Facility Agreement” dated 27 June 2019 between 1300 Smiles and 1300 Smiles (BOH Dental) Pty Ltd and Commonwealth Bank of Australia; and
- (b) the “Corporate Letter of Offer – Letter of Variation” dated 17 May 2021 between, among others, 1300 Smiles and the National Australia Bank Limited,

together with any extension, amendment, variation or replacement of any of the facilities described in paragraphs (a) or (b) (in whole or in part) in order to refinance the loans and commitments under such facilities from time to time with an aggregate credit limit not to exceed the aggregate credit limit so refinanced.

1300 Smiles Group means 1300 Smiles and its Subsidiaries.

1300 Smiles Indemnified Parties means 1300 Smiles, its officers, employees, and advisers and its Related Bodies Corporate and the officers, employees and advisers of each of its Related Bodies Corporate.

1300 Smiles Information means all information contained in the Scheme Booklet other than the Abano Information and the Independent Expert’s Report.

1300 Smiles Prescribed Event means, except to the extent contemplated by this document or the Scheme, any of the following events:

- (a) **(conversion)** 1300 Smiles converts all or any of its shares into a larger or smaller number of shares;
- (b) **(reduction of share capital)** 1300 Smiles or another member of the 1300 Smiles Group resolves to reduce its share capital in any way or resolves to reclassify, combine, split or redeem or repurchase directly or indirectly any of its shares;
- (c) **(buy-back)** 1300 Smiles or another member of the 1300 Smiles Group:
 - (A) enters into a buy-back agreement; or

- (B) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) **(distribution)** 1300 Smiles makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie), other than the Special Dividend;
- (e) **(issuing or granting shares or options)** any member of the 1300 Smiles Group:
- (A) issues shares;
- (B) grants an option over its shares; or
- (C) agrees to make such an issue or grant such an option, in each case to a person outside the 1300 Smiles Group;
- (f) **(securities or other instruments)** any member of the 1300 Smiles Group issues or agrees to issue securities or other instruments convertible into shares or debt securities in each case to a person outside the 1300 Smiles Group;
- (g) **(constitution)** 1300 Smiles adopts a new constitution or modifies or repeals its constitution or a provision of it;
- (h) **(disposals)** any member of the 1300 Smiles Group disposes, or agrees to dispose of the whole or a substantial part of its business or property;
- (i) **(acquisitions, disposals or tenders)** any member of the 1300 Smiles Group
- (A) acquires or disposes of;
- (B) agrees to acquire or dispose of; or
- (C) offers, proposes, announces a bid or tenders for, any business, assets, entity or undertaking the value of which exceeds \$100,000;
- (j) **(Investors Central investments)** any member of the 1300 Smiles Group applies to make, or makes, an investment in, or advances funds in any way to or for the benefit of, Investors Central Limited (ACN 143 097 385) or any product offered by or on behalf of Investors Central Limited (ACN 143 097 385);
- (k) **(Encumbrances)** any member of the 1300 Smiles Group creates, or agrees to create, any Encumbrance over or declares itself the trustee of the whole or a substantial part of its business or property;
- (l) **(employment arrangements)** any member of the 1300 Smiles Group:
- (A) increases the remuneration of, or otherwise varies the employment arrangements with, any of its directors, officers or employees with a base salary of greater than \$150,000 (otherwise than as required under an existing contract in place at the date of this document);

- (B) accelerates the rights of any of its directors, officers, employees or independent contractors to compensation or benefits of any kind (including under any 1300 Smiles bonus plans) (otherwise than in accordance with an existing contract in place at the date of this document);
 - (C) offers to pay, pays or agree to pay any of its directors, officers, employees or independent contractors an incentive, a termination or a retention payment (otherwise than in accordance with an existing contract in place at the date of this document); or
 - (D) offers to pay, pays or agrees to pay any of its directors, officers, employees or independent contractors any discretionary short term incentive and which in aggregate to all directors, officers, employees or independent contractors of the 1300 Smiles Group exceeds \$150,000;
- (m) **(Material Contract)** any member of the 1300 Smiles Group:
- (A) amends, terminates or is in material breach of a Material Contract, except where the Material Contract that has been terminated is a dental services agreement; or
 - (B) enters into a new contract which is reasonably likely to be a Material Contract, other than any dental services agreement on 1300 Smiles' standard terms entered into by 1300 Smiles in the ordinary course of business;
- (n) **(dental services agreements)** the following has occurred in relation to such dental services agreement(s) and/or dental employment agreements(s) from which 1300 Smiles derives in aggregate 15% or more of the 1300 Smiles' "Average Net Production" for the 6 month period ended 31 July 2021 as specified in the Disclosure Letter:
- (A) such agreement(s) have been terminated;
 - (B) notice of termination of such agreement(s) have been given to a 1300 Smiles Group member; or
 - (C) there has been a material breach of such agreement(s) which entitles the counterparty to such agreement(s) to terminate the agreement.
- (o) **(Material Lease)** any member of the 1300 Smiles Group amends, terminates or is in material breach of a Material Lease which is not remedied within the shorter of 10 Business Days of the occurrence of the material breach or the Second Court Date or enters into a new lease which is likely to be material to the business of the 1300 Smiles Group taken as a whole;
- (p) **(related party arrangements)** any member of the 1300 Smiles Group enters into or resolves to enter into a transaction with any related party of 1300 Smiles (other than a related party which is a member of the 1300 Smiles Group) as defined in section 228 of the Corporations Act which would require shareholder approval under Chapter 2E or under Chapter 10 of the Listing Rules;
- (q) **(Transaction Costs)** after the date of this document, pay, incur or agree to pay or incur any amount of Transaction Costs based on the assumptions contained in the Disclosure Letter which in aggregate exceed \$3,500,000;

- (r) **(suspension)** 1300 Smiles Shares are delisted or are subject to suspension from quotation for 5 or more trading days, other than due to, or as a result of, this document (including under clause 5.2(u)) or any action taken by Abano;
- (s) **(Insolvency)** 1300 Smiles or any of its Related Bodies Corporate becomes Insolvent;
- (t) **(ceases business)** any member of the 1300 Smiles Group ceases, or threatens to cease, to carry on business;
- (u) **(breach of law)** any member of the 1300 Smiles Group deliberately takes or omits to take action which that member knows would result in a material breach of law (resulting in costs, charges, interests, penalties, fines or expenses in excess of \$100,000); or
- (v) **(change in accounting policy)** any member of the 1300 Smiles Group changes any accounting policy applied by them to report their financial position other than any change in accounting policy which is required by a change in Accounting Standards,

provided that a 1300 Smiles Prescribed Event listed in items (a) to (v) will not occur where such event, occurrence or matter:

- (w) is Fairly Disclosed by 1300 Smiles in the Disclosure Letter;
- (x) is required to be done or procured by 1300 Smiles pursuant to this document or the Scheme; or
- (y) has been previously approved by Abano in writing.

1300 Smiles Representations and Warranties means the representations and warranties of 1300 Smiles set out in clauses 9.1 and 11.1.

1300 Smiles Share means an ordinary fully paid share in the capital of 1300 Smiles.

1300 Smiles Shareholder means each person registered in the Register as a holder of 1300 Smiles Shares.

Abano Board means the board of directors of Abano.

Abano Group means Abano Holdco and its Subsidiaries.

Abano Holdco means Adams Group Aus Holdings Pty Limited (ACN 637 089 162).

Abano Indemnified Parties means Abano, its officers, employees and advisers, its Related Bodies Corporate and the officers, employees and advisers of each of its Related Bodies Corporate.

Abano Information means the information regarding Abano as is required to be included in the Scheme Booklet under the Corporations Act, Corporations Regulations or ASIC Regulatory Guides 60 and 111. Abano Information does not include information about the 1300 Smiles Group (except to the extent it relates to any statement of intention relating to the 1300 Smiles Group following the Effective Date).

Abano Representations and Warranties means the representations and warranties of Abano set out in clause 11.4.

ACCC means the Australian Competition and Consumer Commission.

Accounting Standards means:

- (a) the requirements of the Corporations Act about the preparation and contents of financial reports; and
- (b) the accounting standards approved under the Corporations Act, being the Australian Accounting Standards and any authoritative interpretations issued by the Australian Accounting Standards Board.

Ancillary Documents means:

- (a) the Co-Investment Deed;
- (b) the Founder Consulting Agreement; and
- (c) the Founder Entity Lease Amendments.

ASIC means the Australian Securities & Investments Commission.

Associate has the meaning set out in section 12 of the Corporations Act, as if section 12(1) of the Corporations Act included a reference to this document.

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

ATO means the Australian Taxation Office.

Authorised Officer means a director or secretary of a party or any other person nominated by a party to act as an Authorised Officer for the purposes of this document.

Break Fee means \$1,700,000.

Business Day means a day (other than a Saturday, Sunday or public holiday) in which banks are open for over-the-counter banking business in Auckland, New Zealand, Brisbane, Melbourne and Sydney, Australia and Toronto, Canada.

Change of Control Contract means any contract that is agreed by the parties as a "Change of Control Contract".

Change of Control Lease means a premises lease to which 1300 Smiles is a party which requires lessor consent for change of control of 1300 Smiles.

Co-Investment Deed means the document titled "Retention and Co-Investment Deed" in relation to Abano Holdco, in a form agreed by the parties.

Competing Transaction means a proposal, transaction or arrangement (whether by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale or issue of securities, joint venture or otherwise) which, if completed, would mean:

- (a) a person (other than Abano or its Related Bodies Corporate or the Founder Entities) whether alone or together with its Associates would:
 - (A) directly or indirectly, acquire an interest or Relevant Interest in or become the holder of 8% or more of the 1300 Smiles Shares (other than as custodian, nominee or bare trustee);
 - (B) acquire control of 1300 Smiles, within the meaning of section 50AA of the Corporations Act;

- (C) directly or indirectly acquire, obtain a right to acquire, or otherwise obtain an economic interest in all or a substantial part or a material part of the assets of or business conducted by the 1300 Smiles Group;
 - (D) otherwise acquire or merge (including by a reverse takeover bid or dual listed company structure) with 1300 Smiles; or
- (b) 1300 Smiles would be required to abandon or otherwise fail to proceed with the Scheme.

Conditions Precedent means the conditions precedent set out in clause 3.1.

Confidentiality Agreement means the Confidentiality Agreement between the parties dated 1 April 2021.

Controller has the meaning it has in the Corporations Act.

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

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

Costs includes costs, charges and expenses, including those incurred in connection with advisers and any legal costs on a full indemnity basis.

Court means the Federal Court of Australia, Sydney Registry, or such other court of competent jurisdiction under the Corporations Act agreed in writing by Abano and 1300 Smiles.

Cyber Insurance Policy means the existing cyber insurance policy, Policy No. CS190221192A0002, Policy wording Emergence Cyber Event Protection-004, under which 1300 Smiles is named as the insured.

Debt Commitment Letter means a credit approved, executed commitment letter annexing the "First Amending Agreement" to the existing syndicated facility agreement from certain banks or other financial institutions addressed to Abano or its Related Bodies Corporate and dated on or about the date of this document as amended or replaced in a manner not inconsistent with this document.

Debt Facility Agreement means any debt facility agreement entered into or to be entered into pursuant to the Debt Commitment Letter.

Deed Poll means a deed poll substantially in the form of Annexure B to this document.

Details means the section of this document headed "Details".

Disclosed in respect of a matter, event or circumstance means Fairly Disclosed:

- (a) by 1300 Smiles in writing to Abano (including in the Disclosure Materials) prior to the date of this document; or
- (b) in any announcement made by 1300 Smiles on ASX prior to the date of this document.

Disclosure Letter means the letter so entitled from 1300 Smiles provided to Abano on or prior to execution of this document.

Disclosure Materials means the information in relation to the 1300 Smiles Group disclosed in writing by or on behalf of 1300 Smiles to Abano and its Representatives in:

- (a) the documents and information contained in the data room made available by 1300 Smiles to Abano and its Representatives, the index of which is attached to the Disclosure Letter;
- (b) any written answers to requests for further information made by Abano and its Representatives as contained in the data room, a copy of which is attached to the Disclosure Letter; and
- (c) the Disclosure Letter.

EBITDA means earnings before interest, tax, depreciation and amortisation determined in accordance with the historical accounting policies and principles applied by 1300 Smiles as at the date of this document. The provision of IFRS 16 Leases will be ignored in the calculation of EBITDA.

Effective, when used in relation to the Scheme, means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

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

Election means the election by the Founder Entity Scheme Participants to retain, in aggregate, 26.227% of their Scheme Shares (rounded up or down to the nearest whole number of Scheme Shares), in accordance with clause 5.9 of the Scheme.

Election Date means 5.00pm on the date that is three clear Business Days before the date of the Scheme Meeting or such other date as is agreed in writing by Abano and 1300 Smiles.

Election Form means a form issued by 1300 Smiles for the purposes of the Founder Entity Scheme Participants making the Election.

Encumbrance means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or 12(2) of the PPSA or any agreement to create any of them or allow them to exist.

End Date means 31 March 2022 or such other date as is agreed by Abano and 1300 Smiles.

Equity Commitment Letter means binding executed commitment letters addressed to Abano from:

- (a) BGH Capital IA Pty Ltd in its capacity as trustee for BGH Capital Trust IA, BGH Capital IB Pty Ltd in its capacity as trustee for BGH Capital Trust IB and BGH Capital Offshore I LP; and
- (b) Ontario Teachers' Pension Plan Board,

dated on or about the date of this document.

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

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

Fairly Disclosed, in relation to a matter, event or circumstance, means fairly disclosed in reasonably sufficient detail so as to allow a reasonable and sophisticated bidder experienced in transactions similar to the transaction contemplated by this document and experienced in business similar to the business conducted by 1300 Smiles to identify or otherwise determine the nature and scope of the particular matter, event or circumstance.

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

First Court Date means the first day on which an application made to the Court, in accordance with clause 5.2(h), for orders under section 411(1) of the Corporations Act convening the Scheme Meeting is heard.

Founder means Daryl Shane Holmes of 42 Stanton Terrace, Castle Hill Queensland 4810.

Founder Consulting Agreement means the consulting agreement to be entered into between the Founder (or an entity under his control) and Maven Dental Group Pty Ltd (ACN 131 333 492), on terms agreed between the parties.

Founder Entities means each of:

- (a) the Founder;
- (b) Daryl Holmes as trustee for the TFD Hybrid Fixed Trust; and
- (c) Golden Arch (Qld) Pty Ltd as trustee for the Whistler Discretionary Trust.

Founder Entity Consideration means:

- (a) \$5.52 less the actual amount of any Special Dividend ("**Founder Entity Cash Consideration**"); and
- (b) one Founder Entity Contingent Note ("**Founder Entity Contingent Note Consideration**"),

in respect of each Transferring Share held by the Founder Entity Scheme Participants, to be provided by Abano to the Founder Entity Scheme Participants under the terms of this Scheme for the transfer to Abano of his Transferring Shares.

Founder Entity Contingent Note means an unsecured note on terms and conditions agreed by the parties to this document and to be issued by Abano providing for a contingent cash payment to the Founder Entity Scheme Participants of up to \$0.81.

Founder Entity Lease Amendments means the amendment document in respect of each of the Founder Entity Leases, on terms agreed between the parties.

Founder Entity Leases means any lease agreed by the parties to constitute a "Founder Entity Lease".

Founder Entity Scheme Participant means a Founder Entity that is a Scheme Participant.

IBC means the Independent Board Committee of 1300 Smiles Board.

Implementation Date means the 5th Business Day following the Record Date.

Income means the components of “Trading Income” and “Other Income” account items (net of “Discounts”) as presented in the consolidated management account Profit & Loss Statement of 1300 Smiles Group as at 30 June 2021.

Incoming Directors means Sinead Ryan, Stephen Davies and Chris Williams.

Independent Directors means each of the 1300 Smiles directors other than the Founder.

Independent Expert means the independent expert, independent of the parties, appointed by 1300 Smiles under clause 5.2(c).

Independent Expert’s Report means the report from the Independent Expert for inclusion in the Scheme Booklet, including any update or supplementary report, stating whether in the Independent Expert’s opinion the Scheme is in the best interests of 1300 Smiles Shareholders.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to any part of its property;
- (c) it is subject to any arrangement (including a deed of company arrangement or scheme of arrangement), assignment, moratorium, compromise or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this document);
- (d) an application or order has been made (and in the case of an application which is disputed by the person, it is not stayed, withdrawn or dismissed within 14 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of the things described in any of the above paragraphs;
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this document reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to any of the things described in the above paragraphs happens in connection with that person under the law of any jurisdiction.

Listing Rules means the Listing Rules of ASX and any other applicable rules of ASX modified to the extent of any express written waiver by ASX.

Losses means all claims, demands, damages, losses, costs, expenses and liabilities.

Maintainable EBITDA means, in respect of a relevant period, EBITDA as adjusted by applying the following principles:

- (a) excluding from the calculation of EBITDA the financial impact of the following on the 1300 Smiles Group:
 - (i) **(contemplated transaction)** costs or expenses incurred by a member of the 1300 Smiles Group in relation to the Scheme (including Transaction Costs);
 - (ii) **(revenue or profit from non-operating activities)** revenue or profit from non-operating activities (for example, gains on sales of assets, out of period release of a provision or accrual recorded at the end of the previous financial period); and
 - (iii) **(costs or losses from non-operating activities)** costs or losses arising from non-operating activities (for example, losses on any sale of assets);
- (b) when calculating EBITDA:
 - (i) if an item of Income is taken into account, its related expense must also be taken into account, and vice versa;
 - (ii) no operating expenses incurred during the financial period are to be capitalised to the balance sheet or otherwise debited to retained earnings;
 - (iii) there should be no account re-classifications for income and expenses relative to EBITDA defined in the consolidated management accounts of 1300 Smiles Group prepared for the 12 months to 30 June 2021; and
- (c) excluding any impact on EBITDA resulting from any act or omission that constitutes a breach of this document by Abano.

Material Adverse Effect means:

- (a) a Specified Event which has, has had, or is reasonably likely to have, either individually or when aggregated with any other Specified Event(s), the effect of:
 - (i) diminishing the consolidated net assets of the 1300 Smiles Group by at least \$11,000,000; or
 - (ii) diminishing the consolidated Maintainable EBITDA of the 1300 Smiles Group for:
 - (A) the financial year ending 30 June 2022; or
 - (B) the 12-month period commencing on the date of the Specified Event,
- by at least:
- (C) in the case of Specified Events which have a one-off or non-recurring impact, \$3,050,000; or
 - (D) in all other cases, \$1,220,000,

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against what EBITDA would reasonably have been expected to have been but for such Specified Event or Specified Events (with such expected EBITDA in the case of the financial year ending 30 June 2022 only); or

but does not include any matter, event or circumstance:

- (b) which has been Disclosed;
- (c) which arises from:
 - (i) in relation to the COVID-19 pandemic or natural disaster, any change in general economic or political conditions;
 - (ii) any other change in general economic or political conditions, excluding paragraph (i), including any changes or major disruptions to, or fluctuations in, domestic or international securities markets in general or change in law, and changes arising from acts of terrorism, or war;
 - (iii) any change in taxation rates, interest rates, exchange rates or general economic conditions;
 - (iv) any actual change in law or regulations or generally accepted accounting principles or the interpretation of them; or

except, in the case of paragraphs (ii), (iii) and (iv), to the extent that the 1300 Smiles Group, taken as a whole, is materially and disproportionately affected as compared with other participants in the industry in which the 1300 Smiles Group operates; or

- (e) any change occurring with the written consent of Abano.

Material Contract means a contract or commitment (or any series of related contracts or commitments):

- (a) having an annual Income contribution to the 1300 Smiles Group (determined in accordance with the historical accounting policies and principles applied by 1300 Smiles as at the date of this document) of more than \$750,000;
- (b) having an annual cost to the 1300 Smiles Group of more than \$250,000;
- (c) for the employment of any person whose base compensation (including superannuation benefits) is in excess of \$150,000;
- (d) concerning the use and sale of the 1300 Smiles Group's software or with respect to the intellectual property of the 1300 Smiles Group or any third party including any reseller or distribution agreements;
- (e) containing a covenant not to compete granted by any member of the 1300 Smiles Group in favour of a third party that materially prohibits or restricts any member of the 1300 Smiles Group from engaging in business anywhere in the world; and
- (f) which is entered into other than in the ordinary course of business and which may otherwise be expected to be contracts or commitments to which paragraphs (a) – (e) above apply.

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Material Encumbrances means each of the following registrations on the PPS Register:

- (a) PPSR registration number 201807130029277;
- (b) PPSR registration number 201807260063888;
- (c) PPSR registration number 201807130040717; and
- (d) PPSR registration number 201807260073902.

Material Lease means any lease agreed by the parties to constitute a "Material Lease".

Material Lease Counterparty means each person named as the counterparty to a Material Lease.

Material Licence means each of the following:

- (a) each of 1300 Smiles' accreditations under the Quality Innovation Performance's Practice Dental Practice Accreditation;
- (b) each of 1300 Smiles' trade waste approvals for its practices in Cairns City, Smithfield, Mackay, Gladstone Central, Gladstone, Belgian Gardens, Bundaberg, Bundaberg Central and Bundaberg PO;
- (c) 1300 Smiles' possession licence under the *Radiation Safety Act 1999* (Qld); and
- (d) 1300 Smiles' radiation management licence under the *Radiation Control Act 1990* (NSW).

Non-Change of Control Lease means a premises lease to which 1300 Smiles is a party which is not a Change of Control Lease.

Non-Founder Consideration means \$8.00, less the actual amount of any Special Dividend, in respect of each Transferring Share held by a Non-Founder Scheme Participant, to be provided by Abano to Non-Founder Scheme Participants under the terms of this Scheme for the transfer to Abano of their Transferring Shares.

Non-Founder Scheme Participant means a Scheme Participant other than a Founder Entity Scheme Participant.

Non-Founder Shares means 1300 Smiles Shares held by 1300 Smiles Shareholders other than the Founder Entities.

Outgoing Directors means the Founder, Robert Jones and Jason Smith.

Permitted Encumbrance each of the following registrations on the PPS Register:

- (a) PPSR registration number 201902280090681;
- (b) PPSR registration number 202003180010777;
- (c) PPSR registration number 201510090020365; and
- (d) PPSR registration number 202107300077396.

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

PPS Register means the Personal Property Securities Register established under the PPSA.

Record Date means 5.00pm on the 2nd Business Day following the Effective Date.

Register means the share register of 1300 Smiles and **Registry** has a corresponding meaning.

Regulator's Draft means the draft of the Scheme Booklet in a form acceptable to both parties which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act.

Regulatory Approval means any approval of a Regulatory Authority to the Scheme or any aspect of it which the parties, acting reasonably, determine is necessary or desirable to implement the Scheme.

Regulatory Authority includes:

- (a) ASX, ACCC, ASIC, ATO and the Takeovers Panel;
- (b) a government or governmental, semi-governmental or judicial entity or authority;
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (d) any regulatory organisation established under statute.

Regulatory Review Period means the period from the date on which the Regulator's Draft is submitted to ASIC to the date on which ASIC confirms that it does not intend to make any submissions at the Court hearing on the First Court Date or otherwise object to the Scheme.

Related Body Corporate has the meaning it has in the Corporations Act.

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

Relevant Lessor means any lessors agreed by the parties to constitute a Relevant Lessor.

Representative means, in relation to a party:

- (a) a Related Body Corporate;
- (b) a director, officer or employee of the party or any of the party's Related Bodies Corporate; or
- (c) an adviser to the party or any of the party's Related Bodies Corporate, where an "adviser" means, in relation to an entity, a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant who provides advisory services in a professional capacity and who has been engaged by that entity.

Retained Share means a Scheme Share to be retained by the Founder Entity Scheme Participants.

Scheme means the scheme of arrangement under part 5.1 of the Corporations Act under which all the Transferring Shares will be transferred to Abano

substantially in the form of Annexure A together with any amendment or modification made pursuant to section 411(6) of the Corporations Act.

Scheme Booklet means, in respect of the Scheme, the information booklet to be approved by the Court and despatched to 1300 Smiles Shareholders which includes the Scheme, an explanatory statement complying with the requirements of the Corporations Act, the Independent Expert's Report and notices of meeting and proxy forms.

Scheme Consideration means, in respect of Transferring Shares held by:

- (a) Non-Founder Scheme Participants, the Non-Founder Consideration; and
- (b) Founder Entity Scheme Participants, the Founder Entity Consideration.

Scheme Meeting means the meetings to be convened by the Court at which 1300 Smiles Shareholders will vote on the Scheme.

Scheme Participants means each person who is a 1300 Smiles Shareholder at the Record Date.

Scheme Share means a 1300 Smiles Share held by a Scheme Participant as at the Record Date and, for the avoidance of doubt, includes any 1300 Smiles Shares issued on or before the Record Date.

Second Court Date means the day on which the Court makes an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme.

Shareholder Loans means each of the Loan Agreements between 1300 Smiles and each of the persons specified in the Disclosure Letter.

Special Dividend means a dividend to be declared and paid by 1300 Smiles of up to \$1.10 per 1300 Smiles Share.

Specified Event means an event, occurrence or matter that:

- (a) occurs after the date of this document; or
- (b) occurs before the date of this document but has not been Disclosed before the date of this document.
- (c) will or is reasonably likely to occur after the date of this document and which has not been publicly announced prior to the date of this document.

Specified Insurances means the existing medical malpractice insurance policy, Policy No. 03A005192MDI, Policy wording QBE Medical Malpractice Civil Liability Policy QM824-118, under which 1300 Smiles is named as the insured, and if the final sentence of clause 7.7(b) applies, the Cyber Insurance Policy.

Subsidiary of an entity means another entity which:

- (a) is a subsidiary of the first entity within the meaning of the Corporations Act; and
- (b) is part of a consolidated entity constituted by the first entity and the entities it is required to include in the consolidated financial statements it prepares or would be, if the first entity was required to prepare consolidated financial statements.

Superior Proposal means a genuine Competing Transaction which the IBC, acting in good faith, and after taking advice from its legal and financial advisers (who must be reputable advisers experienced in transactions of this nature), determines:

- (a) would, if completed substantially in accordance with its terms, results in the acquisition of control of 1300 Smiles or all or substantially all of the 1300 Smiles Group;
- (b) is reasonably capable of being completed in accordance with its terms taking into account all aspects of the Competing Transaction, including its conditions and all relevant legal, regulatory and finance matters; and
- (c) is of an equal or higher financial value and is more favourable to 1300 Smiles Shareholders as a whole than the Scheme, taking into account all aspects of the Competing Transaction, including (without limitation) the consideration and terms and conditions of the Competing Transaction, the identity, reputation and financial condition of the person making such proposal, legal, regulatory and financial matters, certainty and any other matters affecting the probability of the Competing Transaction being completed in accordance with its terms.

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

Tax Return means any return relating to Tax including any document which must be lodged with a Taxing Authority or which a taxpayer must prepare and retain under any law with respect to or imposing any Tax (such as an activity statement, schedule or election and any attachment), excluding an amended return.

Taxes means taxes, levies, imposts, charges and duties (including stamp and transaction duties) paid, payable or assessed as being payable by any authority together with any fines, penalties and interest in connection with them.

Taxing Authority means any Regulatory Authority responsible for the administration of any Taxes.

Timetable means the timetable set out in Schedule 1 subject to any amendments agreed by the parties in writing.

Transaction Costs means investment banking, financial adviser, legal, accounting, Registry and other costs payable to other advisers or third party service providers, and retention payments, incurred by 1300 Smiles in respect of the Scheme, in each case inclusive of GST.

Transaction Implementation Committee means a committee to be made up of:

- (a) the Founder (on behalf of 1300 Smiles) and Sinead Ryan (on behalf of Abano Group);
- (b) a representative from each of the legal and financial advisers of each party; and
- (c) such other persons as the parties may agree from time to time.

Transferring Share means a Scheme Share that is not a Retained Share.

Treasurer means the Treasurer of Australia.

1.2 General interpretation

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

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (e) a reference to “**person**” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to Brisbane time;
- (h) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (i) a reference to “**law**” includes common law, principles of equity and legislation (including regulations);
- (j) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (k) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (l) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually; and
- (m) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (n) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (o) if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day;
- (p) if the day on which a party must do something under this document is not a Business Day, the party must do it on the next Business Day;.

2 Agreement to propose and implement Scheme

2.1 1300 Smiles to propose Scheme

1300 Smiles agrees to propose the Scheme on and subject to the terms and conditions of this document.

2.2 Nomination of acquirer Subsidiary

At any time prior to the Business Day before the First Court Date, Abano may nominate any wholly-owned Subsidiary of Abano (“**Abano Nominee**”) to acquire 1300 Smiles Shares under the Scheme by providing a written notice which sets out the details of Abano Nominee to 1300 Smiles. If Abano decides to nominate Abano Nominee to acquire 1300 Smiles Shares:

- (a) the parties must procure that the 1300 Smiles Shares transferred under the Scheme are transferred to Abano Nominee rather than Abano; and
- (b) Abano must procure that Abano Nominee complies with all of the relevant obligations of Abano under this document and the Scheme; and
- (c) any such nomination will not relieve Abano of its obligations under this document, including the obligation to provide (or procure the provision of) the Scheme Consideration in accordance with the terms of the Scheme provided that Abano will not be in breach of this document for failing to perform an obligation of Abano if that obligation is fully discharged by Abano Nominee.

2.3 Agreement to implement Scheme

The parties agree to implement the Scheme on the terms and conditions of this document.

3 Conditions Precedent

3.1 Conditions Precedent

Subject to this clause 3, the Scheme will not become Effective, and the obligations of Abano under clause 4.3 are not binding, until each of the following Conditions Precedent are satisfied or waived to the extent and in the manner set out in this clause.

Condition Precedent		Party entitled to benefit	Party responsible
(a)	<p>(FIRB approval) before 5.00pm on the Business Day before the Second Court Date either:</p> <ul style="list-style-type: none">(i) the Treasurer (or the Treasurer’s delegate) has provided a written no objections notification to the Scheme either without conditions or with conditions acceptable to Abano (acting reasonably); or(ii) following notice of the proposed Scheme having been given by Abano to the Treasurer under the FIRB Act, the Treasurer has ceased to be empowered to make any order under Part 3 of the FIRB Act because	Cannot be waived	Abano

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Condition Precedent		Party entitled to benefit	Party responsible
	the applicable time limit on making orders and decisions under the FIRB Act has expired.		
(b)	(Shareholder approval) 1300 Smiles Shareholders (including the requisite classes of 1300 Smiles Shareholders) approve the Scheme by the requisite majorities in accordance with the Corporations Act.	Cannot be waived	1300 Smiles
(c)	(Court approval) the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.	Cannot be waived	1300 Smiles
(d)	(Regulatory intervention) no Court or Regulatory Authority has issued an order, temporary restraining order, preliminary or permanent injunction, decree or ruling or taken any action enjoining, restraining or otherwise imposing a legal obligation, restraint or prohibition preventing or impacting the Scheme and no such order, decree, ruling, other action or refusal is in effect as at 8.00am on the Second Court Date.	Both	Both
(e)	(Elections) The Founder Entities make a valid Election by the Election Date.	Abano	1300 Smiles
(f)	(Ancillary Documents) Each Ancillary Document has been entered into by the parties to those documents and remain in force as at 8.00am on the Second Court Date.	Both	Both
(g)	(Independent Expert) the Independent Expert issues a report which concludes that the Scheme is in the best interests of Scheme Participants before the date on which the Scheme Booklet is lodged with ASIC and the Independent Expert does not change its conclusion or withdraw its report at any time prior to 8.00am on the Second Court Date.	1300 Smiles	1300 Smiles
(h)	(No 1300 Smiles Prescribed Event) no 1300 Smiles Prescribed Event occurs between the date of this document and 8.00am on the Second Court Date.	Abano	1300 Smiles
(i)	(No Material Adverse Effect) no Material Adverse Effect occurs between the date of this document and 8.00am on the Second Court Date.	Abano	1300 Smiles
(j)	(1300 Smiles Representations and Warranties) the 1300 Smiles Representations and Warranties are true and correct in all material respects on the date of this document and as at 8.00am on the Second Court Date, except where expressed to be operative at another date.	Abano	1300 Smiles

Condition Precedent		Party entitled to benefit	Party responsible
(k)	(Change of control) in respect of each Change of Control Contract, each counterparty to that contract with relevant rights provides all approvals, consents or waivers which are required under that Change of Control Contract in connection with implementation of the Scheme.	Abano	1300 Smiles
(l)	(Shareholder Loans) before 8.00am on the Second Court Date, 1300 Smiles and each relevant borrower must enter into a payment direction to cause the full amount owed by each relevant borrower under each Shareholder Loan at that time to be repaid from Scheme Consideration and for each relevant Shareholder Loan to be terminated.	Abano	1300 Smiles
(m)	(Relevant lease consent) Relevant Lessors have provided all approvals, consents or waivers which are required under a Change of Control Lease for the change of control in relation to 1300 Smiles.	Abano	1300 Smiles

3.2 Reasonable endeavours

Each of 1300 Smiles and Abano agree to use reasonable endeavours to procure that:

- (a) each of the Conditions Precedent for which it is a party responsible (as noted in clause 3.1):
 - (i) is satisfied as soon as practicable after the date of this document; and
 - (ii) continues to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
- (b) there is no occurrence that would prevent the Condition Precedent for which it is a party responsible being satisfied.

3.3 Regulatory matters

Without limiting clause 3.2, each party:

- (a) **(applying for Regulatory Approvals)** must promptly apply for all relevant Regulatory Approvals and provide each other party with a copy of those applications (provided that any commercially sensitive information may be redacted from the copy provided);
- (b) **(Regulatory Approvals process)** must take all steps it is responsible for as part of the Regulatory Approval process, including responding to requests for information at the earliest practicable time;
- (c) **(representation)** has the right to be represented and make submissions at any meeting with any Regulatory Authority relating to a Regulatory Approval;
- (d) **(consultation)** must consult with the other party in advance in relation to all communications (whether written or oral, and whether direct or via a Representative) with any Regulatory Authority relating to any Regulatory Approval and:

- (i) provide the other party with drafts of any material written communications to be sent to a Regulatory Authority and make any amendments as the other party reasonably requires; and
- (ii) provide copies of any material written communications sent to or received from a Regulatory Authority to the other party promptly upon despatch or receipt (as the case may be),

in each case to the extent it is reasonable to do so; and

- (e) **(Regulatory Authority)** must promptly offer to the relevant Regulatory Authority, and agree or accept, all undertakings, commitments and conditions necessary or appropriate in order to obtain the approval or consent (as the case may be) as soon as possible, unless it would be unreasonable to do so.

3.4 Waiver of Conditions Precedent

- (a) A Condition Precedent may only be waived in writing by the party or parties entitled to the benefit of that Condition Precedent as noted in clause 3.1 and will be effective only to the extent specifically set out in that waiver.
- (b) A party entitled to waive the breach or non-fulfilment of a Condition Precedent under this clause 3.4 may do so in its absolute discretion.
- (c) If either 1300 Smiles or Abano waives the breach or non-fulfilment of a Condition Precedent in accordance with this clause 3.4, then:
 - (i) subject to clause 3.4(c)(ii), that waiver precludes that party from suing the other for any breach of this document arising as a result of the breach or non-fulfilment of that Condition Precedent or arising from the same event which gave rise to the breach or non-fulfilment of that Condition Precedent; but
 - (ii) if the waiver of the Condition Precedent is itself conditional and the other party:
 - (A) accepts the condition, the terms of that condition apply notwithstanding any inconsistency with clause 3.4(c)(i); or
 - (B) does not accept the condition, the Condition Precedent has not been waived.
- (d) A waiver of a breach or non-fulfilment in respect of a Condition Precedent does not constitute:
 - (i) a waiver of a breach or non-fulfilment of any other Condition Precedent arising from the same event; or
 - (ii) a waiver of a breach or non-fulfilment of that Condition Precedent resulting from any other event.

3.5 Notices in relation to Conditions Precedent

Each party must:

- (a) **(notice of satisfaction)** promptly notify the other of satisfaction of a Condition Precedent and must keep the other informed of any material

development of which it becomes aware that may lead to the breach or non-fulfilment of a Condition Precedent;

- (b) **(notice of failure)** promptly give written notice to the other of a breach or non-fulfilment of a Condition Precedent, or of any event which will prevent a Condition Precedent being satisfied; and
- (c) **(notice of waiver)** upon receipt of a notice given under clause 3.5(b), give written notice to the other party as soon as possible (and in any event before 5.00pm on the day before the Second Court Date) as to whether or not it waives the breach or non-fulfilment of any Condition Precedent resulting from the occurrence of that event, specifying the Condition Precedent in question.

3.6 Consultation on failure of Condition Precedent

If:

- (a) there is a breach or non-fulfilment of a Condition Precedent which is not waived in accordance with this document by the time or date specified in this document for the satisfaction of the Condition Precedent;
- (b) there is an act, failure to act or occurrence which will prevent a Condition Precedent being satisfied by the time or date specified in this document for the satisfaction of the Condition Precedent (and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this document); or
- (c) the Scheme has not become Effective by the End Date,

the parties must consult in good faith with a view to determine whether:

- (d) the Scheme may proceed by way of alternative means or methods;
- (e) to extend the relevant time for satisfaction of the Condition Precedent or to adjourn or change the date of an application to the Court; or
- (f) to extend the End Date.

3.7 Failure to agree

If the parties are unable to reach agreement under clause 3.6 within 5 Business Days (or any shorter period ending at 5.00pm on the day before the Second Court Date):

- (a) subject to clause 3.7(b), either party may terminate this document (and that termination will be in accordance with clause 12.1(g)(i)); or
- (b) if a Condition Precedent may be waived and exists for the benefit of one party only, that party only may waive that Condition Precedent or terminate this document (and that termination will be in accordance with clause 12.1(g)(ii)),

in each case before 8.00am on the Second Court Date.

A party will not be entitled to terminate this document under this clause if the relevant Condition Precedent has not been satisfied or agreement cannot be reached as a result of a breach of this document by that party or a deliberate act or omission of that party.

4 Outline of Scheme

4.1 Scheme

1300 Smiles must propose a scheme of arrangement under which:

- (a) all Transferring Shares held by Scheme Participants at the Record Date will be transferred to Abano; and
- (b) each Scheme Participant who holds Transferring Shares will be entitled to receive the Scheme Consideration in respect of those Transferring Shares.

4.2 Scheme Consideration

Subject to and in accordance with this document and the Scheme, each Scheme Participant is entitled to receive the Scheme Consideration in respect of each Transferring Share held by that Scheme Participant.

4.3 Payment of Scheme Consideration

Subject to this document and the Scheme, Abano undertakes to 1300 Smiles (in its own right and separately as trustee or nominee of each Scheme Participant) that, in consideration of the transfer to Abano of each Transferring Share held by a Scheme Participant, Abano will, on the Implementation Date:

- (a) accept that transfer;
- (b) pay or procure the payment:
 - (i) to each Non-Founder Scheme Participant an amount equal to the Non-Founder Consideration for each Transferring Share transferred to Abano on the Implementation Date by that Non-Founder Scheme Participant; and
 - (ii) to each Founder Entity Scheme Participant, an amount equal to the Founder Entity Cash Consideration for each Transferring Share transferred to Abano on the Implementation Date by a Founder Entity Scheme Participant; and
- (c) issue to each Founder Entity Scheme Participant the Founder Entity Contingent Note Consideration for each Transferring Share transferred to Abano on the Implementation Date by a Founder Entity Scheme Participant.

Where the calculation of the Scheme Consideration to be provided to a Scheme Participant would result in the Scheme Participant becoming entitled to:

- (d) a fraction of a cent, the fractional entitlement will be rounded up or down (as applicable) to the nearest cent; or
- (e) a fraction of a Founder Entity Contingent Note the fractional entitlement will be rounded up or down (as applicable) to the nearest whole number of Founder Entity Contingent Notes.

4.4 Election mechanism

- (a) 1300 Smiles must ensure that an Election Form is made available to the Founder Entities.

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- (b) The Election Form must include the relevant matters set out in the Scheme and must otherwise be in a form agreed by the parties in writing.

4.5 No amendment to the Scheme without consent

1300 Smiles 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 Abano (not to be unreasonably withheld or delayed).

5 Implementation

5.1 General obligations

1300 Smiles and Abano must each:

- (a) use all reasonable endeavours and commit necessary resources (including management and corporate relations resources and the resources of external advisers); and
- (b) procure that its officers and advisers work in good faith and in a timely and co-operative fashion with the other party (including by attending meetings and by providing information),

to produce the Scheme Booklet and implement the Scheme as soon as reasonably practicable and in accordance with the Timetable.

5.2 1300 Smiles' obligations

1300 Smiles must take all reasonable steps to implement the Scheme on a basis consistent with this document as soon as reasonably practicable and must:

- (a) **(announcement)** following execution of this document, announce, in a form agreed between 1300 Smiles and Abano (on the basis of statements made to 1300 Smiles by each member of the IBC) that:
- (i) the IBC intends to unanimously recommend to 1300 Smiles Shareholders that the Scheme be approved; and
- (ii) each director of 1300 Smiles who holds 1300 Smiles Shares, intends to vote his or her 1300 Smiles Shares in favour of the Scheme,

subject to:

- (iii) the Independent Expert concluding, and continuing to conclude, that the Scheme is in the best interests of 1300 Smiles Shareholders and is fair and reasonable to the Non-Founder Scheme Participants; and
- (iv) there being no Superior Proposal.
- (b) **(preparation of Scheme Booklet)** subject to clause 5.2(e)(i), as soon as practicable after the date of this document, prepare and despatch the Scheme Booklet:

- (i) in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the Listing Rules; and
- (ii) which includes a statement:
 - (A) by the IBC unanimously recommending that 1300 Smiles Shareholders vote in favour of the Scheme subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of 1300 Smiles Shareholders and there being no Superior Proposal; and
 - (B) that each director of 1300 Smiles who holds 1300 Smiles Shares intends to vote his or her 1300 Smiles Shares in favour of the Scheme subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of 1300 Smiles Shareholders and there being no Superior Proposal;
- (c) **(Independent Expert)** promptly appoint the Independent Expert and provide any assistance and information reasonably requested by the Independent Expert to enable the Independent Expert to prepare its report for the Scheme Booklet as soon as practicable;
- (d) **(section 411(17)(b) statement)** apply to ASIC for the production of a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (e) **(consultation with Abano)** consult with Abano as to the content and presentation of:
 - (i) the Scheme Booklet, which includes:
 - (A) allowing Abano a reasonable opportunity to review and make comments on successive drafts of the Scheme Booklet (accepting that any review of the Independent Expert's Report is limited to review for factual accuracy of those parts that include information relating to Abano);
 - (B) taking any reasonable comments made by Abano into account in good faith when producing a revised draft of the Scheme Booklet;
 - (C) providing to Abano a revised draft of the Scheme Booklet within a reasonable time before the draft of the Scheme Booklet which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act is finalised; and
 - (D) obtaining Abano's consent to the inclusion of the Abano Information (including in respect of the form and context in which the Abano Information appears in the Scheme Booklet); and
 - (ii) documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating processes, affidavits, submissions and draft minutes of Court orders), and consider in good faith any comments on, or

suggested amendments to, those documents from Abano prior to filing those documents with the Court;

- (f) **(lodgement of Regulator's Draft)**
- (i) no later than 14 days before the First Court Date, provide an advanced draft of the Scheme Booklet ("**Regulator's Draft**") to ASIC for its review for the purposes of section 411(2) of the Corporations Act, and provide a copy of the Regulator's Draft to Abano immediately thereafter; and
 - (ii) keep Abano reasonably informed of any material issues raised by ASIC in relation to the Regulator's Draft and, where practical to do so, consult with Abano in good faith prior to taking any steps or actions to address those material issues (provided that, where those issues relate to Abano Information, 1300 Smiles must not take any steps to address them without Abano's prior written consent, not to be unreasonably withheld);

- (g) **(supplementary disclosure)** if, after despatch of the Scheme Booklet, 1300 Smiles becomes aware:
- (i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
 - (ii) of information that is required to be disclosed to 1300 Smiles Shareholders under any applicable law but was not included in the Scheme Booklet,

promptly consult with Abano in good faith as to the need for, and the form of, any supplementary disclosure to 1300 Smiles Shareholders, and make any disclosure that 1300 Smiles considers reasonably necessary in the circumstances, having regard to applicable laws and to ensure that there would be no breach of clause 11.1(f) if it applied as at the date that information arose;

- (h) **(Court application)** apply to the Court for an order under section 411(1) of the Corporations Act directing 1300 Smiles to convene the Scheme Meeting;
- (i) **(registration of Scheme Booklet)** after the Court orders 1300 Smiles to convene the Scheme Meeting, request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (j) **(send Scheme Booklet)** send the Scheme Booklet to 1300 Smiles Shareholders as soon as practicable after the Court orders 1300 Smiles to convene the Scheme Meeting;
- (k) **(Scheme Meeting)** convene the Scheme Meeting to agree to the Scheme in accordance with any orders made by the Court pursuant to section 411(1) of the Corporations Act;
- (l) **(director's voting)** use its reasonable endeavours to procure that each director of 1300 Smiles votes any 1300 Smiles Shares in which they have a Relevant Interest in favour of the Scheme unless clauses 6.1(c) or 6.1(d) apply;
- (m) **(Court approval)** subject to all Conditions Precedent, other than paragraph (c) (Court approval) in clause 3.1 being satisfied or waived in

accordance with this document, apply to the Court for an order approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;

- (n) **(Registry details)** subject to the terms of the Scheme, provide:
- (i) all necessary information about the 1300 Smiles Shareholders known to 1300 Smiles which Abano reasonably requires in order to solicit votes at the Scheme Meeting; and
 - (ii) all necessary directions to the Registry to promptly provide any information that Abano requires in relation to the Register, including any sub-register, and where requested by Abano, 1300 Smiles must procure that information to be provided in the electronic form as reasonably requested by Abano;
- (o) **(proxies)**
- (i) after the date the Scheme Booklet is sent to 1300 Smiles Shareholders, provide Abano with a daily report detailing proxies received in respect of the Scheme Meeting; and
 - (ii) provide to Abano copies of all call centre scripts proposed to be used by 1300 Smiles for 1300 Smiles Shareholder canvassing activities and take into account any reasonable comments made by 1300 Smiles;
- (p) **(promotion of Scheme)** provide all reasonable co-operation in the promotion of the Scheme to 1300 Smiles Shareholders as requested by Abano (acting reasonably), including procuring that senior 1300 Smiles Group employees meeting with key 1300 Smiles Shareholders and communicate with employees, dentists, customers and suppliers in a manner which is supportive of the Scheme;
- (q) **(Conditions Precedent certificate)** at the hearing on the Second Court Date, provide to the Court (through its counsel):
- (i) a certificate signed by one of its directors and made in accordance with a resolution of its board confirming (in respect of matters within 1300 Smiles' knowledge) whether or not the Conditions Precedent for which it is responsible, as noted in clause 3.1 (other than paragraph (c) (Court approval)), have been satisfied or waived in accordance with clause 3, a draft of which must be provided to Abano by 5.00pm on the Business Day prior to the Second Court Date; and
 - (ii) any certificate provided to it by Abano under clause 5.3(g);
- (r) **(lodge copy of Court order)** lodge with ASIC an office copy of the Court order approving the Scheme as approved by the 1300 Smiles Shareholders at the Scheme Meeting in accordance with section 411(10) of the Corporations Act on the Business Day after that office copy is received (or any later date agreed in writing by Abano);
- (s) **(Register)** close the Register as at the Record Date to determine the identity of Scheme Participants and their entitlements to Scheme Consideration;
- (t) **(instruments of transfer)** subject to Abano satisfying its obligations under clause 4.3, on the Implementation Date:

- (i) execute proper instruments of transfer and effect the transfer of Transferring Shares to Abano in accordance with the Scheme; and
- (ii) register all transfers of Transferring Shares held by Scheme Participants to Abano;
- (u) **(Suspension of trading)** apply to ASX to suspend trading in 1300 Smiles Shares with effect from the close of trading on the Effective Date;
- (v) **(listing)** take all reasonable steps to maintain 1300 Smiles' listing on ASX, notwithstanding any suspension of the quotation of 1300 Smiles Shares, up to and including the Implementation Date, including making appropriate applications to ASX and ASIC;
- (w) **(information)** promptly provide to Abano any information regarding the 1300 Smiles Group that Abano reasonably requires to prepare the Abano Information for inclusion in the Scheme Booklet; and
- (x) **(other steps)** do all other things necessary to give effect to the Scheme and the orders of the Court approving the Scheme.

5.3 Abano's obligations

Abano must take all reasonable steps to assist 1300 Smiles to implement the Scheme on a basis consistent with this document and as soon as reasonably practicable, and in particular must:

- (a) **(Abano Information)** prepare and promptly provide to 1300 Smiles for inclusion in the Scheme Booklet the Abano Information (in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 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 1300 Smiles and provide comments promptly on those drafts in good faith;
- (c) **(further Abano Information)** promptly provide to 1300 Smiles any further or new Abano Information as may arise after the Scheme Booklet has been sent to 1300 Smiles Shareholders and until the date of the Scheme Meeting as may be necessary to ensure that the Abano Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission) and to ensure that there would be no breach of clause 11.4(g) if it applied as at the date on which such further or new Abano Information arose;
- (d) **(Independent Expert information)** provide any assistance or information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (e) **(representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act, at which, through its counsel, Abano must undertake (if requested by the court) to do all things and take all steps within its power as may be necessary in order to ensure the fulfilment of its obligations under this document and the Scheme;
- (f) **(Deed Poll)** prior to the Scheme Booklet being sent, sign and deliver, or procure Abano Nominee sign and deliver, the Deed Poll;

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- (g) **(Conditions Precedent certificate)** before 8.00am on the Second Court Date, provide to 1300 Smiles for provision to the Court at the hearing on that date a certificate signed by one of its directors and made in accordance with a resolution of its board confirming (in respect of matters within Abano's knowledge) whether or not the Conditions Precedent for which Abano is responsible, as noted in clause 3.1 (other than paragraph (c) (Court approval)), have been satisfied or waived in accordance with clause 3, a draft of which must be provided to 1300 Smiles by 5.00pm on the Business Day prior to the Second Court Date;
 - (h) **(Share transfer)** if the Scheme becomes Effective, accept a transfer of the Transferring Shares as contemplated by clause 4.3(a);
 - (i) **(Scheme Consideration)** if the Scheme becomes Effective, provide or procure the provision of the Scheme Consideration in the manner and amount contemplated by clauses 4.3(b) and 4.3(c) and the terms of the Scheme;
 - (j) **(Co-Investment Deed)** procure that the Co-Investment Deed is executed by Abano HoldCo and remains in force at 8.00am on the Second Court Date, as contemplated by clause 3.1(m) and that the Co-Investment Deed remains in force until the Implementation Date; and
 - (k) **(other steps)** if the Scheme becomes Effective, do all other things necessary to give effect to the Scheme and the orders of the Court approving the Scheme.

5.4 Scheme Booklet responsibility statement

The responsibility statement to appear in the Scheme Booklet, in a form to be agreed by the parties, will contain words to the effect of:

- (a) 1300 Smiles has prepared, and is responsible for, the content of the Scheme Booklet other than, to the maximum extent permitted by law, the Abano Information, the Independent Expert's Report or any other report or letter issued to 1300 Smiles by a third party; and
- (b) Abano has prepared, and is responsible for, the Abano Information in the Scheme Booklet (and no other part of the Scheme Booklet) and that 1300 Smiles and its directors and officers do not assume any responsibility for the accuracy or completeness of the sections of the Scheme Booklet that Abano has prepared and has responsibility for.

5.5 Disagreement on content of Scheme Booklet

If Abano and 1300 Smiles 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 complete agreement is not reached after reasonable consultation, then:

- (a) if the disagreement relates to the form or content of the Abano Information contained in the Scheme Booklet, 1300 Smiles will make any amendments as Abano reasonably requires acting in good faith; and
- (b) if the disagreement relates to the form or content of any other part of the Scheme Booklet, the 1300 Smiles Board will, acting in good faith, decide the final form or content of the disputed part of the Scheme Booklet.

5.6 Verification

Each party must undertake appropriate verification processes for the information supplied by that party in the Scheme Booklet.

5.7 Conduct of Court proceeding

1300 Smiles and Abano are entitled to separate representation at all Court proceedings relating to the Scheme. This document does not give 1300 Smiles or Abano any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent. 1300 Smiles and Abano must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Scheme as contemplated by this document.

5.8 Appeal process

If the Court refuses to make orders convening the Scheme Meeting or approving the Scheme, Abano and 1300 Smiles must appeal the Court's decision to the fullest extent possible except to the extent that:

- (a) the parties agree otherwise; or
- (b) an independent senior counsel advises that, in their opinion, an appeal would have no reasonable prospect of success before the End Date,

in which case either party may terminate this document in accordance with clause 12.1(g)(iii).

5.9 Financing co-operation

From the date of this document and the earlier of the Effective Date and the termination of this document, 1300 Smiles agrees to provide to Abano such information and assistance as may be reasonably requested by Abano in connection with the arrangement or syndication of any acquisition or debt financings by any member of the Abano Group in connection with the implementation of the Scheme, including:

- (a) ensuring relevant senior executives of the 1300 Smiles Group are available to attend management presentations and/or other calls or meetings with the proposed financiers; and
- (b) assisting Abano to satisfy any conditions and obligations of any financing to the extent those conditions and obligations are within its control (including the repayment of the existing 1300 Smiles Facilities and/or transitioning of same to the Abano Group's financiers, subject always to 1300 Smiles not being required to actually effect such repayment until the Implementation Date).

5.10 Transaction Implementation Committee

The parties must establish a Transaction Implementation Committee as soon as reasonably practical after the date of this document. The role of the Transaction Implementation Committee will be to act as a forum for consultation and planning by the parties to:

- (a) implement the Scheme; and
- (b) subject to clause 5.11, ensure the smooth transition of the management of the business and affairs of the 1300 Smiles Group to Abano following the implementation of the Scheme including to:

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- (i) keep Abano reasonably and promptly informed of, and reasonably consider Abano's views about, material developments in the business of the 1300 Smiles Group;
 - (ii) promptly following a request by Abano, provide access to documents and information relating to the 1300 Smiles Group for the purpose of or in connection with:
 - (A) planning the transition of the management of the business and affairs of the 1300 Smiles Group and other matters relating to the conduct of the business and affairs of the 1300 Smiles Group following implementation of the Scheme;
 - (B) keeping Abano informed of material developments relating to the 1300 Smiles Group; or
 - (C) any other purpose agreed between Abano and 1300 Smiles.

Nothing in this clause 5.10 obliges 1300 Smiles to provide Abano or its Representatives any information:

- (c) concerning the Board's recommendation of the Scheme; or
- (d) which would breach any applicable law or regulation or any obligations of confidentiality owed to any person or result in the loss of legal privilege.

5.11 No partnership or joint venture

Subject to this document, nothing in this clause requires either party to act at the direction of the other. The business of each party will continue to operate independently from the other until the Implementation Date. The parties agree that nothing in this document constitutes the relationship of a partnership or a joint venture between the parties.

5.12 Payment of the Special Dividend

- (a) Despite any other provision of this document, 1300 Smiles may declare and pay the Special Dividend to 1300 Smiles Shareholders, provided that the Special Dividend:
 - (i) is to be declared and paid any time prior to the Implementation Date;
 - (ii) does not breach the Benchmark Rule of section 203-25 of the Income Tax Assessment Act 1997 (Cth);
 - (iii) must be in compliance with Part 2H.5 of the Corporations Act;
 - (iv) will be franked to the maximum extent possible, subject to the franking account of 1300 Smiles not being in deficit after the payment of the Special Dividend or prior to the declaration of or resolution to pay the Special Dividend; and
 - (v) is to be paid from accumulated profits, retained earnings or distributable reserves (or a combination of all or some of them) of the 1300 Smiles Group existing immediately prior to the declaration of the Special Dividend.

- (b) 1300 Smiles must provide Abano with supporting documents evidencing (to Abano's reasonable satisfaction) that:
- (i) the franking account of 1300 Smiles will not be in deficit after the payment of the Special Dividend; and
 - (ii) the Special Dividend does not breach the Benchmark Rule of section 203-25 of the Income Tax Assessment Act 1997 (Cth).
- (c) Despite any other provision of this document, 1300 Smiles may make any intra group distributions and payments between members of the 1300 Smiles Group, in order to be able to declare and pay the Special Dividend in accordance with clause 5.12(a).

6 Recommendations and intentions

6.1 IBC Recommendation and Voting Intentions

1300 Smiles must ensure that any public announcement made by 1300 Smiles and the Scheme Booklet state that:

- (a) the IBC considers the Scheme to be in the best interests of 1300 Smiles Shareholders and that the IBC unanimously recommends that 1300 Smiles Shareholders vote in favour of the Scheme (**Recommendation**); and
- (b) each director of 1300 Smiles intends to cause any 1300 Smiles Shares in which they have a Relevant Interest to be voted in favour of the Scheme (**Voting Intention**);

unless:

- (c) there is a Superior Proposal; or
- (d) the Independent Expert concludes in the Independent Expert's Report (or any update or variation to that report) that the Scheme is not in the best interests of 1300 Smiles Shareholders or not fair and reasonable to Non-Founder Scheme Participants, or adversely changes its previously given opinion in the Independent Expert's Report (or any update or variation to that report) that the Scheme is in the best interests of 1300 Smiles Shareholders.

6.2 Notification of withdrawal or change of recommendation

Without limiting clause 9, if a member of the IBC proposes to withdraw or change its Recommendation or if a director of 1300 Smiles proposes to withdraw or changes its Voting Intention in accordance with clause 6.1:

- (a) 1300 Smiles must notify Abano in writing immediately; and
- (b) if a withdrawal or change of Recommendation or Voting Intention is proposed in accordance with clause 6.1(d), the parties must consult in good faith for 2 Business Days after the date on which the notification in clause 6.2(a) is given to consider and determine whether the Recommendation and Voting Intention in place at the time can be maintained. That Recommendation and Voting Intention cannot be withdrawn or changes in accordance with clause 6.1 until the end of the consultation period.

6.3 Confirmation

1300 Smiles represents and warrants to Abano that each member of the IBC has confirmed that they intend to provide the Recommendation and each director of 1300 Smiles has confirmed that each director of 1300 Smiles intends to provide the Voting Intention, and their agreement not to do anything inconsistent with their Recommendation and Voting Intention (including withdrawing, changing or in any way qualifying their Recommendation or Voting Intention) other than in circumstances referred to in clause 6.1.

7 Directors and employees

7.1 Release of 1300 Smiles and 1300 Smiles directors and officers

Subject to the Corporations Act, Abano releases its rights, and agrees with 1300 Smiles that it will not make a claim, against any 1300 Smiles Indemnified Party (other than 1300 Smiles and its Related Bodies Corporate) as at the date of this document and from time to time in connection with:

- (a) any breach of any representations and warranties of 1300 Smiles or any other member of 1300 Smiles Group in this document; or
- (b) 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 1300 Smiles Indemnified Party has engaged in wilful misconduct or fraud. Nothing in this clause 7.1 limits Abano's rights to terminate this document under clause 12.1.

7.2 Benefit for 1300 Smiles Indemnified Parties

1300 Smiles receives and holds the benefit of this clause to the extent it relates to each 1300 Smiles Indemnified Party as trustee on behalf of each of them.

7.3 Release of Abano and Abano directors and officers

Subject to the Corporations Act, 1300 Smiles releases its rights, and agrees with Abano that it will not make a claim, against any Abano Indemnified Party (other than Abano and its Related Bodies Corporate) as at the date of this document and from time to time in connection with:

- (a) any breach of any representations and warranties of Abano or any other member of the Abano Group in this document; or
- (b) 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 whether the Abano Indemnified Party has engaged in wilful misconduct or fraud. Nothing in this clause 7.3 limits 1300 Smiles' rights to terminate this document under clause 12.1.

7.4 Benefit for Abano Indemnified Parties

Abano receives and holds the benefit of this clause to the extent it relates to each Abano Indemnified Party as trustee on behalf of each of them.

7.5 Appointment/retirement of 1300 Smiles directors

On the Implementation Date, but subject to the Scheme Consideration having been provided to the Scheme Participants and receipt by 1300 Smiles of signed consents to act, 1300 Smiles must use its reasonable endeavours to:

- (a) cause the appointment of each Incoming Director to the 1300 Smiles Board; and
- (b) procure that each of the Outgoing Directors retire from the 1300 Smiles Board and provide written notice to the effect that they have no claim outstanding for loss of office, remuneration or otherwise against 1300 Smiles,

in each case, in accordance with 1300 Smiles' constitution, the Corporations Act and the Listing Rules.

7.6 Directors' and officers' insurance

- (a) Subject to the Scheme becoming Effective and subject to the Corporations Act, Abano undertakes in favour of 1300 Smiles and each other person who is a 1300 Smiles Indemnified Party that it will to the extent permitted by law and unless otherwise agreed:
 - (i) for a period of 7 years from the Implementation Date, ensure that the constitutions of 1300 Smiles and each other member of the 1300 Smiles Group continue to contain such rules as are contained in those constitutions at the date of this document 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 member of the Abano Group; and
 - (ii) procure that 1300 Smiles and each other member of the 1300 Smiles Group complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time, subject to clause 7.7, for a period of 7 years from the retirement date of each director and officer.
- (b) Notwithstanding any other provision of this document, 1300 Smiles must, subject to Abano's approval of the relevant quotation, at 1300 Smiles' cost, prior to the Implementation Date, enter into arrangements to secure separate directors' and officers' run-off insurance for a period of up to 7 years on and from the Implementation Date for the retiring directors and officers and other individuals and entities who are insured under the existing directors' and officers' insurance policy for the 1300 Smiles Group, on terms no less favourable than such current policy in force or expiring as at the Implementation Date, in respect of acts or omissions occurring in the period up to and including the Implementation Date, including in connection with the Scheme (**D&O Run-Off Insurance**). Before entering into D&O Run-Off Insurance, Abano must first approve such quotation (such approval not to be unreasonably withheld, conditioned or delayed) before 1300 Smiles may enter into that contract of insurance.
- (c) To the extent permitted by law and unless otherwise agreed, Abano must not, and from the Implementation Date must procure that each member of the 1300 Smiles Group must not, amend or cancel any D&O Run-Off Insurance or Other Run-Off Insurance at any time after the Implementation Date, or do anything or fail to do anything within its reasonable control which would prejudice or adversely affect any D&O

Run-Off Insurance or Other Run-Off Insurance (or the cover under such) at any time after the Implementation Date.

7.7 Other insurance policies notification and Run-Off Policies

- (a) Prior to the Implementation Date, 1300 Smiles must provide, or must procure that the relevant member of the 1300 Smiles Group provides any notifications:
- (i) which are required to be provided under the 1300 Smiles Group's insurance policies prior to the Implementation Date in respect of the Scheme; and
 - (ii) under the 1300 Smiles Group's insurance policies prior to the Implementation Date all matters in respect of which the 1300 Smiles Group consider that they have grounds to make a claim under such policies.
- (b) As soon as reasonably practicable after the date of this document, 1300 Smiles must notify, or must procure that the relevant member of the 1300 Smiles Group notifies, the insurer under the Cyber Insurance Policy and use reasonable endeavours to obtain written confirmation from the relevant insurer under the Cyber Insurance Policy that the Scheme will not affect coverage under the Cyber Insurance Policy, including that the Cyber Insurance Policy will not be cancelled or amended as a result of the Scheme and will remain in force and effect following Implementation on the same terms and conditions as prior to implementation. If 1300 Smiles is not able to obtain such confirmation within 10 Business Days prior to Implementation, 1300 Smiles' obligations under clause 7.7(c) apply in relation to the Cyber Insurance Policy.
- (c) Subject to clause 7.7(b) but notwithstanding any other provision of this document, 1300 Smiles must, subject to Abano's approval of the relevant quotation(s) and at 1300 Smiles' cost, prior to the Implementation Date, enter into arrangements to secure separate run-off insurance for the Specified Insurance(s) for a period of up to 7 years on and from the Implementation Date for 1300 Smiles and each of the entities and individuals who are insured under the Specified Insurance(s), on terms no less favourable than such Specified Insurance(s) in force or expiring as at the Implementation Date, in respect of acts or omissions occurring in the period up to and including the Implementation Date (**Other Run-Off Insurance**). Before entering into Run-Off Insurance, Abano must first approve such quotation (such approval not to be unreasonably withheld, conditioned or delayed) before 1300 Smiles may enter into that contract of insurance.

7.8 Period of undertaking

The undertakings contained in clause 7.6 are given until the earlier of the end of the relevant period specified in that clause or the relevant member of the 1300 Smiles Group ceasing to be part of the Abano Group.

7.9 Benefit of undertaking for 1300 Smiles Group

1300 Smiles acknowledges that it receives and holds the benefit of clause 7.6 to the extent it relates to each director and officer of a member of the 1300 Smiles Group as trustee on behalf of each of them.

8 Conduct of business

8.1 Overview

From the date of this document up to and including the Implementation Date, 1300 Smiles must, and must ensure each member of the 1300 Smiles Group:

- (a) ensure that the business of the 1300 Smiles Group is conducted:
 - (i) in the ordinary course;
 - (ii) in substantially the same manner as previously conducted; and
 - (iii) in accordance with all applicable laws;
- (b) promptly notify Abano in writing if any of the following matters of which 1300 Smiles becomes aware, and such written notification must include a reasonable summary of the relevant matter:
 - (i) events, facts, matters or circumstances which would or would reasonably be expected to:
 - (A) have a Material Adverse Effect or constitute a 1300 Smiles Prescribed Event;
 - (B) constitute a breach of clause 8;
 - (C) constitute a breach of 1300 Smiles Representations and Warranties; or
 - (D) have an impact on the financial or operational performance or more than \$100,000, or the reputation, of the 1300 Smiles Group or the 1300 Smiles Group's relationships with Regulatory Authorities; and
 - (ii) any breach of, or default under, any Material Contract, Material Lease or material commitment, laws, licences or consents applicable to any member of the 1300 Smiles Group and which is reasonably likely to result in a liability of more than \$100,000 for the 1300 Smiles Group (save that 1300 Smiles is not obligated to provide any information to the extent that doing so would breach any existing obligations of confidence to which a member of the 1300 Smiles Group is subject or result in loss of legal privilege); and
- (c) provide Abano with regular updates in relation to any action, claim, dispute, litigation, prosecution, regulatory inquiry or investigation by a Regulatory Authority or other form of proceeding involving or relating to the 1300 Smiles Group or its business.

Without limiting the forgoing, from the date of this document up to and including the Implementation Date, 1300 Smiles must ensure that no member of the 1300 Smiles Group:

- (d) takes or fails to take any action that constitutes, or that could reasonably be expected to result in or otherwise give rise to a 1300 Smiles Prescribed Event; or
- (e) authorise, commit or agree to do any such thing.

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8.2 Specific obligations

Without limiting clause 8.1 and other than with the prior approval of Abano or as required by this document, 1300 Smiles must, during the period contemplated by clause 8.1, procure that each member of the 1300 Smiles Group:

- (a) **(business and assets)** maintains the condition of its business and assets, including maintaining at least its current level of insurance;
- (b) **(officers and key employees)** keeps available the services of its officers and key employees;
- (c) **(relationships)** use reasonable endeavours to preserve its relationships with customers, suppliers, licensors, licensees, regulators, dentists, joint venturers and others with whom it has business dealings, in each case taken as a whole;
- (d) **(agreement and commitments)** perform and comply, in all material respects, with the Material Contracts and Material Leases;
- (e) **(compliance with laws, licences and consents)** comply in all material respects with all laws, licences and consents applicable to any member of the 1300 Smiles Group or its business and ensure that it continues to hold each Material Licence or, if a Material Licence expires that Material Licence is promptly renewed;
- (f) **(Taxes)** pay to the ATO or other relevant tax authority where due all taxes which become due and payable before the Implementation Date;
- (g) **(leases)** as relevant, use reasonable endeavours to:
 - (i) register each lease to which a member of the 1300 Smiles Group is party and which is not registered under applicable legislation; and
 - (ii) enter into new leases or exercises any relevant options in respect of each of the leases to which a member of the 1300 Smiles Group is party and which has expired as at the date of this document or which expire between the date of this document and the Implementation Date, and in particular exercises the option in favour of 1300 Smiles in respect of the property at 6/34 Sydney Street, Mackay Queensland 4740; and
- (h) **(Encumbrances)** before 8.00am on the Second Court Date, use reasonable endeavours to obtain duly executed releases and discharges (including an undertaking to remove all relevant registrations on the PPSR Register) of each Material Encumbrance; and
- (i) **(domain names)** use reasonable endeavours to procure the transfer of all domain names used by the 1300 Smiles Group but not registered to a member of the 1300 Smiles Group as at the date of this document.

8.3 Prohibited actions

Other than with the prior approval of Abano or as required by this document 1300 Smiles must not, and must ensure that each member of the 1300 Smiles Group does not, during the period referred to in clause 8.1:

- (a) **(financial indebtedness)** incur any additional, or increase the 1300 Smiles Group's financial indebtedness (including incur any contingent liability by requesting new, or increasing the face value of any existing,

any bank guarantees, letters of credit or like instruments) above the credit limit available to the 1300 Smiles Group under the 1300 Smiles Facilities as at the date of this document;

- (b) **(tax)**
- (i) make, change or revoke any material Tax election;
 - (ii) file any amended Tax return;
 - (iii) settle any Tax claim, audit or action;
 - (iv) surrender any right to claim a material Tax refund, offset or other reduction in Tax liability; or
 - (v) change its method of Tax accounting,

in each case, if such action would have the effect of increasing the Tax liabilities of the 1300 Smiles Group by an amount that exceeds \$100,000;

- (c) **(capital expenditure)** undertake or commit to any capital expenditure:
- (i) in respect of which the cost of the item (or series of related items) exceeds \$100,000; or
 - (ii) where the aggregate value of all such capital expenditure exceeds \$500,000 per month from the date of this document;
- (d) **(new employees or independent contractors)** engage a new employee or independent contractor for personal services in respect of which the total employment or engagement costs for the 1300 Smiles Group in respect of that individual are in excess of \$150,000 per annum, other than the engagement of dentists in the ordinary course of business, provided the remuneration of the dentist is not materially more than the market remuneration of a dentist with similar experience and expertise;
- (e) **(collective bargaining)** enter into, or vary, any collective bargaining agreement or other agreement with a union or other organisation representing employees;
- (f) **(indemnities)** guarantee, provide an indemnity for, provide security in respect of, or otherwise accept liability in respect of, the obligations or liabilities of any person who is not a member of the 1300 Smiles Group, except for the provision of indemnities to directors and employees of the 1300 Smiles Group (to the extent permitted by the Corporations Act or other applicable law);
- (g) **(restraints)** enter into any restraint of trade, non-competition undertaking or similar agreement which places a material restriction on any member of the 1300 Smiles Group's ability to carry on business activities which it undertakes in the ordinary course of business or vary any existing restraint of trade, non-competition undertaking or similar agreement which places a material restriction on any member of the 1300 Smiles Group's ability to carry on business activities where such variation increases the term, nature or scope of the restriction
- (h) **(litigation)** settle or offer to settle any action, claim, dispute, litigation, prosecution, regulatory inquiry or investigation by a Regulatory Authority or other form of proceeding, where:

- (i) the aggregate settlement amount exceeds \$250,000; or
 - (ii) the settlement involves the imposition of an injunction against, or restriction on, any member of the 1300 Smiles Group undertaking any business activity, where that injunction or restriction will have a material impact on the business of the 1300 Smiles Group as a whole; or
- (i) **(agree)** agree to do any of the matters set out above.

8.4 Exceptions to conduct of business provisions

Nothing in this clause 8 restricts the ability of a member of the 1300 Smiles Group to take any action which:

- (a) is expressly required or permitted by this document, the Scheme, or otherwise required by law or by an order of a court or Regulatory Authority;
- (b) has been Disclosed;
- (c) has been agreed to in writing by Abano; or
- (d) is required in connection with the sale or liquidation of the 1300 Smiles' investments in Investors Central Limited (ACN 143 097 385) and the property located at 361 Flinders Street, Townsville.

8.5 Change of control

- (a) As soon as practicable after the date of this document, 1300 Smiles must:
 - (i) seek to identify any change of control or similar provisions in any significant contracts (including Material Contracts and Material Leases) to which any member of the 1300 Smiles Group is a party which may be triggered by the implementation of the Scheme (**Change of Control Requirements**); and
 - (ii) use reasonable endeavours to obtain the consents which are required in accordance with the terms of any identified Change of Control Requirements.
- (b) A failure by 1300 Smiles to obtain any counterparty consent as part of the Change of Control Requirements will not constitute a breach of this document, and together with any consequences which arise, will be disregarded when assessing the operation of any other provision of this document.
- (c) Abano must cooperate with, and provide reasonable assistance to, 1300 Smiles to obtain such consents or confirmations in relation to any identified Change of Control Requirements, including by promptly providing any information reasonably required by counterparties.

8.6 Access to people and 1300 Smiles Information

Between the date of this document and the Implementation Date, 1300 Smiles must:

- (a) as soon as reasonably practicable provide Abano and its officers and advisers with any documents, records, and other information (subject to

any existing confidentiality obligations owed to third parties, or applicable privacy laws) which Abano reasonably requires for the purposes of:

- (i) understanding 1300 Smiles' financial position (including its cash flow and working capital position), trading performance and management control systems;
 - (ii) implementing the Scheme;
 - (iii) preparing for carrying on the business of 1300 Smiles following implementation of the Scheme; and
 - (iv) any other purpose which is agreed in writing between the parties; and
- (b) provide Abano and its officers and advisers with reasonable access to 1300 Smiles' officers and advisers which Abano reasonably requires for the purposes of:
- (i) understanding 1300 Smiles' financial position (including its cash flow and working capital position), trading performance and management control systems;
 - (ii) implementing the Scheme;
 - (iii) preparing for carrying on the business of 1300 Smiles following implementation of the Scheme; and
 - (iv) any other purpose which is agreed in writing between the parties,

provided in every case that such access is reasonably necessary to Abano and does not place an unreasonable burden on the ability of 1300 Smiles to run its business.

8.7 No amendment or waiver of Commitment Letters

Abano will not, without 1300 Smiles' prior written consent, amend or permit the amendment of the Equity Commitment Letter or the Debt Commitment Letter nor waive any of its rights under the Equity Commitment Letter or the Debt Commitment Letter in any respect which will prejudice Abano's ability to pay the Scheme Consideration in accordance with this document, the Scheme and the Deed Poll in a material respect.

9 Exclusivity

9.1 No existing discussions

1300 Smiles represents and warrants that, other than the discussions with Abano and its Representatives in respect of the Scheme, as at the date of this document neither it nor its Representatives are in negotiations or discussions in respect of any Competing Transaction with any person. From the date of this document, 1300 Smiles will promptly enforce the terms of any confidentiality agreement entered into with a party other than Abano in relation to a Competing Transaction and will promptly request the return or destruction of all 1300 Smiles Confidential Information from any such party in accordance with the terms of that confidentiality agreement and terminate their access to any confidential information on an ongoing basis in accordance with the terms of that confidentiality agreement. 1300 Smiles agrees not to waive, and to promptly enforce, any standstill obligations of any such party, except in relation to a

Competing Transaction where Abano has failed to provide a matching or superior proposal which satisfies clause 9.8(f).

9.2 No-shop

During the Exclusivity Period, 1300 Smiles must ensure that neither it nor any of its Representatives directly or indirectly:

- (a) solicits, invites, encourages or initiates any enquiries, expressions of interest, offers, proposals, negotiations or discussions with any person; or
- (b) communicates any intention to do any of these things,

with a view to, or that may be reasonably expected to encourage or lead to, obtaining any offer, proposal or expression of interest from any person in relation to a Competing Transaction.

9.3 No-talk

Subject to clause 9.5 and 9.6, during the Exclusivity Period, 1300 Smiles must ensure that neither it nor any of its Representatives:

- (a) negotiates or enters into; or
- (b) participates in negotiations or discussions with any other person regarding,

a Competing Transaction or any agreement, understanding or arrangement that may be reasonably expected to lead to a Competing Transaction, even if that person's Competing Transaction was not directly or indirectly solicited, invited, encouraged or initiated by 1300 Smiles or any of its Representatives or the person has publicly announced the Competing Transaction.

9.4 Due diligence information

Subject to clauses 9.5 and 9.6, during the Exclusivity Period, 1300 Smiles must not, and must procure that its Representatives do not, in relation to a Competing Transaction or for the purpose of any other person making, formulating, developing or finalising a Competing Transaction:

- (a) enable any other person (other than Abano and its Representatives and any other person nominated by Abano) to undertake due diligence investigations on or in respect of any member of the 1300 Smiles Group, any of the operations or assets of the business or any part thereof;
- (b) make available to any other person, or permit any other person to receive (other than Abano and its Representatives and any other person nominated by Abano) (in the course of due diligence investigations or otherwise) any non-public information relating to any member of the 1300 Smiles Group, any of the operations or assets of the business or any part thereof;
- (c) make available to any other person, or permit any other person to have access to (other than Abano and its Representatives and any other person nominated by Abano) (in the course of due diligence investigations or otherwise) any premises used, leased, licensed or owned by the 1300 Smiles Group; or
- (d) make available to any other person, or permit any other person to have access to (other than Abano and its Representatives and any other

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person nominated by Abano) (in the course of due diligence investigations or otherwise) any officers or employees of the 1300 Smiles Group.

9.5 Exceptions

Clause 9.3 and clause 9.4 do not apply to the extent that they restrict 1300 Smiles or the 1300 Smiles Board from taking or refusing to take any action with respect to a genuine Competing Transaction (which was not solicited, invited, encouraged or initiated by 1300 Smiles in contravention of clause 9.2) provided that the 1300 Smiles Board has determined, in good faith that:

- (a) after consultation with its financial advisors, such a genuine Competing Transaction is, or could reasonably be considered to become, a Superior Proposal; and
- (b) after receiving written legal advice from its external legal advisers (who must be experienced in transactions of this nature) that failing to respond to such a genuine Competing Transaction would be reasonably likely to constitute a breach of the 1300 Smiles Board's fiduciary or statutory obligations.

9.6 Further exceptions

Nothing in this document prevents 1300 Smiles from:

- (a) continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to the Scheme or its business generally;
- (b) fulfilling its continuous disclosure requirements; or
- (c) doing anything which is required in connection with the sale or liquidation of the 1300 Smiles' investments in Investors Central Limited (ACN 143 097 385) and the property located at 361 Flinders Street, Townsville.

9.7 Notice of unsolicited approach

During the Exclusivity Period, 1300 Smiles must promptly inform Abano if it or any of its Representatives:

- (a) receives any unsolicited approach with respect to any Competing Transaction and must disclose to Abano all material details of the Competing Transaction, including details of the proposed bidder or acquirer;
- (b) receives any request for information relating to 1300 Smiles or any of its Related Bodies Corporate or any of their businesses or operations or any request for access to the books or records of 1300 Smiles or any of its Related Bodies Corporate, which 1300 Smiles has reasonable grounds to suspect may relate to a current or future Competing Transaction; or
- (c) provides any information relating to 1300 Smiles or any of its Related Bodies Corporate or any of their businesses or operations to any person in connection with or for the purposes of a current or future Competing Transaction.

9.8 Matching right

Without limiting clauses 9.2 and 9.3, during the Exclusivity Period, 1300 Smiles:

- (a) must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a third party, 1300 Smiles or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Transaction; and
- (b) must use its best endeavours to procure that none of the relevant directors of 1300 Smiles change their Recommendation and Voting Intention to publicly recommend an actual, proposed or potential Competing Transaction (or recommend against the Scheme),

unless:

- (c) the IBC acting in good faith and in order to satisfy what the IBC considers to be its statutory or fiduciary duties (having received written advice from its external legal advisers), determines that the Competing Transaction would be or would be likely to be an actual, proposed or potential Superior Proposal;
- (d) 1300 Smiles has provided Abano with the material terms and conditions of the actual, proposed or potential Competing Transaction, including price and the identity of the third party making the actual, proposed or potential Competing Transaction;
- (e) 1300 Smiles has given Abano at least 5 Business Days after the date of the provision of the information referred to in clause 9.8(d) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction; and
- (f) Abano has not announced a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction by the expiry of the 5 Business Day period referred to in clause 9.8(e).

1300 Smiles acknowledges and agrees that each successive modification of any actual, proposed or potential Competing Transaction will constitute a new actual, proposed or potential Competing Transaction for the purposes of the requirements under clause 9.8(a) and accordingly 1300 Smiles must comply with clause 9.8(a) and clause 9.8(b) of this clause in respect of any new actual, proposed or potential Competing Transaction unless clause 9.8(c) to 9.8(f) (inclusive) apply

9.9 Abano counterproposal

If Abano proposes to 1300 Smiles, or announces amendments to the Scheme or a new proposal that constitute a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction ("**Abano Counterproposal**") by the expiry of the 5 Business Day period referred to in clause 9.8(e), 1300 Smiles must procure that the IBC considers the Abano Counterproposal and if the IBC, acting reasonably and in good faith, determines that the Abano Counterproposal would provide an equivalent or superior outcome for 1300 Smiles Shareholders as a whole compared with the Competing Transaction, taking into account all of the terms and conditions of the Abano Counterproposal, then:

- (a) 1300 Smiles and Abano must use their best endeavours to agree the amendments to this document and, if applicable, the Ancillary Documents, Scheme and Deed Poll that are reasonably necessary to

reflect the Abano Counterproposal and to implement the Abano Counterproposal, in each case as soon as reasonably practicable; and

- (b) 1300 Smiles must use its best endeavours to procure that each of the directors of 1300 Smiles maintains their Recommendation and Voting Intention to 1300 Smiles Shareholders.

9.10 Legal advice

1300 Smiles acknowledges that it has received legal advice on this document and the operation of this clause.

10 Break Fee

10.1 Background

This clause has been agreed in circumstances where:

- (a) Abano and 1300 Smiles believe that the Scheme will provide significant benefits to Abano, 1300 Smiles and their respective shareholders, and Abano and 1300 Smiles acknowledge that, if they enter into this document and the Scheme is subsequently not implemented, Abano will incur significant costs, including those set out in clause 10.7;
- (b) Abano requested that provision be made for the Break Fee, without which Abano would not have entered into this document;
- (c) both the Abano Board and the IBC believe that it is appropriate for both parties to agree to the payment referred to in this clause to secure Abano's participation in the Scheme; and
- (d) both parties have received legal advice on this document and the operation of this clause.

10.2 Payment by 1300 Smiles to Abano

1300 Smiles agrees to pay the Break Fee to Abano without withholding or set off if the Scheme does not proceed because:

- (a) **(Competing Transaction)** on or before the End Date a Competing Transaction is announced and within 12 months of the End Date the third party who announced or made the Competing Transaction (or any of its Associates):
 - (i) completes a Competing Transaction; or
 - (ii) acquires more than 50% of 1300 Smiles;
- (b) **(change of recommendation)** any Independent Director fails to recommend the Scheme or withdraws their recommendation, adversely changes or qualifies their recommendation or otherwise makes a public statement indicating that he or she no longer supports the Scheme, except:
 - (i) where the change of recommendation or statement is made after the Independent Expert concludes that in the opinion of the Independent Expert the Scheme is not in the best interests of 1300 Smiles Shareholders or that it is not fair and reasonable to the Non-Founder Scheme Participants (other than where a

Competing Transaction has been proposed or announced before the report is issued which the Independent Expert may reasonably regard to be on more favourable terms than the transaction contemplated by this document);

- (ii) in circumstances where 1300 Smiles validly terminates this document in accordance with clause 12.1(c); or
- (c) **(termination)** Abano validly terminates this document in accordance with:
 - (i) clause 12.1(c) (material breach); or
 - (ii) clause 12.1(d) (Founder Entity dealing).

10.3 No amount payable if Scheme becomes Effective

Notwithstanding the occurrence of any event in clause 10.2, if the Scheme becomes Effective:

- (a) no amount is payable by 1300 Smiles under clause 10.2; and
- (b) if any amount has already been paid under clause 10.2 it must be refunded by Abano.

10.4 Timing of payment

- (a) A demand by Abano for payment of the Break Fee under clause 10.2 must:
 - (i) be in writing;
 - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
 - (iii) state the circumstances which give rise to the demand; and
 - (iv) nominate an account in the name of Abano into which 1300 Smiles must pay the Break Fee.
- (b) 1300 Smiles must pay the Break Fee to Abano under clause 10.2 without withholding or set off within 10 Business Days of receipt by 1300 Smiles of a valid demand for payment from Abano under clause 10.4(a).

The demand may only be made after the occurrence of an event referred to in clause 10.2.

10.5 Break Fee only payable once

1300 Smiles can only ever be liable to pay the Break Fee once.

10.6 Limitation of liability

- (a) Subject to clause 10.6(a)(i) and clause 10.7:
 - (i) the maximum liability of 1300 Smiles to Abano in relation to a breach or breaches of this document by 1300 Smiles (including any representation or warranty not being true and correct) or its failure to perform its obligations under this document, is the Break Fee and in no event will the aggregate liability of 1300

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Smiles under or in connection with a breach of this document (including any representation or warranty not being true and correct) exceed the Break Fee;

- (ii) the payment by 1300 Smiles of the Break Fee represents the sole amount of liability of 1300 Smiles to Abano for damages under or in connection with this document and no further damages of any kind will be payable by 1300 Smiles to Abano in connection with this document; and
 - (iii) clause 10.6(a)(i) does not apply to a breach of clause 9 by 1300 Smiles in reliance on which Abano has validly terminated this document in accordance with clause 12.1(c).
- (b) The maximum liability of Abano to 1300 Smiles in relation a breach or breaches of this document by Abano (including any representation or warranty not being true and correct) or its failure to perform its obligations under this document, is \$1,700,000 and in no event will the aggregate liability of Abano under or in connection with a breach of this document (including any representation or warranty not being true and correct) exceed \$1,700,000. The payment by Abano of \$1,700,000 represents the sole amount of liability of Abano to 1300 Smiles for damages under or in connection with this document and no further damages of any kind will be payable by Abano to 1300 Smiles in connection with this document.

10.7 Nature of payment

The Break Fee is an amount to compensate Abano for:

- (a) advisory costs
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses;
- (d) the distraction of Abano's management from conducting Abano's business as usual caused by pursuing the Scheme;
- (e) reasonable opportunity costs incurred by Abano in pursuing the Scheme or in not pursuing alternative acquisitions or strategic initiatives which Abano could have developed to further its business and objectives; and
- (f) damage to Abano's reputation associated with a failed transaction and the implications of that damage to Abano's business.

The parties agree that the costs incurred are of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amount payable under clause 10.2.

10.8 Compliance with law

- (a) If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a Court that all or any part of the amount payable under clause 10.2:
 - (i) is unlawful or would if performed be, unlawful;
 - (ii) involves a breach of the duties of the 1300 Smiles Board; or

- (iii) constitutes unacceptable circumstances within the meaning of the Corporations Act,

then 1300 Smiles' obligation to pay the applicable amount or part of the amount payable under clause 10.2 does not apply and if Abano has received any such part of the payment due under clause 10.2 it must refund it within 5 Business Days of such final determination.

- (b) The parties must not make or cause or permit to be made any application to a Court, arbitral tribunal or the Takeovers Panel for or in relation to a determination referred to in this clause 10.8.

11 Representations and warranties

11.1 1300 Smiles' representations and warranties

1300 Smiles represents and warrants to Abano (on its own behalf and separately as trustee or nominee for each of the Abano directors) that each of the following statements is true and correct in all material respects as at the date of this document and as at 5.00pm on the Business Day immediately prior to the Second Court Date (unless that representation or warranty is expressed to be given only at a particular time, in which case it is given only at that time):

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:
 - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
 - (ii) any law binding on or applicable to it or its assets;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms;
- (f) **(1300 Smiles Information)** the 1300 Smiles Information provided in accordance with this document and included in the Scheme Booklet as at the date of the Scheme Booklet will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;
- (g) **(disclosure)** 1300 Smiles has provided to Abano all information known to it (having made reasonable enquiries) as at the date of this document regarding matters affecting or relating to it:
 - (i) which is not already in the public domain; and

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- (ii) the disclosure of which might reasonably be expected to have resulted in Abano not entering into this document at all or only entering into this document on materially different terms;
- (h) **(information not misleading)** all the Disclosure Materials provided to Abano by 1300 Smiles were compiled in good faith and with reasonable care, and so far as 1300 Smiles is aware at the date of this document, are accurate and not misleading in any material respect, whether by way of omission or otherwise;
- (i) **(no other material information)** as at the date of this document, 1300 Smiles is not aware of any material circumstances that has not been Disclosed which might reasonably be expected to materially adversely affect the financial position or performance of any member of the 1300 Smiles Group or the value of 1300 Smiles Shares, or which might otherwise reasonably be expected to be material to a purchaser or 1300 Smiles Shares;
- (j) **(continuous disclosure)** 1300 Smiles is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure (other than the transaction contemplated by this document);
- (k) **(financial statements)** the audited consolidated financial statements of the 1300 Smiles Group for the financial year ended 30 June 2020 ("**1300 Smiles Financial Report**"):
- (i) have been prepared in accordance with and comply with Accounting Standards; and
- (ii) provide a true and fair view of the financial position and performance of the 1300 Smiles Group as at the date they were prepared;
- (l) **(no undisclosed liabilities)** except as Disclosed, no member of the 1300 Smiles Group has any indebtedness or liabilities required under Accounting Standards to be reflected on a balance sheet or the notes thereto, other than those (i) specifically reflected in, fully reserved against or otherwise described in the 1300 Smiles Financial Report or the notes thereto; or (ii) incurred under this document or in connection with the Scheme; or (iii) in the ordinary course of business as permitted under this document;
- (m) **(compliance)** the 1300 Smiles Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over it and has all material licenses, permits and franchises necessary for it to conduct its respective businesses as presently being conducted;
- (n) **(dentist number outlook)** all information provided to Abano in the Disclosure Materials in relation to the dentist number outlook for the 1300 Smiles Group by the 1300 Smiles Group is based on assumptions which 1300 Smiles believes, as at the date the information was provided and continues to believe, to be reasonable;
- (o) **(opinions)** any material statement of opinion or belief contained in the 1300 Smiles Information is honestly held and there are reasonable grounds for holding the opinion or belief;

- (p) **(provision of information to Independent Expert)** all information provided by or on behalf of 1300 Smiles to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;
- (q) **(no default)** so far as 1300 Smiles is aware, neither 1300 Smiles nor any of its Subsidiaries is in default in any material respect under any Material Contract, Material Lease or the 1300 Smiles Facilities nor has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party a termination right or right to accelerate any right or obligation, under any such document with such an effect;
- (r) **(no litigation)** no litigation, arbitration, conciliation or administrative proceedings are taking place or to its knowledge, pending or threatened which, if adversely decided, could reasonably be expected to have a material effect, in or on the business, operations, financial position or performance of the 1300 Smiles Group (taken as a whole);
- (s) **(securities)** 1300 Smiles' issued securities as at the date of this document are 23,678,384 1300 Smiles Shares only, and as at 8.00am on the Second Court Date and on the Record Date there will be no more than 23,678,384 1300 Smiles Shares, and it has not issued, or agreed to issue, any other securities or instruments or granted any rights which are, will be or become outstanding or which give or may give any right to or which may become convertible into 1300 Smiles Shares;
- (t) **(no Encumbrances)** on the Implementation Date, there will be no Encumbrances over all or any of its assets or revenues, other than the Permitted Encumbrances;
- (u) **(Insolvency event)** no member of the 1300 Smiles Group is Insolvent;
- (v) **(1300 Smiles Shares not indirect Australian real property interests)** the relevant 1300 Smiles Shares held by each Scheme Participant are not, and until (and including) the Implementation Date will not be, indirect Australian real property interests within the meaning of Division 855 of the Tax Act for the Scheme Participant;
- (w) **(change of control provisions)** 1300 Smiles has Disclosed all Material Contracts which result in, or could result in:
 - (i) any monies borrowed by any member of the 1300 Smiles Group being or becoming repayable or being capable of being declared repayable immediately or earlier than the repayment date stated in such agreement;
 - (ii) any such agreement being terminated or modified or any action being taken or arising thereunder;
 - (iii) the interest of any member of the 1300 Smiles Group in any firm, joint venture, trust, corporation or other entity (or any arrangements relating to such interest) being terminated or modified; or
 - (iv) the business of any member of the 1300 Smiles Group with any other person being materially adversely affected,

as a result of the 1300 Smiles entering into this document or the transactions contemplated by it including the acquisition of the 1300 Smiles Shares by Abano.

- (x) **(Insurance):**
- (i) the 1300 Smiles Group maintains insurance in such amounts and against accident, physical loss or damage, third party liability (including general liability and professional negligence) and all other normal risks incidental to the operation of the business of the 1300 Smiles Group as required by law or is otherwise reasonably required and can be obtained on reasonable commercial terms for a group with activities of the nature of that undertaken by 1300 Smiles Group (“**Insurance**”);
 - (ii) each material policy of Insurance is currently in full force and effect and all applicable premiums that are due and payable have been paid;
 - (iii) the 1300 Smiles Group has not received any current written notice that it is not in compliance in all material respects with the current insurance policies covering the 1300 Smiles Group; and
 - (iv) as of the date of this document, no written notice of cancellation, termination or revocation of a material policy of insurance has been received by a member of the 1300 Smiles Group that remains outstanding; and
- (y) **(Taxes)** neither 1300 Smiles nor any of its Subsidiaries:
- (i) is currently the subject of a Tax audit or examination or other administrative or judicial proceeding arising therefrom, and to 1300 Smiles' knowledge, no such audit, examination or proceeding is threatened or contemplated, or
 - (ii) has received from any Taxing Authority any written notice of a proposed adjustment, deficiency or underpayment of Taxes which has not been satisfied by payment or been withdrawn that would reasonably be likely to give rise to any Material Adverse Effect on the overall 1300 Smiles Group business or financial position,

and all Tax Returns required to be filed by any 1300 Smiles Group entity, have been timely filed and all Taxes shown as due and payable on such Tax Returns, and all amounts of Taxes required to have been paid by 1300 Smiles and its Subsidiaries have been paid or appropriate reserves have been recorded in the financial statements of 1300 Smiles.

11.2 1300 Smiles' indemnity

Subject to clause 10.6, 1300 Smiles indemnifies the Abano Indemnified Parties against all Losses incurred directly or indirectly as a result of any of the representations and warranties in clause 11.1 not being true and correct.

11.3 Qualifications on the 1300 Smiles Representations and Warranties

Each of the 1300 Smiles Representations and Warranties in clause 11.1 are each given subject to and are qualified by, and Abano may not make any Claim based on a fact, matter or circumstance that:

- (a) is expressly provided for in this document or any Ancillary Document;

- (b) was Disclosed by 1300 Smiles (including in the Disclosure Materials);
- (c) is within the actual knowledge of Abano, or its Representatives directly involved in the assessment or negotiation of the transactions contemplated by this document, as at the date of this document; or
- (d) is Disclosed on the ASX.

Any 1300 Smiles Representations and Warranties in clause 11.1 that are given subject to 1300 Smiles' awareness, knowledge or belief are given by reference to the actual awareness, knowledge or belief of the Representatives of 1300 Smiles who have been directly involved in the assessment or negotiation of the transactions contemplated by this document after having made reasonable enquiries and the actual awareness, knowledge or belief of the directors and officers of 1300 Smiles.

11.4 Abano's representations and warranties

Abano represents and warrants to 1300 Smiles (on its own behalf and separately as trustee or nominee for each of the 1300 Smiles directors) that each of the following statements is true and correct in all material respects as at the date of this document and as at 5.00pm on the Business Day immediately prior to the Second Court Date:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:
 - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
 - (ii) any law binding on or applicable to it or its assets;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms;
- (f) **(reliance)** the Abano Information provided to 1300 Smiles for inclusion in the Scheme Booklet will be provided in good faith and on the understanding that 1300 Smiles and its directors will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the Corporations Act;
- (g) **(Abano Information)** the Abano Information provided in accordance with this document and included in the Scheme Booklet, as at the date of the Scheme Booklet, will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;

- (h) **(opinions)** any statement of opinion or belief contained in the Abano Information is honestly held and there are reasonable grounds for holding the opinion or belief;
- (i) **(no dealing with 1300 Smiles Shareholders)** neither it nor any of its associates has any agreement, arrangement or understanding with any 1300 Smiles Shareholder under which that 1300 Smiles Shareholder (or an associate of that 1300 Smiles Shareholder) would be entitled to receive consideration for their 1300 Smiles Shares different from the Scheme Consideration or under which the 1300 Smiles Shareholder agrees to vote in favour of the Scheme or against any Competing Transaction;
- (j) **(reasonable basis)** it has a reasonable basis to expect that it will, by the Implementation Date, have available to it sufficient cash amounts (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy Abano's obligations to pay the Scheme Consideration in accordance with its obligations under this document, the Scheme and the Deed Poll;
- (k) **(sufficient cash amounts – unconditional at Second Court Date)** at 8.00am on the Second Court Date, Abano will have available to it on an unconditional basis (other than conditions relating to the approval of the Court and other conditions within the control of Abano) sufficient cash amounts (whether from internal cash resources or external funding arrangements (including debt and equity financing) or a combination of both) to satisfy Abano's obligation to pay the aggregate Scheme Consideration in accordance with its obligations under this document, the Scheme and Deed Poll;
- (l) **(sufficient cash amounts – available on Implementation Date)** Abano will have available to it on the Implementation Date sufficient cash amounts (whether from internal cash resources or external funding arrangements (including debt and equity financing) or a combination of both) to satisfy Abano's obligation to pay the aggregate Scheme Consideration in accordance with its obligations under this document, the Scheme and Deed Poll;
- (m) **(provision of information to Independent Expert)** all information provided by or on behalf of Abano to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;
- (n) **(Commitment Letters)** Abano has given to 1300 Smiles true, correct and complete copies of the Equity Commitment Letter and the Debt Commitment Letter (in each case, provided that any commercially sensitive information may be redacted from the copy provided);
- (o) **(Debt Facility Agreement)** Abano has a reasonable basis to expect that it will be able to agree the Debt Facility Agreement on final terms that are acceptable having regard to the nature, scope and activities of the business of the Abano Group and the 1300 Smiles Group;
- (p) **(Insolvency event)** no member of the Abano Group is Insolvent; and
- (q) **(regulatory action)** so far as Abano is aware, no regulatory action of any nature has been taken in relation to any member of the Abano Group that would prevent or restrict its ability to fulfil its obligations under this document.

11.5 Abano's indemnity

Abano indemnifies the 1300 Smiles Indemnified Parties against all Losses incurred directly or indirectly as a result of any of the representations and warranties in clause 11.4 not being true and correct.

12 Termination

12.1 Termination events

This document may be terminated:

- (a) **(End Date)** by either party, if the Scheme has not become Effective on or before the End Date;
- (b) **(lack of support)** by Abano at any time prior to 8.00am on the Second Court Date if any member of the IBC changes its recommendation to the Scheme Participants that they vote in favour of the resolution to approve the Scheme, including any adverse modification to its recommendation, or otherwise makes a public statement indicating that it no longer supports the Scheme;
- (c) **(material breach)** by either Abano or 1300 Smiles at any time prior to 8.00am on the Second Court Date, if the other is in breach of a term of this document (including any representation and warranty not being true and correct in a material respect), which is material taken in the context of the Scheme as a whole, provided that Abano or 1300 Smiles (as the case may be) has given notice to the other setting out the relevant circumstances and the relevant circumstances continue to exist 5 Business Days (or any shorter period ending at 8.00am on the Second Court Date) after the time such notice is given;
- (d) **(Founder Entity dealing)** by Abano at any time prior to 8.00am on the Second Court Date if there is any dealing with a 1300 Smiles Share held by a Founder Entity as at the date of this document, including a sale, assignment, transfer, conveyance, grant of an option over, grant of, creation of, or allowing a swap or other synthetic instrument or an Encumbrance over, and any other disposal, alienation, economic monetisation or realisation of, a 1300 Smiles Share or of a legal or beneficial interest in a 1300 Smiles Share, or agreeing to do any of the foregoing (conditionally or otherwise);
- (e) **(competing interest)** by Abano at any time prior to 8.00am on the Second Court Date, if a person (other than Abano or its Related Bodies Corporate or the Founder Entities) whether alone or together with its Associates would, directly or indirectly, have a Relevant Interest in 8% or more of the 1300 Smiles Shares (other than as custodian, nominee or bare trustee);
- (f) **(Competing Transaction)** by 1300 Smiles at any time prior to 8.00 am on the Second Court Date if the IBC determines that a Competing Transaction that was not solicited, invited, encouraged or initiated in breach of clause 9.2 is a Superior Proposal;
- (g) **(consultation or appeal failure)** in accordance with and pursuant to:
 - (i) clause 3.7(a);
 - (ii) clause 3.7(b); or

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(iii) clause 5.8;

- (h) **(audit, examination, investigation or similar review by a Regulatory Authority)** by Abano, on the commencement, or notification of 1300 Smiles or another member of the 1300 Smiles Group of, an audit, examination, investigation or similar review by an agreed Regulatory Authority, of any matter or liability relating to the business of the 1300 Smiles Group or issuance of an invoice, statement of account, assessment or notice of amended assessment to 1300 Smiles or any other member of the 1300 Smiles Group relating to any payment by, or act or omission of, or in connection with, the business of the 1300 Smiles Group or any part of it; or
- (i) **(agreement)** if agreed to in writing by Abano and 1300 Smiles.

12.2 Termination

Where a party has a right to terminate this document, 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 document.

12.3 Effect of Termination

If this document is terminated by either party, or if this document otherwise terminates in accordance with its terms, then in either case all further obligations of the parties under this document, other than the obligations set out in this clause and in clauses 10.2, and 14 to 18 (inclusive) will immediately cease to be of further force and effect without further liability of any party to the other, provided that nothing in this clause releases any party from liability for any pre-termination breach of this document.

12.4 Damages

Subject to clause 10.6, in addition to the right of termination under clause 12.1 where there is no appropriate remedy for the breach in this document (other than termination), the non-defaulting party is entitled to damages for Losses suffered by it and expenses incurred by it as a result of the breach of the terms of this document.

13 Public announcements

13.1 Public announcement of Scheme

Immediately after signing this document, 1300 Smiles and Abano must issue a joint public announcement of the proposed Scheme.

13.2 Required disclosure

Where a party is required by any applicable law or any Listing Rule to make any announcement or make any disclosure in connection with the Scheme, it must use all reasonable endeavours, to the extent possible, to consult with the other party prior to making the relevant disclosure, provided that neither party is required to consult with the other in relation to any public announcement relating to termination of this document or any Competing Transaction

13.3 Other announcements

Subject to clauses 13.1 and 13.2, no party may make any public announcement or disclosure in connection with the Scheme other than in a form approved by

each party (acting reasonably). Each party will use all reasonable endeavours to provide such approval as soon as practicable.

14 Confidential information

Each party acknowledges and agrees that it continues to be bound by the Confidentiality Agreement in respect of all information received by it from the other party on, before or after the date of this document.

15 Notices and other communications

15.1 Form

Unless this document expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in connection with this document must be in writing and signed by the sender (if an individual) or an Authorised Officer of the sender.

All communications (other than email communications) must also be marked for the attention of the person referred to in the Details (or, if the recipient has notified otherwise, then marked for attention in the way last notified).

Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

15.2 Delivery

Communications must be:

- (a) left at the address referred to in the Details;
- (b) sent by regular ordinary post (airmail if appropriate) to the address referred to in the Details; or
- (c) sent by email to the address referred to in the Details.

If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

15.3 When effective

Communications take effect from the time they are received or taken to be received under clause 15.4 (whichever happens first) unless a later time is specified in the communication.

15.4 When taken to be received

Communications are taken to be received:

- (a) if sent by post, 6 Business Days after posting (or 10 days after posting if sent from one country to another);
- (b) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or

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- (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

15.5 Receipt outside business hours

Despite anything else in this clause 15, if communications are received or taken to be received under clause 15.4 after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

16 GST

16.1 Definitions and interpretation

For the purposes of this clause:

- (a) “**GST Act**” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (b) a term which has a defined meaning in the GST Act has the same meaning when used in this clause, unless the contrary intention appears; and
- (c) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as if it were a separate supply.

16.2 GST exclusive

Unless this document expressly states otherwise, all consideration to be provided under this document is exclusive of GST.

16.3 Payment of GST

- (a) If GST is payable, or notionally payable, on a supply in connection with this document, the party providing the consideration for the supply agrees to pay to the supplier an additional amount equal to the amount of GST payable on that supply (“**GST Amount**”).
- (b) Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.
- (c) This clause does not apply to the extent that the consideration for the supply is expressly stated to include GST or the supply is subject to a reverse-charge.

16.4 Adjustment events

If an adjustment event arises for a supply made in connection with this document, the GST Amount must be recalculated to reflect that adjustment. The supplier or the recipient (as the case may be) agrees to make any payments

necessary to reflect the adjustment and the supplier agrees to issue an adjustment note.

16.5 Reimbursements

Any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this document which is calculated by reference to an amount paid by another party must be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a taxable supply, clause 16.3 will apply to the reduced payment.

17 Costs

17.1 Costs

The parties agree to pay their own Costs in connection with the preparation, negotiation, execution and completion of this document, except for amounts covered by clause 17.2.

17.2 Stamp duty and registration fees

Abano:

- (a) agrees to pay or reimburse all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this document or any other transaction contemplated by this document (including any fees, fines, penalties and interest in connection with any of those amounts); and
- (b) indemnifies 1300 Smiles against, and agrees to reimburse and compensate it for, any liability in respect of stamp duty under clause 17.2(a).

Abano agrees to pay amounts due to 1300 Smiles under this clause within 3 Business Days of demand from Abano.

18 General

18.1 Variation and waiver

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

18.2 Consents, approvals or waivers

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

18.3 Discretion in exercising rights

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

18.4 Partial exercising of rights

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

18.5 Conflict of interest

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

18.6 Remedies cumulative

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

18.7 Indemnities and reimbursement obligations

Any indemnity, reimbursement or similar obligation in this document.

- (a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this document, any settlement or any other thing;
- (b) is independent of any other obligations under this document; and
- (c) continues after this document, or any obligation arising under it, ends.

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity in connection with this document.

18.8 Inconsistent law

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

18.9 Supervening law

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

18.10 Counterparts

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

18.11 Entire agreement

This document constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

18.12 Further steps

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

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

18.13 No liability for loss

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

18.14 Severability

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

18.15 Rules of construction

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

18.16 Assignment

- (a) Except as provided in clause 18.16(b), a party may not assign or otherwise deal with its rights under this document or allow any interest in them to arise or be varied without the consent of the other party.
- (b) Notwithstanding any other provision of this document, Abano may grant Encumbrances over its rights under this document by way of security for the benefit of financiers(s) (including to any agent or trustee acting on behalf of any of those financiers) to:
 - (i) Abano;
 - (ii) any Related Body Corporate of Abano; or
 - (iii) following the Implementation Date, any member of the 1300 Smiles Group,

from time to time, and any such security may be enforced or released.

18.17 Enforceability

For the purpose of this document:

- (a) 1300 Smiles is taken to be acting as agent and trustee on behalf of and for the benefit of all 1300 Smiles Indemnified Parties; and
- (b) Abano is taken to be acting as agent and trustee on behalf of and for the benefit of all Abano Indemnified Parties,

and all of those persons are to this extent taken to be parties to this document.

18.18 No representation or reliance

Each party acknowledges that:

- (a) no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this document, except for representations or inducements expressly set out in this document;
- (b) it does not enter into this document 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 document; and
- (c) clauses 18.18(a) and 18.18(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX.

19 Governing law

19.1 Governing law and jurisdiction

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

19.2 Serving documents

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address for service of notices under clause 15.2.

EXECUTED as an agreement

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Scheme Implementation Agreement

Schedule 1 Timetable (clause 5.1)

Event	Date
Lodge Scheme Booklet with ASIC and ASX	X
Application in respect of the Court hearing to be held on the First Court Date, filed with the Court, served on ASIC	X + 1 Business Day
First Court Date	X + 21 Business Days
Printing and despatch of Scheme Booklet	X + 21 – 24 Business Days
Election Date (3 clear Business Days before Scheme Meeting)	Y - 4
Scheme Meeting held	Y
Second Court Date	Z
Lodge Court order with ASIC (Effective Date)	Z + 1 Business Day
Record Date	Z + 3 Business Days
Payment of Non-Founder Consideration and Founder Entities Cash Consideration to Trust Account	Z + 7 Business Days
Implementation Date	Z + 8 Business Days

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Scheme Implementation Agreement

Signing page

23 August 2021

DATED: _____

EXECUTED by **ADAMS AUS BIDCO**
PTY LIMITED in accordance with
section 127(1) of the *Corporations Act*
2001 (Cth) by authority of its directors:



.....
Signature of director

Stephen Davies

.....
Name of director (block letters)

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.....
Signature of director/company
secretary*

*delete whichever is not applicable

SINEAD MARGARET RYAN

.....
Name of director/company secretary*
(block letters)

*delete whichever is not applicable

EXECUTED by **1300 SMILES LIMITED**
in accordance with section 127(1) of
the *Corporations Act 2001* (Cth) by
authority of its directors:

.....
Signature of director

.....
Name of director (block letters)

.....
Signature of director/company
secretary*

*delete whichever is not applicable

.....
Name of director/company secretary*
(block letters)

*delete whichever is not applicable

For personal use only

Scheme Implementation Agreement

Signing page

23 August 2021

DATED: _____

**EXECUTED by ADAMS AUS BIDCO
PTY LIMITED** in accordance with
section 127(1) of the *Corporations Act
2001* (Cth) by authority of its directors:

.....
Signature of director

.....
Name of director (block letters)

.....
Signature of director/company
secretary*

*delete whichever is not applicable

.....
Name of director/company secretary*
(block letters)

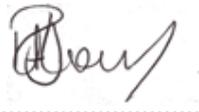
*delete whichever is not applicable

EXECUTED by 1300 SMILES LIMITED)
in accordance with section 127(1) of)
the *Corporations Act 2001* (Cth) by)
authority of its directors:)


.....
Signature of director

Daryl Holmes

.....
Name of director (block letters)


.....
Signature of director/company
secretary*

*delete whichever is not applicable

.....
Robert Jones
Name of director/company secretary*
(block letters)

*delete whichever is not applicable

For personal use only

Scheme Implementation Agreement

Annexure A Scheme of Arrangement

For personal use only

Scheme of Arrangement

Dated

1300 Smiles Limited (ACN 094 508 166) ("**1300 Smiles**")

Scheme Participants

King & Wood Mallesons

Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.kwm.com

Scheme of Arrangement

Contents

Details	1
General terms	2
1 Definitions and interpretation	2
1.1 Definitions	2
1.2 General interpretation	5
2 Preliminary	6
2.1 1300 Smiles	6
2.2 Abano	6
2.3 If Scheme becomes Effective	6
2.4 Scheme Implementation Agreement	7
2.5 Deed Poll	7
3 Conditions precedent	7
3.1 Conditions precedent to Scheme	7
3.2 Conditions precedent and operation of clause 5	7
3.3 Certificate in relation to conditions precedent	7
4 Scheme	8
4.1 Effective Date	8
4.2 Termination and End Date	8
5 Implementation of Scheme	8
5.1 Lodgement of Court orders with ASIC	8
5.2 Transfer and registration of Transferring Shares	8
5.3 Entitlement to Scheme Consideration	9
5.4 Title and rights in 1300 Smiles Shares	9
5.5 Scheme Participants' agreements	9
5.6 Warranty by Scheme Participants	9
5.7 Transfer free of encumbrances	9
5.8 Appointment of Abano as sole proxy	9
5.9 Election procedure	10
6 Scheme Consideration	10
6.1 Consideration under the Scheme	10
6.2 Satisfaction of obligations	11
6.3 Payment of Non-Founder Consideration and the Founder Entity Cash Consideration	11
6.4 Unclaimed monies	11
6.5 Orders of a court	11
6.6 Provision of Founder Entity Contingent Notes	12
6.7 Joint holders	12
6.8 Fractional entitlements	12
6.9 Foreign resident capital gains withholding	13
7 Dealings in Scheme Shares	14
7.1 Determination of Scheme Participants	14

7.2	Register	14
7.3	No disposals after Effective Date	14
7.4	Maintenance of 1300 Smiles Register	14
7.5	Effect of certificates and holding statements	14
7.6	Details of Scheme Participants	15
7.7	Quotation of 1300 Smiles Shares	15
7.8	Termination of quotation of 1300 Smiles Shares	15
<hr/>		
8	Power of attorney	15
<hr/>		
9	Notices	15
9.1	No deemed receipt	15
9.2	Accidental omission	16
<hr/>		
10	General	16
10.1	Variations, alterations and conditions	16
10.2	Further action by 1300 Smiles	16
10.3	Authority and acknowledgement	16
10.4	No liability when acting in good faith	16
10.5	Enforcement of Deed Poll	16
10.6	Stamp duty	16
<hr/>		
11	Governing law	17
11.1	Governing law and jurisdiction	17
11.2	Serving documents	17

Scheme of Arrangement

Details

Parties

1300 Smiles	Name	1300 Smiles Limited
	ABN/ACN/ARBN	094 508 166
	Formed in	Queensland, Australia
	Address	Level G, 105 Denham St Townsville QLD 4810
	Email	md@1300smiles.com.au
	Attention	Daryl Holmes

Scheme Participants	Each person registered as a holder of fully paid ordinary shares in 1300 Smiles as at 5.00pm on the Record Date.
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Governing law	New South Wales
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General terms

1 Definitions and interpretation

1.1 Definitions

Unless the contrary intention appears, these meanings apply:

1300 Smiles Share means an ordinary fully paid share in the capital of 1300 Smiles.

1300 Smiles Shareholder means each person registered in the Register as a holder of 1300 Smiles Shares.

Abano means Adams Aus Bidco Pty Limited (ACN 637 090 996).

Abano Holdco means Adams Group Aus Holdings Pty Limited (ACN 637 089 162).

Abano Nominee means any wholly-owned Subsidiary of Abano nominated by Abano in accordance with clause 2.2 of the Scheme Implementation Agreement.

ACCC means the Australian Competition and Consumer Commission.

ATO means the Australian Taxation Office.

ASIC means the Australian Securities and Investments Commission.

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

Business Day means a day (other than a Saturday, Sunday or public holiday) in which banks are open for over-the-counter banking business in Auckland, New Zealand, Brisbane, Melbourne and Sydney, Australia and Toronto, Canada.

Co-Investment Deed means the Retention and Co-investment Deed in relation to Abano Holdco, in the form agreed between the Company and Abano Holdco.

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

Court means Federal Court of Australia, Sydney Registry or such other court of competent jurisdiction under the Corporations Act agreed in writing by Abano and 1300 Smiles.

Deed Poll means the deed poll dated on or around the date of this Scheme executed by Abano substantially in the form of Annexure B of the Scheme Implementation Agreement or as otherwise agreed by Abano and 1300 Smiles under which Abano covenants in favour of each Scheme Participant to perform its obligations under this Scheme.

Details means the section of this document headed "Details".

Effective means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to this Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

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

Election means the election by the Founder Entity Scheme Participants to retain, in aggregate, 26.227% of their Scheme Shares (rounded up or down to the nearest whole number of Scheme Shares), in accordance with clause 5.9.

Election Date means 5.00pm on the date that is three clear Business Days before the date of the Scheme Meetings or such other date as is agreed in writing by Abano and 1300 Smiles.

Election Form means a form issued by 1300 Smiles for the purposes of the Founder Entity Scheme Participants making an Election.

Encumbrance means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or (2) of the PPSA, or any agreement to create any of them or allow them to exist.

End Date means 31 March 2022 or such other date as is agreed by Abano and 1300 Smiles.

Founder means Daryl Shane Holmes of 42 Stanton Terrace Caste Hill Queensland 4810.

Founder Entities means each of:

- (a) the Founder;
- (b) Daryl Holmes as trustee for the TFD Hybrid Fixed Trust; and
- (c) Golden Arch (Qld) Pty Ltd as trustee for the Whistler Discretionary Trust.

Founder Entity Consideration means:

- (a) \$5.52 less the actual amount of any Special Dividend ("**Founder Entity Cash Consideration**"); and
- (b) one Founder Entity Contingent Note ("**Founder Entity Contingent Note Consideration**"),

in respect of each Transferring Share held by Founder Entity Scheme Participants, to be provided by Abano to the Founder Entity Scheme Participants under the terms of this Scheme for the transfer to Abano (or Abano Nominee) of his Transferring Shares.

Founder Entity Contingent Note means an unsecured note to be issued by Abano providing for a contingent cash payment to the Founder Entity Scheme Participants of up to \$0.81.

Founder Entity Scheme Participant means a Founder Entity that is a Scheme Participant.

Immediately Available Funds means a bank cheque or other form of cleared funds acceptable to 1300 Smiles.

Implementation Date means the 5th Business Day following the Record Date or such other date as is agreed by Abano and 1300 Smiles.

Non-Founder Consideration means \$8.00, less the actual amount of any Special Dividend, in respect of each Transferring Share held by a Non-Founder

Scheme Participant, to be provided by Abano to Non-Founder Scheme Participants under the terms of this Scheme for the transfer to Abano (or Abano Nominee) of their Transferring Shares.

Non-Founder Scheme Participant means a Scheme Participant other than a Founder Entity Scheme Participant.

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

Record Date means the 2nd Business Day following the Second Court Date or such other date as 1300 Smiles and Abano agree.

Register means the share register of 1300 Smiles maintained by or on behalf of 1300 Smiles in accordance with section 168(1) of the Corporations Act.

Registered Address means, in relation to a 1300 Smiles Shareholder, the address shown in the Register.

Regulatory Authority includes:

- (a) ASX, ACCC, ASIC, ATO and the Takeovers Panel;
- (b) a government or governmental, semi-governmental or judicial entity or authority;
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (d) any regulatory organisation established under statute.

Retained Share means a Scheme Share to be retained by the Founder Entity Scheme Participants in accordance with an Election made under clause 5.9.

Scheme means this scheme of arrangement between 1300 Smiles and Scheme Participants under which all of the Transferring Shares will be transferred to Abano (or an Abano Nominee) under Part 5.1 of the Corporations Act as described in clause 6 of this Scheme, in consideration for the Scheme Consideration, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by 1300 Smiles and Abano in accordance with clause 8 of this Scheme.

Scheme Consideration means, in respect of Transferring Shares held by:

- (a) Non-Founder Scheme Participants, the Non-Founder Consideration; and
- (b) Founder Entity Scheme Participants, the Founder Entity Consideration.

Scheme Implementation Agreement means the scheme implementation agreement dated 23 August 2021 between 1300 Smiles and Abano under which, amongst other things, 1300 Smiles has agreed to propose this Scheme to 1300 Smiles Shareholders, and each of Abano and 1300 Smiles has agreed to take certain steps to give effect to this Scheme.

Scheme Meetings means the meetings of 1300 Smiles Shareholders, ordered by the Court to be convened pursuant to section 411(1) of the Corporations Act at which 1300 Smiles Shareholders will vote on this Scheme.

Scheme Participant means each person who is a 1300 Smiles Shareholder as at 5.00pm on the Record Date.

Scheme Share means a 1300 Smiles Share held by a Scheme Participant as at 5.00pm on the Record Date and, for the avoidance of doubt, includes any 1300 Smiles Shares issued on or before the Record Date.

Second Court Date means the day on which the Court makes an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme.

Share Scheme Transfer means, for each Scheme Participant, a duly completed and executed proper instrument of transfer of the Transferring Shares held by that Scheme Participant for the purposes of section 1071B of the Corporations Act, which may be a master transfer of all Transferring Shares.

Special Dividend means a dividend to be declared and paid by 1300 Smiles of up to \$1.10 per 1300 Smiles Share.

Subsidiary has the meaning given to it in the Corporations Act.

Transferring Share means a Scheme Share that is not a Retained Share.

Trust Account means an Australian dollar denominated trust account operated by or on behalf of 1300 Smiles to hold the Scheme Consideration on trust for the purpose of paying the Scheme Consideration to the Scheme Participants in accordance with clause 6.2 of this Scheme.

1.2 General interpretation

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

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

- (k) a reference to “regulations” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (l) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (m) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (n) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (o) if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day; and
- (p) if the day on which a party must do something under this document is not a Business Day, the party must do it on the next Business Day.

2 Preliminary

2.1 1300 Smiles

1300 Smiles is:

- (a) a public company limited by shares;
- (b) incorporated in Australia and registered in Queensland, Australia; and
- (c) admitted to the official list of the ASX and 1300 Smiles Shares are officially quoted on the stock market conducted by ASX.

As at the date of the Scheme Implementation Agreement, 1300 Smiles' issued securities are 23,678,384 1300 Smiles Shares.

2.2 Abano

Abano is:

- (a) a proprietary company limited by shares; and
- (b) incorporated in Australia and registered in Victoria, Australia.

2.3 If Scheme becomes Effective

If this Scheme becomes Effective:

- (a) in consideration of the transfer of each Transferring Share to Abano (or Abano Nominee), 1300 Smiles will procure Abano to provide the Scheme Consideration to 1300 Smiles on behalf of each Scheme Participant in accordance with the terms of this Scheme;
- (b) all Transferring Shares, together with all rights and entitlements attaching to the Transferring Shares as at the Implementation Date, will be transferred to Abano (or Abano Nominee) on the Implementation Date; and

- (c) 1300 Smiles will enter the name of Abano (or Abano Nominee) in the Register in respect of all Transferring Shares transferred to Abano (or Abano Nominee) in accordance with the terms of this Scheme with the result that Abano (or Abano Nominee) will hold all 1300 Smiles Shares other than the Retained Shares.

2.4 Scheme Implementation Agreement

1300 Smiles and Abano have agreed by executing the Scheme Implementation Agreement to implement the terms of this Scheme.

2.5 Deed Poll

Abano has executed the Deed Poll for the purpose of covenanting in favour of the Scheme Participants to perform (or procure the performance of) its obligations as contemplated by this Scheme, including to provide the Scheme Consideration.

3 Conditions precedent

3.1 Conditions precedent to Scheme

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

- (a) as at 8.00am on the Second Court Date, the Deed Poll not having been terminated;
- (b) all of the conditions precedent in clause 3.1 of the Scheme Implementation Agreement having been satisfied or waived (other than the conditions precedent in items (a) (FIRB approval), (b) (Shareholder approval) and (c) (Court approval)) in accordance with the terms of the Scheme Implementation Agreement;
- (c) the Court having approved this Scheme, with or without any modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, 1300 Smiles and Abano having accepted in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act; and
- (d) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme.

3.2 Conditions precedent and operation of clause 5

The satisfaction of each condition of clause 3.1 of this Scheme is a condition precedent to the operation of clause 5 of this Scheme.

3.3 Certificate in relation to conditions precedent

1300 Smiles and Abano must provide to the Court on the Second Court Date a certificate executed as a deed poll confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent set out in clause 3.1 of this Scheme (other than the conditions precedent in clause 3.1(c) and clause 3.1(d) of this Scheme) have been satisfied or waived as at 8.00am on the Second Court Date.

The certificate referred to in this clause 3.3 will constitute conclusive evidence of whether the conditions precedent referred to in clause 3.1 of this Scheme (other than the conditions precedent in clause 3.1(c) and 3.1(d) of this Scheme) have been satisfied or waived as at 8.00am on the Second Court Date.

4 Scheme

4.1 Effective Date

Subject to clause 4.2 this Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

4.2 Termination and 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 Scheme Implementation Agreement or the Deed Poll is terminated in accordance with its terms,

unless 1300 Smiles and Abano otherwise agree in writing.

5 Implementation of Scheme

5.1 Lodgement of Court orders with ASIC

If the conditions precedent set out in clause 3.1 of this Scheme (other than the condition precedent in clause 3.1(d) of this Scheme) are satisfied, 1300 Smiles must lodge with ASIC, in accordance with section 411(10) of the Corporations Act, an office copy of the Court order approving this Scheme as soon as reasonably practicable after the Court approves this Scheme, and in any event by no later than 5.00pm on the first Business Day after the day on which the Court approves this Scheme or such later time as Abano and 1300 Smiles agree in writing.

5.2 Transfer and registration of Transferring Shares

On the Implementation Date, but subject to the provision of the Scheme Consideration for the Transferring Shares in accordance with clauses 6.1 to 6.3 of this Scheme and Abano having provided 1300 Smiles with written confirmation of the provision of the Scheme Consideration:

- (a) the Transferring Shares, together with all rights and entitlements attaching to the Transferring Shares as at the Implementation Date, will be transferred to Abano (or Abano Nominee) without the need for any further act by any Scheme Participant (other than acts performed by 1300 Smiles as attorney and agent for Scheme Participants under clause 8 of this Scheme) by:
 - (i) 1300 Smiles delivering to Abano (or Abano Nominee) a duly completed and executed Share Scheme Transfer executed on behalf of the Scheme Participants; and
 - (ii) Abano (or Abano Nominee) duly executing the Share Scheme Transfer and delivering it to 1300 Smiles for registration; and

- (b) as soon as practicable after receipt of the duly executed Share Scheme Transfer, 1300 Smiles must enter the name of Abano (or Abano Nominee) in the Register in respect of all Transferring Shares transferred to Abano (or Abano Nominee) in accordance with the terms of this Scheme.

5.3 Entitlement to Scheme Consideration

On the Implementation Date, in consideration for the transfer to Abano (or Abano Nominee) of the Transferring Shares, each Scheme Participant will be entitled to receive the Scheme Consideration in respect of each of their Transferring Shares in accordance with clause 6 of this Scheme.

5.4 Title and rights in 1300 Smiles Shares

Subject to the provision of the Scheme Consideration for the Transferring Shares as contemplated by clause 6 of this Scheme, on and from the Implementation Date, Abano (or Abano Nominee) will be beneficially entitled to the Transferring Shares transferred to it under the Scheme, pending registration by 1300 Smiles of Abano (or Abano Nominee) in the Register as the holder of the Transferring Shares.

5.5 Scheme Participants' agreements

Under this Scheme, each Scheme Participant agrees to the transfer of their Transferring Shares, together with all rights and entitlements attaching to those Transferring Shares, in accordance with the terms of this Scheme.

5.6 Warranty by Scheme Participants

Each Scheme Participant warrants to Abano and is deemed to have authorised 1300 Smiles to warrant to Abano as agent and attorney for the Scheme Participant by virtue of this clause 5.6, that:

- (a) all their Transferring Shares (including any rights and entitlements attaching to those shares) transferred to Abano (or Abano Nominee) under the Scheme will, as at the date of the transfer, be fully paid and free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind; and
- (b) they have full power and capacity to sell and to transfer their Transferring Shares (including any rights and entitlements attaching to those shares) to Abano (or Abano Nominee) under the Scheme.

5.7 Transfer free of encumbrances

To the extent permitted by law, all Transferring Shares (including any rights and entitlements attaching to those shares) which are transferred to Abano (or Abano Nominee) under this Scheme will, at the date of the transfer of them to Abano (or Abano Nominee), vest in Abano (or Abano Nominee) free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind not referred to in this Scheme.

5.8 Appointment of Abano as sole proxy

- (a) Immediately upon provision of the Scheme Consideration to each Scheme Participant in the manner contemplated by clauses 5.2, 6.3 and 6.6 of this Scheme until 1300 Smiles registers Abano (or Abano Nominee) as the holder of all of the Transferring Shares in the Register, each Scheme Participant:

- (i) irrevocably appoints 1300 Smiles as attorney and agent (and directs 1300 Smiles in such capacity) to appoint Abano and each of its directors from time to time (jointly and each of them individually) as its sole proxy, and where applicable corporate representative, to attend shareholders' meetings, exercise the votes attaching to Transferring Shares registered in its name and sign any shareholders resolution, and no Scheme Participant may itself 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 this clause 5.8(a)(i));
 - (ii) must take all other actions in the capacity of the registered holder of Transferring Shares as Abano directs; and
 - (iii) acknowledges and agrees that in exercising the powers referred to in clause 5.8(a)(i), Abano and any director from time to time may act in the best interests of Abano as the intended registered holder of the Transferring Shares.
- (b) 1300 Smiles undertakes in favour of each Scheme Participant that it will appoint Abano and each of its directors from time to time (jointly and each of them individually) as that Scheme Participant's proxy or, where applicable, corporate representative in accordance with clause 5.8(a)(i) of this Scheme.

5.9 Election procedure

- (a) Subject to clause 5.9(b) and 5.9(c), each Founder Entity Scheme Participant will be entitled to make an Election. An Election will take effect in accordance with this Scheme to the extent that a Founder Entity Scheme Participant makes an Election and qualifies as a Scheme Participant.
- (b) If a Founder Entity Scheme Participant makes an Election, they may vary, withdraw or revoke that Election by lodging a replacement Election Form so that it is received on or before the Election Date. An Election cannot be varied, withdrawn or revoked after the Election Date.
- (c) An Election must be made in accordance with the terms and conditions on the Election Form and this clause 5.9, and an Election not so made will not be a valid election for the purpose of this Scheme and will not be recognised by Abano or 1300 Smiles for any purpose (provided that Abano may, with the agreement of 1300 Smiles, waive this requirement and settle as it thinks fit, any difficulty, matter of interpretation or dispute which may arise in connection with determining the validity of any Election, and any such decision will be conclusive and binding on Abano, 1300 Smiles and the relevant Founder Entity Scheme Participant).

6 Scheme Consideration

6.1 Consideration under the Scheme

On the Implementation Date, 1300 Smiles must procure Abano to provide (or procure the provision of):

- (a) the Non-Founder Consideration to the Non-Founder Scheme Participants;

- (b) the Founder Entity Consideration to the Founder Entity Scheme Participants,

in accordance with clauses 6.2, 6.3, 6.4 and 6.6 of this Scheme.

6.2 Satisfaction of obligations

The obligation of 1300 Smiles to procure provision of the Non-Founder Consideration and the Founder Entity Cash Consideration pursuant to clause 6.1 of this Scheme will be satisfied by 1300 Smiles procuring Abano no later than the Business Day before the Implementation Date to deposit (or procure the deposit) in Immediately Available Funds the aggregate amount of the Non-Founder Consideration payable to the Non-Founder Scheme Participants and the Founder Entity Cash Consideration payable to the Founder Entity Scheme Participants into the Trust Account (except that the amount of any interest on the amount deposited will be to Abano's account).

6.3 Payment of Non-Founder Consideration and the Founder Entity Cash Consideration

On the Implementation Date, subject to receipt of the Non-Founder Consideration and the Founder Entity Cash Consideration from Abano in accordance with clause 6.2 of this Scheme, 1300 Smiles must pay:

- (a) to each Non-Founder Scheme Participant an amount equal to the Non-Founder Consideration for each Transferring Share transferred to Abano (or Abano Nominee) on the Implementation Date by that Non-Founder Scheme Participant; and
- (b) to the Founder Entity Scheme Participants an amount equal to the Founder Entity Cash Consideration for each Transferring Share transferred to Abano (or Abano Nominee) on the Implementation Date by the Founder Entity Scheme Participants.

Unless otherwise directed by the Scheme Participants before the Record Date, the amounts referred to in this clause 6.3 of this Scheme must be paid by direct credit or sending a cheque drawn on an Australian bank in Australian currency on the Implementation Date to each Scheme Participant by pre-paid ordinary post (or, if the address of the Scheme Participant in the Register is outside Australia, by pre-paid airmail post) to their address recorded in the Register at 5.00pm on the Record Date.

6.4 Unclaimed monies

1300 Smiles may cancel a cheque issued under clause 6.3 of this Scheme if the cheque:

- (a) is returned to 1300 Smiles; or
- (b) has not been presented for payment within 6 months after the date on which the cheque was sent.

During the period of 1 year commencing on the Implementation Date, on request from a Scheme Participant, 1300 Smiles must reissue a cheque that was previously cancelled under this clause 6.4.

6.5 Orders of a court

In the case of notice having been given to 1300 Smiles (or the Registry) of an order made by a court of competent jurisdiction:

- (a) which requires payment to a third party of a sum in respect of Transferring Shares held by a particular Scheme Participant, which would otherwise be payable to that Scheme Participant in accordance with clause 6.3 of this Scheme, then 1300 Smiles must procure that payment is made in accordance with that order; or
- (b) which would prevent 1300 Smiles from dispatching payment to any particular Scheme Participant in accordance with clause 6.3 of this Scheme, 1300 Smiles will retain an amount, in Australian dollars, equal to the number of Transferring Shares held by that Scheme Participant multiplied by the Scheme Consideration until such time as payment in accordance with clause 6.3 of this Scheme is permitted by law.

6.6 Provision of Founder Entity Contingent Notes

The:

- (a) obligations of Abano to issue Founder Entity Contingent Notes to the Founder Entity Scheme Participants under the Scheme will be satisfied by Abano:
- (i) on the Implementation Date, causing the name and Registered Address (as at the Record Date) of the Founder Entity Scheme Participant to be entered in the register for the Founder Entity Contingent Notes as the holder of the Founder Entity Contingent Notes issued to the Founder Entity Scheme Participants and provide an extract of the register evidencing the entry into the register of the Founder Entity Scheme Participants certified as true and correct by an officer of Abano; and
 - (ii) on or before the date that is five Business Days after the Implementation Date, sending or procuring the sending of certificates to the Founder Entity Scheme Participants reflecting the issue of the Founder Entity Contingent Notes.
- (b) Founder Entity Scheme Participants agree pursuant to the Scheme to:
- (i) have their name and address entered in the register for the Founder Entity Contingent Notes; and
 - (ii) be bound by the terms of the Founder Entity Contingent Notes.

6.7 Joint holders

In the case of Transferring Shares held in joint names:

- (a) any cheque required to be sent under this Scheme must be payable to the joint holders and sent to the holder whose name appears first in the Register as at 5.00pm on the Record Date; and
- (b) any other document required to be sent under this Scheme must be sent to the holder whose name appears first in the Register as at 5.00pm on the Record Date.

6.8 Fractional entitlements

- (a) Where the calculation of the Non-Founder Consideration to be provided to a Non-Founder Scheme Participant would result in the Non-Founder Scheme Participant becoming entitled to a fraction of a cent, the fractional entitlement will be rounded up or down to the nearest cent and,

for the avoidance of doubt, fractional entitlements of 0.5 of a cent will be rounded up.

- (b) Where the calculation of the Founder Entity Cash Consideration to be provided to a Founder Entity Scheme Participant would result in a Founder Entity Scheme Participant becoming entitled to a fraction of a cent, the fractional entitlement will be rounded up or down to the nearest cent and, for the avoidance of doubt, fractional entitlements of 0.5 of a cent will be rounded up.
- (c) Where the calculation of the Founder Entity Contingent Note Consideration to be provided to a Founder Entity Scheme Participant would result in the issue of a fraction of a Founder Entity Contingent Note, the number of Founder Entity Contingent Notes to be issued to a Founder Entity Scheme Participant will be rounded up or down to the nearest whole number of Founder Entity Contingent Notes and, for the avoidance of doubt, fractional entitlements of 0.5 of a Founder Entity Contingent Notes will be rounded up.

6.9 Foreign resident capital gains withholding

(a) If Abano determines, having regard to legal advice, that Abano is:

- (i) required by law to withhold any amount from a payment or an issue of Founder Entity Contingent Notes to a Founder Entity Scheme Participant; or
- (ii) liable to pay an amount to the Commissioner of Taxation under Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953* (Cth) in respect of the acquisition of Transferring Shares from a Scheme Participant,

(either of the above being the **Relevant Amount**),

then Abano is entitled to

- (iii) withhold the Relevant Amount before making the payment to the Scheme Participant or issuing the Founder Entity Contingent Notes to the Founder Entity Scheme Participant (as applicable);
- (iv) reduce the number of Founder Entity Contingent Notes issued by a number calculated by the following factor, RA/VS, rounded to the nearest whole number of Founder Entity Contingent Notes, where:
 - (A) RA means the Relevant Amount or the amount of the Relevant Amount not satisfied after the application of clause 6.9(a)(iii); and
 - (B) VS means the value (as reasonably assessed by Abano) of one Founder Entity Contingent Note; and
- (v) where the Scheme Consideration is a combination of cash and Founder Entity Contingent Notes, first withhold the Relevant Amount from any cash element,

and payment of the reduced amount or issue of the reduced number of Founder Entity Contingent Notes (or a combination) and payment of the Relevant Amount to the relevant taxation authority pursuant to clause **Error! Reference source not found.** will be taken to be full payment of

the Relevant Amount for the purpose of this Scheme, including clause 6.3 and 6.6.

- (b) Abano must pay the Relevant Amount so withheld to the relevant taxation authority within the time permitted by law, and, if requested in writing by the relevant Scheme Participant, provide a receipt or other appropriate evidence (or procure the provision of such receipt or other evidence) of such payment to the relevant Scheme Participant.

7 Dealings in Scheme Shares

7.1 Determination of Scheme Participants

To establish the identity of the Scheme Participants, dealings in Scheme Shares will only be recognised by 1300 Smiles if:

- (a) in the case of dealings of the type to be effected using CHES, the transferee is registered in the Register as the holder of the relevant Scheme Shares on or before 5.00pm on the Record Date; and
- (b) in all other cases, registrable transmission applications or transfers in registrable form in respect of those dealings are received on or before 5.00pm on the Record Date at the place where the Register is kept.

7.2 Register

1300 Smiles must register any registrable transmission applications or transfers of the Scheme Shares received in accordance with clause 7.1(b) of this Scheme on or before 5.00pm on the Record Date.

7.3 No disposals after Effective Date

If this Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Effective Date in any way except as set out in this Scheme and any such disposal will be void and of no legal effect whatsoever.

1300 Smiles will not accept for registration or recognise for any purpose any transmission, application or transfer in respect of Scheme Shares received after 5.00pm on the Record Date (except a transfer to Abano (or Abano Nominee) pursuant to this Scheme and any subsequent transfer by Abano (or Abano Nominee) or its successors in title).

7.4 Maintenance of 1300 Smiles Register

For the purpose of determining entitlements to the Scheme Consideration, 1300 Smiles will maintain the Register in accordance with the provisions of clauses 7.1 to 7.3 until the Scheme Consideration has been provided to the Scheme Participants and Abano (or Abano Nominee) has been entered in the Register as the holder of all the Transferring Shares. The Register in this form will solely determine entitlements to the Scheme Consideration.

7.5 Effect of certificates and holding statements

Subject to provision of the Scheme Consideration and registration of the transfer to Abano (or Abano Nominee) contemplated in clauses 5.2 and 7.4 of this Scheme, any statements of holding in respect of Transferring Shares will cease to have effect after 5.00pm on the Record Date as documents of title in respect

of those shares (other than statements of holding in favour of Abano (or Abano Nominee) and its successors in title). After 5.00pm on the Record Date, each entry current on the Register as at 5.00pm on the Record Date in respect of Transferring Shares (other than entries in respect of Abano (or Abano Nominee) or its successors in title) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Transferring Shares relating to that entry.

7.6 Details of Scheme Participants

Within 3 Business Days after the Record Date 1300 Smiles will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Participant, as shown in the Register at 5.00pm on the Record Date are available to Abano in such form as Abano reasonably requires.

7.7 Quotation of 1300 Smiles Shares

Suspension of trading on ASX in 1300 Smiles Shares will occur from the close of trading on ASX on the Effective Date.

7.8 Termination of quotation of 1300 Smiles Shares

After the Scheme has been fully implemented, 1300 Smiles will apply:

- (a) for termination of the official quotation of 1300 Smiles Shares on ASX; and
- (b) to have itself removed from the official list of the ASX.

8 Power of attorney

Each Scheme Participant, without the need for any further act by any Scheme Participant, irrevocably appoints 1300 Smiles and each of its directors and secretaries (jointly and each of them individually) as its attorney and agent for the purpose of:

- (a) executing any deed or document necessary or expedient to give effect to this Scheme including the Share Scheme Transfer;
- (b) enforcing the Deed Poll against Abano; or
- (c) any deed or document required by Abano or Abano Holdco that causes each Founder Entity Scheme Participant to be bound by the Co-Investment Deed or to be bound by the constituent documents of Abano Holdco,

and 1300 Smiles accepts such appointment.

9 Notices

9.1 No deemed receipt

If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to 1300 Smiles, 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 1300 Smiles' registered office or at the office of the registrar of 1300 Smiles Shares.

9.2 Accidental omission

The accidental omission to give notice of either of the Scheme Meetings or the non-receipt of such a notice by any Shareholder will not, unless so ordered by the Court, invalidate either of the Scheme Meetings or the proceedings of either of the Scheme Meetings.

10 General

10.1 Variations, alterations and conditions

1300 Smiles may, with the consent of Abano (which cannot be unreasonably withheld), by its counsel or solicitor consent on behalf of all persons concerned to any variations, alterations or conditions to this Scheme which the Court thinks fit to impose.

10.2 Further action by 1300 Smiles

1300 Smiles will execute all documents and do all things (on its own behalf and on behalf of each Scheme Participant) necessary or expedient to implement, and perform its obligations under, this Scheme.

10.3 Authority and acknowledgement

Each of the Scheme Participants:

- (a) irrevocably consents to 1300 Smiles and Abano doing all things necessary or expedient for or incidental to the implementation of this Scheme; and
- (b) acknowledges that this Scheme binds 1300 Smiles and all Scheme Participants (including those who do not attend the relevant Scheme Meeting or do not vote at that meeting or vote against the Scheme at that Meeting) and, to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of 1300 Smiles.

10.4 No liability when acting in good faith

Neither 1300 Smiles nor Abano, nor any of their respective officers, will be liable for anything done or omitted to be done in the performance of this Scheme in good faith.

10.5 Enforcement of Deed Poll

1300 Smiles undertakes in favour of each Scheme Participant to enforce the Deed Poll against Abano on behalf of and as agent and attorney for the Scheme Participants.

10.6 Stamp duty

Abano will pay all stamp duty (including any fines, penalties and interest) payable in connection with this Scheme or the Deed Poll.

11 Governing law

11.1 Governing law and jurisdiction

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

11.2 Serving documents

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

Scheme Implementation Agreement

Annexure B Deed Poll

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Deed Poll

Dated

Given by Adams Aus Bidco Pty Limited (ACN 637 090 996) ("**Abano**")

In favour of each registered holder of fully paid ordinary shares in 1300 Smiles Limited (ACN 094 508 166) ("**1300 Smiles**") as at 5.00 pm on the Record Date ("**Scheme Participants**")

King & Wood Mallesons

Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.kwm.com

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Deed Poll

Contents

Details	1	
General terms	2	
1	Definitions and interpretation	2
1.1	Definitions	2
1.2	General interpretation	2
1.3	Nature of deed poll	2
2	Conditions precedent and termination	2
2.1	Conditions precedent	2
2.2	Termination	2
2.3	Consequences of termination	3
3	Performance of obligations generally	3
4	Scheme Consideration	3
4.1	Scheme Consideration	3
4.2	Manner of payment	3
4.3	Joint holders	4
5	Representations and warranties	4
6	Continuing obligations	4
7	Costs	5
7.1	Costs	5
7.2	Stamp duty and registration fees	5
8	Notices	5
9	General	5
9.1	Variation	5
9.2	Partial exercising of rights	5
9.3	Remedies cumulative	6
9.4	Assignment or other dealings	6
9.5	Further steps	6
10	Governing law and jurisdiction	6
10.1	Governing law and jurisdiction	6
10.2	Serving documents	6
	Signing page	7
	Annexure A - Scheme	8

Deed Poll

Details

Parties

Abano	Name	Adams Aus Bidco Pty Limited
	ACN	637 090 996
	Formed in	Victoria, Australia
	Address	Level 26, 101 Collins Street Melbourne VIC 3000
	Email	Hmorfis@bghcapital.com
	Attention	Hari Morfis

In favour of Each registered holder of fully paid ordinary shares in 1300 Smiles as at 5.00 pm on the Record Date.

Governing law New South Wales

- Recitals**
- A** The directors of 1300 Smiles have resolved that 1300 Smiles should propose the Scheme.
 - B** The effect of the Scheme will be that all Transferring Shares will be transferred to Abano (or Abano Nominee).
 - C** 1300 Smiles and Abano have entered into the Scheme Implementation Agreement.
 - D** In the Scheme Implementation Agreement, Abano agreed (amongst other things) to provide the Scheme Consideration to 1300 Smiles on behalf of the Scheme Participants, subject to the satisfaction of certain conditions.
 - E** Abano is entering into this deed poll for the purpose of covenanting in favour of Scheme Participants to perform its obligations in relation to the Scheme.

Deed Poll

General terms

1 Definitions and interpretation

1.1 Definitions

Unless the contrary intention appears, these meanings apply:

Authorised Officer means a director or secretary of a party or any other person nominated by a party to act as an Authorised Officer for the purposes of this document.

Scheme means the proposed scheme of arrangement between 1300 Smiles and Scheme Participants under which all the Transferring Shares will be transferred to Abano (or Abano Nominee) under Part 5.1 of the Corporations Act, substantially in the form of Annexure A to this deed poll, or as otherwise agreed by Abano and 1300 Smiles, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act, to the extent they are approved in writing by 1300 Smiles and Abano in accordance with clause 10.1 of the Scheme.

All other words and phrases used in this document have the same meaning as given to them in the Scheme.

1.2 General interpretation

Clause 1.2 of the Scheme applies to this document.

1.3 Nature of deed poll

Abano acknowledges and agrees that this document may be relied on and enforced by any Scheme Participant in accordance with its terms even though the Scheme Participants are not a party to it.

2 Conditions precedent and termination

2.1 Conditions precedent

Abano's obligations under clause 4 are subject to the Scheme becoming Effective.

2.2 Termination

Abano's obligations under this document will automatically terminate and the terms of this document will be of no further force or effect if:

- (a) the Scheme has not become Effective on or before the End Date; or
- (b) the Scheme Implementation Agreement is terminated in accordance with its terms.

2.3 Consequences of termination

If this document is terminated under clause 2.2, then, in addition and without prejudice to any other rights, powers or remedies available to Scheme Participants:

- (a) Abano is released from its obligations to further perform this document except those obligations contained in clause 7.2 and any other obligations which by their nature survive termination; and
- (b) each Scheme Participant retains the rights, powers or remedies they have against Abano in respect of any breach of this document which occurs before it is terminated.

3 Performance of obligations generally

Abano must comply with its obligations under the Scheme Implementation Agreement and do all acts and things necessary or desirable on its part to give full effect to the Scheme.

4 Scheme Consideration

4.1 Scheme Consideration

Subject to clause 2, Abano undertakes in favour of each Scheme Participant to:

- (a) pay or procure the payment of the Non-Founder Consideration to the Trust Account on behalf of each Non-Founder Scheme Participant in accordance with the Scheme;
- (b) pay or procure the payment of the Founder Entity Cash Consideration to the Trust Account on behalf of each Founder Entity Scheme Participant in accordance with the Scheme; and
- (c) issue Founder Entity Contingent Notes to each Founder Entity Scheme Participant in accordance with the Scheme.

4.2 Manner of payment

The obligations of Abano under clause 4.1 will be satisfied if, in respect of the Scheme Consideration:

- (a) Abano deposits or procures the deposit, no later than the Business Day before the Implementation Date in Immediately Available Funds the aggregate amount of the Non-Founder Consideration payable to the Non-Founder Scheme Participants and the Founder Entity Cash Consideration payable to the Founder Entity Scheme Participants into the Trust Account (except that the amount of any interest on the amount deposited will be to Abano's account);
- (b) on the Implementation Date, Abano issues all of the Founder Entity Contingent Notes it is obligated to issue to the Founder Entity Scheme Participants under the Scheme and Abano provides 1300 Smiles with written confirmation that Abano has done so;
- (c) on the Implementation Date, Abano enters the name of the Founder Entity Scheme Participants into Abano's register of Founder Entity Contingent Notes as the holder of those Founder Entity Contingent Notes and provide an extract of the register evidencing the entry into the

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register of the Founder Entity Scheme Participants certified as true and correct by an officer of Abano; and

- (d) on or before the date that is five Business Days after the Implementation Date, Abano sends or procures the sending of a certificate to the Founder Entity Scheme Participants reflecting the issue of the Founder Entity Contingent Notes, in each case, in accordance with and subject to the Scheme.

4.3 Joint holders

In the case of Transferring Shares held in joint names:

- (a) any bank cheque required to be sent under the Scheme must be payable to the joint holders and sent to the holder whose name appears first in the Register as at 5.00pm on the Record Date; and
- (b) any other document required to be sent under this Scheme must be sent to the holder whose name appears first in the Register as at 5.00pm on the Record Date.

5 Representations and warranties

Abano represents and warrants to each Scheme Participant that:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation or formation, is validly existing under those laws and has power and authority to own its assets and carry on its business as it is now being conducted;
- (b) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:
 - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded;
 - (ii) any law binding on or applicable to it or its assets; or
 - (iii) any Encumbrance or document binding on or applicable to it;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms; and
- (f) **(solvency)** is not Insolvent.

6 Continuing obligations

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

- (a) Abano has fully performed each of its obligations under this document;
or
- (b) the earlier termination of this document under clause 2.2.

7 Costs

7.1 Costs

Abano agrees to pay all costs in respect of the Scheme (including, in connection with the transfer of the Transferring Shares to Abano in accordance with the terms of the Scheme) except for amounts covered by clause 7.2.

7.2 Stamp duty and registration fees

Abano:

- (a) agrees to pay or reimburse all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this document or any other transaction contemplated by this document (including any fees, fines, penalties and interest in connection with any of these amounts); and
- (b) indemnifies each Scheme Participant against, and agrees to reimburse and compensate it, for any liability in respect of stamp duty under clause 7.2(a) on demand.

8 Notices

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

9 General

9.1 Variation

A provision of this document or any right created under it may not be varied, altered or otherwise amended unless:

- (a) if before the First Court Date, the variation, alteration or amendment is agreed to by 1300 Smiles and Abano in writing; and
- (b) if on or after First Court Date, the Court indicates that the variation, alteration or amendment would not itself preclude approval of the Scheme,

in which event Abano must enter into a further deed poll in favour of the Scheme Participants giving effect to the variation, alteration or amendment.

9.2 Partial exercising of rights

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

9.3 Remedies cumulative

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

9.4 Assignment or other dealings

Abano and each Scheme Participant may not assign, encumber or otherwise deal with its rights under this document or allow any interest in them to arise or be varied without the consent of Abano and 1300 Smiles.

9.5 Further steps

Abano agrees to do anything including executing all documents and do all things (on its own behalf or on behalf of each Scheme Participant) necessary or expedient to give full effect to this document and the transactions contemplated by it.

10 Governing law and jurisdiction

10.1 Governing law and jurisdiction

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

10.2 Serving documents

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

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Signing page

DATED: _____

EXECUTED by **ADAMS AUS BIDCO
PTY LIMITED** in accordance with
section 127(1) of the *Corporations Act
2001* (Cth) by authority of its directors:

.....
Signature of director

.....
Name of director (block letters)

.....
Signature of director/company
secretary*
*delete whichever is not applicable

.....
Name of director/company secretary*
(block letters)
*delete whichever is not applicable

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Annexure A - Scheme

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