

ASX Announcement

7 August 2023

Proposed acquisition of Estia Health by Bain Capital progresses to signed Scheme Implementation Agreement

Estia Health Limited (**ASX: EHE**) ("**Estia Health**" or the "**Company**") announces that it has entered into a Scheme Implementation Agreement ("**SIA**") with an entity controlled by Bain Capital, LP ("**Bain Capital**") for the acquisition of 100% of the issued share capital of Estia Health by way of a scheme of arrangement undertaken in accordance with the requirements of the Corporations Act 2001 (Cth) ("**Scheme**").

Summary

- Estia Health has entered into a Scheme Implementation Agreement with Bain Capital under which Bain Capital has agreed to acquire 100% of the shares in Estia Health by way of a Scheme of Arrangement
- Should the Scheme proceed Estia Health shareholders will receive cash of \$3.20 per Estia Health share, reduced by the amount of any permitted dividends paid ("**Scheme Consideration**")
- The Scheme Consideration represents a 50% premium to Estia Health's closing share price of \$2.14 on 21 March 2023, prior to Bain Capital's proposal
- Estia Health is permitted to pay fully franked dividends of up to \$0.12 per share which would enable eligible shareholders to receive up to \$0.05 per share in additional benefit from franking credits
- The Board of Estia Health unanimously recommends shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to an Independent Expert concluding that the Scheme is in the best interests of Estia Health shareholders
- The Scheme is subject to various conditions including approval by Estia Health shareholders at a Scheme Meeting expected to be held in November 2023, with a Scheme Booklet containing an Independent Expert's report to be provided to shareholders ahead of the Scheme Meeting
- Implementation of the Scheme is expected to occur prior to the end of 2023
- Estia Health shareholders do not need to take any action at this point in time

Background

On 23 March 2023 Estia Health received a confidential, non-binding and indicative proposal from Bain Capital to acquire 100% of the issued share capital in Estia Health at \$3.00 cash per share (adjusted for any dividends paid or payable after the date of the proposal). In order to formulate an improved proposal, Estia Health provided a limited period of access to certain non-public financial and other information on a non-exclusive basis to Bain Capital.

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As announced on 7 June 2023, Estia Health subsequently received a revised non-binding and conditional proposal from Bain Capital at \$3.20 cash per share (adjusted for permitted dividends paid or payable after the date of the proposal). On the basis of this proposal Estia Health's Board of Directors agreed to provide Bain Capital the opportunity to conduct due diligence on an exclusive basis to enable it to provide a binding proposal. This period of exclusivity ended on 27 July 2023.

Estia Health and Bain Capital have now entered into the SIA which requires the parties to implement the acquisition by Bain Capital of 100% of the issued share capital of Estia Health by way of a Scheme.

Details of the Scheme

If the Scheme is implemented, Estia Health shareholders will receive total cash value of \$3.20 per share, less the cash amount of permitted dividends declared and paid after the date of entry into the SIA.

Estia Health intends to pay a fully franked ordinary dividend on or before the Scheme Implementation Date and is permitted under the SIA to pay ordinary dividends of up to \$0.12 cash per share¹. Payment of \$0.12 per share in fully franked dividends would enable eligible Estia Health shareholders to receive approximately \$0.05 per share in additional benefit from franking credits, depending on their tax circumstances.

The Scheme Consideration implies an equity value of approximately \$838 million², an enterprise value of approximately \$959 million³ and represents a premium of:

- 50% to the closing share price on 21 March 2023⁴ of \$2.14;
- 52% to the 1-month volume weighted average price ("VWAP")⁵ to 21 March 2023 of \$2.10 per share; and
- 59% to the 3-month VWAP⁴ to 21 March 2023 of \$2.01 per share.

Estia Health Directors' recommendation

Estia Health's Board of Directors unanimously recommends that Estia Health shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to an Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of Estia Health shareholders. Each Estia Health Director intends to vote all of the Estia Health shares that he or she holds or controls in favour of the Scheme, subject to those same qualifications.

Estia Health Chair, Dr Gary Weiss, said: "We are pleased that Bain Capital has recognised Estia Health's value as a leading Australian aged care operator with a strong reputation for person-centred care. The Estia Health Board is confident as to the outlook for the business, however, recognises that the Scheme allows shareholders to realise certain cash value now at an attractive premium.

1. This dividend is subject to Estia Health's Board of Directors resolving to determine or declare it, which, in turn, is subject to the finalisation of Estia Health's audited financial statements for FY2023, cash flows, overall financial condition and capital requirements, legal and taxation considerations, the general business environment and prevailing conditions at the time

2. Based on 258,361,034 shares outstanding and 3,401,143 performance rights

3. Based on 31 December 2022 net debt of \$59.7 million and lease liabilities of \$62.1 million

4. Being the day immediately prior to market speculation around the existence of a possible change of control proposal

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

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“The Board considered a range of matters in coming to its unanimous recommendation, including the intrinsic value of Estia Health under a range of scenarios and the price at which its shares may trade over the medium term in the absence of the Scheme. We believe the proposed transaction is a good outcome for shareholders and our stakeholders more broadly.”

Estia Health CEO, Mr Sean Bilton, said: “Bain Capital’s interest in Estia Health is a strong endorsement of our strategy to build a market leading aged care provider focussed on creating high quality outcomes for our residents and families and an attractive and supportive environment for our employees.

“We look forward to a partnership that will continue to deliver our core purpose to ‘enrich and celebrate life together’.”

Details of the Scheme Implementation Agreement

Implementation of the Scheme is subject to various conditions including Estia Health shareholder approval. A copy of the SIA, which sets out the terms and conditions of the Scheme and associated matters, is attached to this announcement at Annexure 1.

In summary, conditions for implementation of the Scheme include:

- an Independent Expert issuing an Independent Expert’s Report which concludes that the Scheme is in the best interests of Estia Health shareholders (and not changing or withdrawing that conclusion);
- approval of the Foreign Investment Review Board;
- approval of Estia Health shareholders by the requisite majorities;
- approval of the Federal Court of Australia;
- no Material Adverse Changes (as defined in the SIA) to Estia Health including limits on consolidated net assets and consolidated annual EBITDA movements, maintenance of a minimum Refundable Accommodation Deposit balance and that no Material Regulatory Events (as defined in the SIA) occur;
- no Prescribed Occurrences (as defined in the SIA); and
- certain other customary conditions.

The Scheme is not subject to any financing condition.

The SIA contains limited termination rights, including that either party may terminate in the event of an unremedied material breach by the other party.

Under the SIA, Estia Health will be subject to exclusivity obligations, including no shop, no talk and no due diligence obligations (the latter two subject to a fiduciary exception), notification obligations and a matching right. A break fee will be payable by Estia Health to Bain Capital in certain circumstances and a reverse break fee will be payable by Bain Capital to Estia Health in certain circumstances.

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Indicative timetable and next steps

Estia Health shareholders do not need to take any action at this point in time.

A Scheme Booklet containing information relating to the proposed acquisition under the Scheme, reasons for the Directors' recommendation, an Independent Expert's Report and details of the Scheme meeting will be prepared and provided to the Australian Securities and Investments Commission for review, and subsequently sent to Estia Health shareholders.

Shareholders will then have the opportunity to vote on the Scheme at a shareholder meeting that is expected to be held in November 2023. Subject to shareholder approval being obtained by the requisite majorities and the other conditions of the Scheme being satisfied, the Scheme is expected to be implemented prior to the end of 2023.

UBS Securities Australia is acting as financial adviser and Minter Ellison as legal adviser to Estia Health.

Approved for release by the Board of Directors of Estia Health Limited.

--- ENDS ---

Further enquiries:

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About Estia Health

Estia Health Limited is one of Australia's leading aged care providers, operating 73 homes across Victoria, South Australia, New South Wales and Queensland. Estia Health cares for over 8,000 residents annually and supports them and their families at an important time in their lives.

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Annexure 1: Scheme Implementation Agreement

For personal use only

Scheme Implementation Agreement

Project Eclipse

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Estia Health Limited (**Target**)

Firebird BidCo Pty Ltd (**Bidder**)

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Scheme Implementation Agreement

Project Eclipse

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Details

Date 6 August 2023

Parties

Name Estia Health Limited
ACN 160 986 201
Short form name **Target**
Notice details Address: Level 9, 227 Elizabeth Street, Sydney, NSW 2000
Attention: The Directors

[REDACTED]
[REDACTED]
[REDACTED]

Name Firebird BidCo Pty Ltd
ACN 669 884 824
Short form name **Bidder**
Notice details Address: Level 28, 88 Phillip Street Sydney, NSW 2000
Attention: Michael Murphy / Charles Lawson / Samuel Payne

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Background

- A Target and Bidder have agreed to implement the Proposed Transaction on and subject to the terms and conditions of this agreement.
- B Target and Bidder have agreed certain other matters in connection with the Proposed Transaction as set out in this agreement.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

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

AASB 16 means Accounting Standard AASB 16 *Leases*.

Acceptable Confidentiality Agreement means a confidentiality agreement which contains obligations on the recipient of confidential information which are no less onerous in any material respect than the obligations of Bidder under the Confidentiality Agreement.

Accounting Standards means:

- (a) the accounting standards made by the Australian Accounting Standards Board in accordance with the Corporations Act, and the requirements of the Corporations Act relating to the preparation and content of accounts; and
- (b) generally accepted accounting principles that are consistently applied in Australia, except those inconsistent with the standards or requirements referred to in paragraph (a).

Aged Care Act means the *Aged Care Act 1997* (Cth) and where the context permits, includes the *Aged Care (Transitional Provisions) Act 1997* (Cth).

ACQSC means the Aged Care Quality and Safety Commission formed under the ACQSC Act.

ACQSC Act means the *Aged Care Quality and Safety Commission Act 2018* (Cth).

Adviser means, in relation to an entity:

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

Allocated Place means a place allocated under Part 2.2 of the Aged Care Act.

Announcement means an announcement by Target in relation to the Proposed Transaction, in the form agreed by Target and Bidder (both acting reasonably), prior to signing of this agreement.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in Division 2 of Part 1.2 of the Corporations Act as if section 12(1) of that Act included a reference to this agreement and Target was the designated body.

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

Authorised Person means, in respect of a person:

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

Bain Capital means Bain Capital Private Equity, LLC.

Bain Capital Fund Entities means any fund, limited partnership, special purpose vehicle or other collective or pooled investment vehicle or other person which is managed or advised by Bain Capital or any of its Related Bodies Corporate.

Bain Entities means the Bidder Group, Bain Capital and each of the Bain Capital Fund Entities.

Bain Parties has the meaning given to that term in clause 21.12.

Bidder Break Fee has the meaning given to that term in clause 16(a).

Bidder Group means Bidder and each of their Related Bodies Corporate (excluding, at any time, Target and its Subsidiaries to the extent that Target and its Subsidiaries are Subsidiaries of Bidder at that time). A reference to a member of the **Bidder Group** or a **Bidder Group Member** is a reference to Bidder or any of its Subsidiaries and, for the avoidance of doubt, excludes any Bain Capital Fund Entities, any portfolio company or investment of the Bain Capital Fund Entities (as such term is commonly understood in the private equity industry) or any equity holders or investors of Bain Capital or any Bain Capital Fund Entities.

Bidder Information means such information regarding Bidder as is provided by or on behalf of Bidder, or any of their Advisers, to Target or the Independent Expert for inclusion in the Explanatory Booklet in accordance with this agreement.

Bidder Parties means each member of the Bidder Group and their respective Authorised Persons.

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

Business Day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in New South Wales, Australia.

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

Competing Proposal means any actual, potential or proposed offer, proposal or expression of interest, transaction or arrangement (including, by way of takeover bid or scheme of arrangement) under which, if ultimately completed substantially in accordance with its terms:

- (a) a person or two or more persons who are Associates (other than Bidder, the Bain Entities or an Associate of Bidder or the Bain Entities) would directly or indirectly:
 - (i) acquire (whether directly or indirectly) or become the holder of a legal, beneficial and/or economic interest in, all or a substantial part of the business or assets of the Target Group taken as a whole;
 - (ii) acquire a Relevant Interest in, or otherwise acquire or have a right to acquire a legal, beneficial and/or economic interest in, 20% or more of the shares or other securities of Target or any other member of the Target Group;
 - (iii) acquire control of Target or any other member of the Target Group within the meaning of section 50AA of the Corporations Act or otherwise acquire or merge with any member of the Target Group; or
- (b) which would cause Target or its Related Body Corporates not to proceed with the Proposed Transaction or as a result of which the Proposed Transaction otherwise would not proceed,

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

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

Confidentiality Deed means the confidentiality deed between Target and Bain Capital dated 19 April 2023.

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

Counter Proposal has the meaning given to that term in clause 17.7(b).

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

Daily Payment means a 'daily accommodation payment' or a 'daily accommodation contribution' (as each of those terms is defined in the Aged Care Act) provided to a member of Target Group by or on behalf of a Resident in relation to a RACF.

Data Room means the Project Eclipse data room hosted by Intralinks.

Debt Commitment Letters means the binding, credit-approved, executed commitment letters from one or more bank, financial institution, trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (including derivatives) addressed to any member of the Bidder Group for the purposes of the Proposed Transaction and provided to Target on or before the date of this agreement in a form acceptable to Bidder and Target.

Deed Poll means the deed poll to be executed by Bidder prior to the First Court Date, in the form set out in Schedule 2 or in such other form as is acceptable to Target acting reasonably.

Delivery Time means, in relation to the Second Court Date, 2 hours before the commencement of the hearing or if the commencement of the hearing is adjourned, the commencement of the adjourned hearing, of the Court to approve the Scheme in accordance with section 411(4)(b) of the Corporations Act.

Department of Health and Aged Care means the Commonwealth Department of Health and Aged Care.

Due Diligence Material means the information disclosed by or on behalf of Target and its Subsidiaries (including management presentations and all written responses provided in response to written questions or requests for information) to the Bain Entities or any of their respective Authorised Persons prior to the date of this agreement in the Data Room as evidenced conclusively by the USB provided by Target to Bidder on execution of this agreement.

EBITDA means statutory reported earnings before interest, tax, depreciation, amortisation for the consolidated Target Group calculated using the same methodology as in the Target's annual financial report for year ended 30 June 2022, adjusted to exclude the financial impact of the following:

- (a) imputed DAP revenue on RAD Balances and bond balances resulting from the adoption of AASB 16;
- (b) revenue or profit from non-operating or non-recurring activities (including gains on sales of assets and insurance gains);
- (c) costs or losses from non-operating or non-recurring activities (including losses and costs on any sales and acquisitions of assets);
- (d) unrealised fair value gains, losses and impairment expenses (including on any hedge or swap arrangements and in relation to investment properties or assets held for sale),

provided that, if material amounts associated with routine business activities are treated as operating and / or recurring by the Target Group in the Target Group's reporting, amounts associated with such activities will be treated as operating or recurring when calculating EBITDA for the purposes of this agreement. Without limiting the generality of the above, EBITDA specifically includes the profit or loss impact of:

- (e) net new homes and home closures which have occurred less than 12 months prior to the end of the reporting period; and
- (f) any costs relating to bonuses or incentives.

Effective means, when used in relation to the Scheme, the coming into effect, under 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 the Scheme.

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

Electronic Delivery has the meaning given to that term in clause 21.15(a).

End Date means:

- (a) 29 February 2024; or
- (b) such other date and time agreed in writing between Bidder and Target.

Entry Contribution means an Accommodation Bond, a Refundable Accommodation Contribution or a Refundable Accommodation Deposit (as each of those terms is defined in the Aged Care Act) provided to a member of the Target Group by or on behalf of a Resident in relation to a RACF.

Equity Commitment Letters means the binding, executed equity commitment letters addressed to Bidder and Target, and provided on or before the date of this agreement in a form acceptable to Bidder and Target.

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

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

Existing Financing means any existing financing agreement or arrangement for the provision of Financial Indebtedness to a member of the Target Group (including swap and derivative agreements or arrangements, if applicable).

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

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

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

- (a) borrowing from any bank or other financial institution or similar organisation, including any accrued but unpaid interest, early repayment fees, penalties and/or other break costs;
- (b) debt securities, including any bill, bond, debenture, note, loan stock or similar instrument;
- (c) acceptance, endorsement or discounting arrangement;
- (d) guarantee;
- (e) finance or capital lease;
- (f) swap, hedge arrangement, option, futures contract, derivative or analogous transaction;
- (g) agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or business;
- (h) agreement for the deferral of a purchase price or other payment in relation to the provision of services other than in the ordinary course of business of Target Group; or
- (i) obligation to deliver goods or provide services paid for in advance by any financier,

but does not include any debt or liabilities in respect of Entry Contributions or any item which is categorised as debt or liability under AASB 16.

Financing Default means any "event of default" (however described), any "review event" (however described) or any other termination event (however described) under and for the purposes of any Existing Financing.

FIRB means the Foreign Investment Review Board.

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

Governmental Agency means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, ASIC, ASX and any regulatory organisation established under statute or any stock exchange.

GST Exclusive Consideration has the meaning given to that term in clause 21.5(c).

Headcount Test means the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the resolution to approve the Scheme at the Scheme Meeting is passed by a majority in number of Target Shareholders present and voting, either in person or by proxy.

Implementation Date means, with respect to the Scheme, the fifth Business Day, or such other Business Day as the parties agree in writing, following the Record Date for the Scheme.

Impugned Amount has the meaning given to that term in clause 18.4.

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

Independent Expert's Report means the report from the Independent Expert commissioned by Target for inclusion in the Explanatory Booklet, which includes a statement or opinion from the Independent Expert on whether the Scheme is in the best interest of Target Shareholders, and includes any update of that report by the Independent Expert.

Insolvency Event means in relation to a person:

- (a) the appointment of a liquidator, provisional liquidator, administrator, statutory manager, controller, receiver and manager or other insolvency official (whether under an Australian law or a foreign law) to the person or to the whole or a substantial part of the property or assets of the person and the action is not stayed, withdrawn or dismissed within 30 days;
- (b) the entry by the person into a compromise or arrangement with its creditors generally;
- (c) the calling of a meeting to consider a resolution to wind up the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or order for the winding up or deregistration of the person other than where the application or order (as the case may be) is set aside or withdrawn within 30 days;
- (d) the person suspends or threatens to suspend payment of its debts as and when they become due;
- (e) the person ceases or threatens to cease to carry on business;
- (f) the person is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act;
- (g) the person being deregistered as a company or otherwise dissolved;
- (h) the person executing a deed of company arrangement;
- (i) the person incurs a liability while acting or purporting to act as trustee (or co-trustee) or general partner of a trust or partnership (including a limited partnership) and the person is not entitled to be fully indemnified against the liability out of trust or partnership assets because of one or more of the following:
 - (i) a breach of trust or obligation as partner by the person;
 - (ii) the person acting outside the scope of its powers as trustee or partner;
 - (iii) a term of the trust or partnership denying, or limiting, the person's right to be indemnified against the liability;
 - (iv) the assets of the trust or partnership being insufficient to discharge the liability;
- (j) anything analogous to those set out in any of paragraphs (a) to (i) inclusive occurs in relation to the person under the laws of a foreign jurisdiction,

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

Instrument has the meaning given in clause 8.5(b).

Interest Rate means the 30 day Bank Bill Swap Reference Rate as published as at the relevant due date for payment by the Australian Financial Markets Association.

Key Person means any executive or other employee of the Target Group, whose total employment cost exceeds \$350,000.

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

Material Adverse Change means a Specified Event that occurs (i) after the date of this agreement or (ii) on or before the date of this agreement but which only becomes known to Bidder

after the date of this agreement which, whether individually or aggregated with all such other Specified Events, has resulted in or is reasonably likely to result in:

- (a) the RAD Balance of Target Group being below \$845 million at the Delivery Time on the Second Court Date;
- (b) a Material Regulatory Event;
- (c) the consolidated net assets of the Target Group (calculated in accordance with the accounting policies and practices applied by the Target as at the date of this Agreement) being diminished by at least \$40 million against the 30 June 2023 Target Group balance sheet, but excluding the impact of the payment of the Permitted Dividend, the amortisation of bed licences and any Specified Event to the extent that any loss incurred by the Target Group in connection with that Specified Event is recovered, or is reasonably expected to be recoverable, under a Target Group Member's insurance policy; or
- (d) the consolidated annual EBITDA of Target Group being reduced by at least \$10 million (calculated after taking into account any event, occurrence or matter after the date of this agreement that has or could reasonably be expected to have a positive effect on consolidated annual EBITDA) as compared to what the consolidated annual EBITDA of Target Group would reasonably have been expected to be at the end of a financial year but for such Specified Event but excluding the impact of any Specified Event to the extent that any loss incurred by the Target Group in connection with that Specified Event is recovered, or is reasonably expected to be recoverable, under a Target Group Member's insurance policy,

other than, as a result of the Specified Events:

- (e) that are Fairly Disclosed in:
 - (i) the Due Diligence Materials;
 - (ii) an announcement made by Target to ASX or publicly available document lodged with ASIC, in the 12 month period prior to the date of this agreement; or
 - (iii) a publicly available document which would be disclosed in a search of:
 - (A) the PPS Register;
 - (B) the website maintained by ACQSC;
 - (C) the registry of the land titles in each state or territory of Australia;
 - (D) the registry of the High Court, the Federal Court, the Federal Circuit Court, and the Supreme Courts in each state and territory of Australia;
 - (E) IP Australia, had each such search been conducted on the Business Day before the date of this agreement;
- (f) that were within the actual knowledge of Bidder as at the date of this agreement (which does not include the mere knowledge of the risk of an event, circumstance, occurrence or matter happening);
- (g) that occur as a result of an action that is required to be taken or expressly permitted pursuant to this agreement or the Scheme (and, for the avoidance of doubt, includes the payment of the Permitted Dividend);
- (h) that relate to the incurrence of reasonable costs resulting from COVID outbreaks and the receipt of COVID-19 cost-reimbursement from grant applications under Australian Federal Government grant schemes GO4863 and GO6223 relating to COVID-19 cost reimbursement (or any successor Australian Federal Government grant schemes);
- (i) that the Bidder has previously approved or requested in writing or that the Bidder has caused;
- (j) that relate to any of the following:
 - (i) arising as a result of any generally applicable change in any enacted legislation (including subordinate legislation);

- (ii) arising as a result of any generally applicable change in Accounting Standards or the interpretation of the Accounting Standards;
- (iii) arising from changes in economic or business conditions, or the industry in which the Target operates (including/ interest rates, general economic, political or business conditions, including material adverse changes or major disruptions to, or fluctuations in, domestic or international financial markets);
- (iv) arising from any act of terrorism, outbreak or escalation of war (whether or not declared), major hostilities, civil unrest or outbreak or escalation of any disease epidemic or pandemic (including the outbreak, escalation or any impact of, or recovery from, the Coronavirus or COVID-19 pandemic); or
- (v) arising from any act of God, natural disaster, lightning, storm flood, bushfire, earthquake, explosion, cyclone, tidal wave, landslide, on or after the date of this agreement,

but excluding any event, change, condition, matter, circumstance or thing which have a materially disproportionate, and adverse, impact on Target Group relative to its competitors.

Material Contracts means the contracts or agreements set out in folders 2.2.20, 2.2.31.8.1, 2.2.31.8.2, 2.2.31.8.3, 2.4.8, 2.4.4, 2.4.4.1 and 2.4.24.3 of the Data Room.

Material Regulatory Event means the occurrence of any of the following:

- (a) a Target Entity that is an Approved Provider breaches the Aged Care Act and as a result of that breach by a Target Entity, the ACQSC issues a notice to agree under s63U of the ACQSC Act and the breach the subject of that notice to agree is not remedied within the period specified in the relevant notice;
- (b) a Sanction is imposed that revokes or suspends the status of a Target Entity as an Approved Provider;
- (c) if a RACF is entitled to extra service places, a Sanction is imposed that revokes or suspends all or part of those extra service places of the RACF;
- (d) If a RACF holds extra service places, a Sanction is imposed that withdraws those extra service places from the RACF;
- (e) a Sanction is imposed with respect to a RACF or Target Entity which has the effect of either requiring the repayment of, or restricting or limiting the entitlement of a Target Entity to receive Subsidies or funding for care recipients in connection with a RACF, or to charge or collect from care recipients of a Refundable Accommodation Deposit or Accommodation Payment; or
- (f) a Sanction not covered by any of the paragraphs above is imposed with respect to a RACF or Target Entity which is an Approved Provider, which materially impacts their ability (respectively) to effectively operate a RACF and service new and existing care recipients of a RACF,

in each case, which affect 5 or more RACFs in any 12 month period.

For the purposes of this definition, Approved Provider, Refundable Accommodation Deposit and Accommodation Payment have the meanings given to them in the Aged Care Act.

Performance Right means a right granted under the Performance Rights Plan to acquire by way of issue a Share subject to the terms of such plan.

Performance Rights Holder means a person who holds a Performance Right.

Performance Rights Plan means the Target's Equity Incentive Plan adopted by the Target Board on 6 October 2020.

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

Permitted Dividend means the ordinary dividend referred to in clause 7.5.

Policy has the meaning given to that term in clause 11.4.

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

PPS Register means the register established under the PPSA.

Process Deed means the process deed between Target and Bain Capital dated 7 June 2023.

Proposed Transaction means:

- (a) the proposed acquisition by Bidder in accordance with the terms and conditions of this agreement, of all of the Shares through the implementation of the Scheme; and
- (b) all associated transactions and steps contemplated by this agreement.

RACF means a residential aged care facility operated by the Target Group.

RAD Balance means the aggregate amount of refundable accommodation deposits (excluding probate liabilities) and bonds of the Target Group, calculated in the same manner as in the 31 December 2022 Target Group reported balance sheet.

Receiving Party has the meaning given to that term in clause 21.3.

Recipient has the meaning given to that term in clause 21.5(c).

Recommendation has the meaning given to that term in clause 6.1(a)(i).

Record Date means, in respect of the Scheme, 7.00pm on the second Business Day (or such other Business Day as the parties agree in writing) following the Effective Date.

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

Related Body Corporate of a person, means a related body corporate of that person under section 50 of the Corporations Act and includes any body corporate that would be a related body corporate if section 48(2) of the Corporations Act was omitted.

Relevant Expense has the meaning given to that term in clause 21.5(g).

Relevant Interest has the meaning given in the Corporations Act.

Resident means:

- (a) a current resident who has a right to reside in or occupy any part of a RACF as at the date of this agreement;
- (b) a prospective resident who as at the date of this agreement has a right to reside in or occupy any part of a RACF after the date of this agreement; and
- (c) a former resident who as at the date of this agreement has ceased to reside in or occupy any part of a RACF.

Relevant Notice has the meaning given to that term in clause 17.7(a)(iv).

RG 60 means Regulatory Guide 60 issued by ASIC on September 2020, as amended from time to time.

Sanction means any sanction imposed by the ACQSC that has been issued under s63N of the ACQSC Act or imposed by any other Government Agency, on a Target Entity.

Scheme means the proposed scheme of arrangement under Part 5.1 of the Corporations Act between Target and Scheme Shareholders in respect of all Scheme Shares, substantially in the form set out in Schedule 3 or in such other form as the parties agree in writing, subject to any alterations or conditions that are:

- (a) agreed to in writing by Target and Bidder, and approved by the Court; or
- (b) made or required by the Court under section 411(6) of the Corporations Act and agreed to by each party.

Scheme Consideration means, in respect of each Scheme Share held by a Scheme Shareholder, \$3.20 cash (as reduced by the amount of any Permitted Dividend).

Scheme Meeting means the meeting of Target Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

Scheme Share means a Share on issue as at the Record Date.

Scheme Shareholder means a person who holds one or more Scheme Shares.

Scheme Shareholder Declaration has the meaning given to that term in clause 19(b)

Second Court Date means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme is heard or scheduled to be heard or, if the application is adjourned for any reason, the date on which the adjourned application is heard or scheduled to be heard.

Security Interest means any mortgage, charge, pledge, lien, assignment or other security interest or any other arrangement (including a right of set off or combination) entered into for the purpose of conferring a priority, including any security interest as defined in section 51A of the Corporations Act or section 12(1) or (2) of the PPSA.

Senior Manager means an employee of any member of the Target Group reporting directly to the chief executive officer of Target.

Share means an issued fully paid ordinary share in the capital of Target.

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

Specified Event means an event, change, condition, matter, circumstance or thing.

Subdivision 14-D means Subdivision 14-D of Schedule 1 to the *Tax Administration Act 1953* (Cth).

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

Subsidy means any government subsidy or funding payable to a Target Entity.

Superior Proposal means a bona fide Competing Proposal which in the determination of the Target Board acting in good faith in order to satisfy what the Target Board considers to be its fiduciary or statutory duties (after having received written advice from their reputable external Australian legal advisers specialising in the area of corporate law and financial advisers):

- (a) is reasonably capable of being valued and implemented taking into account all aspects of the Competing Proposal, including any timing considerations, its conditions, the identity, reputation and financial condition of the person making such proposal, the nature of any consideration offered and all other relevant legal, regulatory and financial matters, in each case, to the extent known by the Board; and
- (b) would, if completed substantially in accordance with its terms, be reasonably likely to result in a transaction more favourable to Target Shareholders as a whole than the Proposed Transaction, taking into account all of the terms and conditions of the Competing Proposal, including consideration, conditionality, funding, certainty and timing.

Supplier has the meaning given to that term in clause 21.5(c).

Takeovers Panel means the Australian Takeovers Panel.

Target Break Fee has the meaning given to that term in clause 15.1(a)

Target Board means the board of directors of Target (or any committee of the board of directors of Target constituted to consider the Proposed Transaction on behalf of Target).

Target Director means a director of Target.

Target Group means Target and its Subsidiaries and **Target Group Member** means any of them.

Target Group Property has the meaning given to that term in clause 8.6(a).

Target Information means information to be included by Target in the Explanatory Booklet that explains the effect of the Scheme and sets out the information prescribed by the Corporations Act and the *Corporations Regulations 2001* (Cth), and any other information that is material to the making of a decision by Target Shareholders whether or not to vote in favour of the Scheme, being information that is within the knowledge of the Target Board and has not previously been disclosed to Target Shareholders, other than the Bidder Information and the Independent Expert's Report.

Target Parties means each member of the Target Group and its Related Bodies Corporate and Authorised Persons.

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

- (a) Target converts all or any of its shares into a larger or smaller number of shares (see section 254H of the Corporations Act);
- (b) any member of the Target Group resolves to reduce its share capital in any way;
- (c) any member of the Target Group:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement under subsections 257C(1) or 257D(1) of the Corporations Act;
- (d) any member of the Target Group issues securities, or grants a performance right, or an option over its securities, or agrees to make such an issue or grant such a right or an option, other than (i) an issue of a performance right or (ii) under the valid exercise of a performance right on issue or in existence or issued under clause 5.2, in each case, in accordance with clause 5;
- (e) any member of the Target Group issues, or agrees to issue, convertible notes;
- (f) any member of the Target Group disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;
- (g) any member of the Target Group creates or agrees to create, any security interest over the whole, or a substantial part, of its business or property;
- (h) an Insolvency Event occurs in relation to any member of the Target Group;
- (i) Target pays, declares, distributes or incurs a liability to make or pay a dividend, bonus or other share of its profits, income, capital or assets by way of dividend or other form of distribution other than in respect of any Permitted Dividend;
- (j) Target makes any change to its constitution or convenes a meeting to consider a resolution to change to its constitution;
- (k) any member of the Target Group ceases, or threatens to cease to, carry on the business conducted as at the date of this agreement;
- (l) any member of the Target Group (other than a dormant, non-operating member of the Target Group) being deregistered as a company or being otherwise dissolved;
- (m) any disposal of shares or securities by a member of the Target Group in any member of the Target Group other than to a member of the Target Group; or
- (n) any member of the Target Group directly or indirectly authorises, commits or agrees to take or announces any of the actions referred to in paragraphs (a) to (m) above insofar as it applies to the member of the Target Group the subject of such direct or indirect authorisation, commitment, agreement or announcement;
- (o) any member of the Target Group doing any of the following (or agreeing or offering to do any of the following):
 - (i) other than the Permitted Dividend, declaring, paying or distributing any dividend, bonus shares or other share of its profits or assets by way of a dividend, capital reduction or otherwise;
 - (ii) incurring any additional Financial Indebtedness or guarantee or indemnifying the obligations of any person other than a member of the Target Group for an amount which exceeds \$5,000,000 (in aggregate), in each case other than as Fairly Disclosed in the Due Diligence Material or incurred in accordance with the Target's ordinary and usual course of business consistent with past practice (which, for the avoidance of doubt includes draw downs, and rollovers, under Target Group's existing debt facilities or other Financial Indebtedness as at the date of this agreement);
 - (iii) amending or taking any action that:

- (A) seeks or causes a financier (or person acting on its behalf) to consent to or waive (whether or not such consent or waiver is conditioned) any provision under; and
- (B) would be reasonably likely to give rise to a financier (or person acting on its behalf) being capable of exercising a right that would pose a risk to the continuity of, any Financial Indebtedness to which one or more members of the Target Group are a party; or

any Financial Indebtedness to which one or more members of the Target Group are a party;

- (iv) entering into a single new employment contract with a potential employee of the Target Group under which contract the total fixed remuneration payable to that potential employee would exceed \$350,000 in any 12 month period, except where such contract is entered into with a person who is replacing an employee of the Target Group who has ceased to be engaged by the Target Group after the date of this agreement (**Ceased Employee**), provided that such contract is on materially the same terms and conditions as the contract with the Ceased Employee;
- (v) paying its officers, directors, other executives, Senior Manager or employees termination or retention payments, a Transaction bonus or a discretionary bonus the value of which exceeds \$250,000 (individually) or \$1 million (in aggregate), except in accordance with contractual arrangements in effect on the date of this agreement or otherwise in accordance with current personnel practices in each case Fairly Disclosed in the Due Diligence Material;
- (vi) commencing, threatening in writing, settle or offer to settle any legal proceedings, claim, dispute, investigation, arbitration or other like proceeding that relates to potential costs or liability of more than \$3 million (after allowing for insurance recoveries), other than pursuing debts in the ordinary course of business;
- (vii) in respect of any single transaction or series of related or similar transactions, acquiring or disposing of any interest in a business, real property, entity or undertaking, the value of which exceeds \$5 million, individually or when aggregated with all such businesses, real property, entities or undertakings the subject of the transaction or series of related or similar transactions;
- (viii) incurring (other than pursuant to contractual arrangements in effect on the date of this agreement and which are Fairly Disclosed in the Due Diligence Material) or enter into commitments involving capital expenditure of more than \$5 million whether in one transaction or a series of related transactions;
- (ix) entering into any contract, joint venture, partnership or commitment involving total expenditure greater than \$2 million per year (individually or in aggregate), other than in the ordinary course of its business;
- (x) any member of the Target Group authorising, agreeing, resolving or committing to do any of the matters set out above,

provided that a Target Prescribed Occurrence will not include any matter:

- (p) required to be done or expressly permitted under this agreement or the Scheme;
- (q) required by law (including to comply with the requirements of the Aged Care Act and associated aged care legislation and regulations), contract (but only to the extent such contract was entered into before the date of this agreement or otherwise in accordance with this agreement), regulation or by an order of a court or Governmental Agency;
- (r) which, in the reasonable opinion of Target, is a necessary and prudent response to any emergency or disaster to preserve the financial position or operations of the business of the Target Group (including, but not limited to an epidemic or pandemic or the impact arising from such an event or a situation giving rise to a risk of personal injury or damage to property) and it is impractical to seek the approval of Bidder prior to giving effect to the response;

- (s) required for any Target Director to comply with his or her fiduciary or statutory duties, provided that, to the extent possible in the circumstances, Target first provides Bidder with reasonable details and consults in good faith with Bidder in relation to the act to be done (or not done) in reliance on this subparagraph;
- (t) to the extent it is Fairly Disclosed in the Due Diligence Material or in documents that were publicly available in the 12 months prior to the date of this agreement from public filings of Target with ASX, ASIC, ACQSC, Department of Health and Aged Care, or public registers as being actions that the Target Group may carry out between the date of this agreement and the Implementation Date;
- (u) other than in the case of limbs (o)(vii) and (o)(viii), to the extent it is Fairly Disclosed in the Due Diligence Material; or
- (v) the undertaking has been previously approved or requested by Bidder in writing (which approval must not be unreasonably withheld, delayed or conditioned).

Target Register means the register of members of Target maintained by or on behalf of Target in accordance with the Corporations Act.

Target Shareholder means each person who is registered in the register maintained by Target under section 168(1) of the Corporations Act as a holder of Shares.

Target Warranties means the representations and warranties of Target set out in clause 10.4.

Tax means any tax (including goods and services tax), levy, excise, duty, charge, surcharge, contribution, withholding tax, impost or withholding obligation of whatever nature, whether direct or indirect, by whatever method collected or recovered, together with any fees, penalties, fines, interest or statutory charges in any country or jurisdiction.

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

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

Transaction Financing has the meaning given to that term in clause 8.6(a).

Transaction Financing Document has the meaning given to that term in clause 8.6(a).

Transaction means the acquisition by Bidder of the Scheme Shares for the Scheme Consideration under the Scheme.

Treasurer means the Treasurer of the Commonwealth of Australia.

Voting Intention has the meaning given to that term in clause 6.1(a)(ii).

Voting Power has the meaning given in the Corporations Act.

1.2 Interpretation

In this agreement, except where the context otherwise requires:

- (a) the singular includes the plural, and the converse also applies;
- (b) gender includes other genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (g) a reference to time is to Sydney, Australia time;
- (h) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;

- (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (j) a reference to legislation or to a provision of legislation (including a listing rule or operating rule of a financial market or of a clearing and settlement facility) includes a modification or re enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (k) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (l) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (m) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it;
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (p) a reference to **Fairly Disclosed** means disclosed to any of Bidder, the Bain Entities, Target (as applicable) or any of their respective Authorised Persons to a sufficient extent and in sufficient detail so as to enable a reasonable and sophisticated recipient of the relevant information who is experienced in transactions similar to the Proposed Transaction and experienced in transactions similar to the Proposed Transaction in the aged care industry, to identify the nature and scope of the relevant matter, event or circumstance.

1.3 Headings

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

1.4 Consents or approvals

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

1.5 Listing requirements included as law

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

1.6 Reasonable endeavours

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

- (a) pay money:
 - (i) in the form of an inducement or consideration to a person to procure something (other than the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing), except for payment of any applicable fee for the lodgement or filing of any relevant application with any Governmental Agency; or
 - (ii) in circumstances that are commercially onerous or unreasonable in the context of this agreement;
- (b) provide other valuable consideration to or for the benefit of any person;
- (c) agree to commercially onerous or unreasonable conditions; or

- (d) commence any legal action or proceeding against any person, except where that provision specifies otherwise.

2. Agreement to propose Scheme

- (a) Target agrees to propose and implement the Scheme on and subject to the terms and conditions of this agreement, and to take reasonable actions within its control to implement the Scheme substantially in accordance with the Timetable.
- (b) Bidder agrees to assist Target in proposing and implementing the Scheme on and subject to the terms and conditions of this agreement, and to take reasonable actions within its control substantially in accordance with the Timetable.
- (c) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 2(a) or 2(b) to the extent that such failure is due to circumstances and matters outside the party's control including where the failure is due to an action or inaction in response to an actual, proposed or potential Competing Proposal in accordance with clause 17. For the avoidance of doubt, the parties must continue to take reasonable actions to the extent it is within their control to minimise the delay to implementation of the Timetable caused by such circumstances or matters.
- (d) Each party must keep the other informed about their progress against the Timetable and promptly notify each other if it believes that any of the dates in the Timetable are not achievable or unlikely to become achievable.
- (e) To the extent that any of the dates or timeframes set out in the Timetable become not achievable due to matters outside of a party's control, the parties will consult in good faith to agree any necessary extension to ensure such matters are completed within the shortest possible timeframe.

3. Conditions precedent and pre-implementation steps

3.1 Conditions to Scheme

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the parties on and from the Effective Date in relation to the implementation of the Scheme will not be binding, until each of the following conditions precedent is satisfied or waived to the extent and in the manner set out in this clause 3:

- (a) **(Regulatory Approvals)**
 - (i) **(ASIC and ASX)** before the Delivery Time on the Second Court Date, ASIC and ASX issue or provide such consents or approvals as are necessary or which Target and Bidder agree are necessary or desirable to implement the Scheme and such consent, approval or other act has not been withdrawn or revoked before the Delivery Time on the Second Court Date;
 - (ii) **(FIRB)** before the Delivery Time on the Second Court Date, one of the following has occurred:
 - (A) Bidder has received written notice under the FATA, by or on behalf of the Treasurer, advising that the Commonwealth Government has no objections to the Proposed Transaction either unconditionally or on terms that are acceptable to Bidder acting reasonably;
 - (B) the Treasurer or their delegate becomes precluded by the passage of time from making an order or decision under Part 3 of the FATA in relation to the Proposed Transaction and the Proposed Transaction is not prohibited by section 82 of the FATA; or
 - (C) where an interim order is made under section 68 of the FATA in respect of the Proposed Transaction, the subsequent period for making an order or decision under Part 3 of the FATA elapses without the Treasurer or their delegate making such an order or decision,

and the parties acknowledge and agree that if the Treasurer or their delegate has provided a written no objection notification in relation to the Proposed Transaction, Bidder cannot object to this condition being satisfied (1) because the no objection notification contains the standard tax conditions published at the date of this Agreement in Part D of the Guidance Note 12 issued by the Foreign Investment Review Board or (2) because the no objection notification contains any other conditions including relating to board composition, restrictions on access to resident and other sensitive data, cybersecurity, restrictions on the location of data storage and restrictions on operational involvement by limited partners or other equity investors, unless the conditions referred to in this sub-paragraph (2) would have a material adverse impact on Target Group;

- (iii) **(Regulator)** before the Delivery Time on the Second Court Date, the Bidder has not received a written notice or correspondence from ACQSC, Department of Health and Aged Care or the Minister for Health and Aged Care advising that they intend to take regulatory action to address the Target's suitability as an Approved Provider (as defined in the Aged Care Act) as a result of the Proposed Transaction;
- (b) **(restraints)** no law, statute, ordinance, regulation, rule, temporary restraining order, preliminary or permanent injunction or other judgement, order or decree issued by any court of competent jurisdiction or Governmental Agency in Australia or other legal restraint or prohibition preventing, prohibiting or materially restricting the implementation of the Scheme is in effect as at the Delivery Time on the Second Court Date (including, for the avoidance of doubt, where the implementation of the Scheme would result in a breach of such applicable law, statute, ordinance, regulation, rule or order (as applicable));
- (c) **(no Target Prescribed Occurrence)** no Target Prescribed Occurrence occurs between (and including) the date of this agreement and the Delivery Time on the Second Court Date;
- (d) **(Target Shareholder approval)** the Scheme is approved by Target Shareholders at the Scheme Meeting by the majorities required under section 411(4)(a)(ii) of the Corporations Act;
- (e) **(Court approval)** the Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act (either unconditionally and without modification or with modifications or conditions consented to by Bidder (acting reasonably)) in accordance with clause 4.1(b);
- (f) **(Independent Expert)** the Independent Expert issues the Independent Expert's Report concluding that in its opinion the Scheme is in the best interest of Target Shareholders and the Independent Expert maintaining that opinion (including by not withdrawing, qualifying or changing that opinion) at all times up to the Delivery Time on the Second Court Date;
- (g) **(no Material Adverse Change)** no Material Adverse Change occurs between (and including) the date of this agreement and the Delivery Time on the Second Court Date; and
- (h) **(Performance Rights)** as at the Delivery Time on the Second Court Date, Target has complied with its obligations under clause 5, including by executing all relevant documents and otherwise on terms acceptable to Bidder (acting reasonably), such that there will be no Performance Rights on issue on the Implementation Date.

3.2 Benefit and waiver of conditions precedent

- (a) The Conditions in clauses 3.1(a) (Regulatory Approvals) and 3.1(b) (restraints) are for the benefit of each party and any breach or non-fulfilment of it may only be waived (if capable of waiver) with the written consent of both parties, which consent either party may give or withhold in its absolute discretion.
- (b) The Conditions in clauses 3.1(c) (no Target Prescribed Occurrences), 3.1(g) (no Material Adverse Change), 3.1(a)(iii) (Regulator) and 3.1(h) (Performance Rights) are for the sole benefit of Bidder and any breach or non-fulfilment of them may only be waived by Bidder giving its written consent.

- (c) The Conditions in clause 3.1(f) (Independent Expert) is for the sole benefit of Target and any breach or non-fulfilment of them may only be waived by Target giving its written consent.
- (d) A party entitled to waive a Condition under this clause 3.2 may do so in its absolute discretion. Any waiver of a Condition by a party for whose benefit the condition applies must take place on or prior to the Delivery Time on the Second Court Date. The Conditions in clauses 3.1(a)(ii) (FIRB), 3.1(d) (Target Shareholder approval) and 3.1(e) (Court approval) cannot be waived.
- (e) If a party waives the breach or non-fulfilment of any of the Conditions in clause 3.1, that waiver will not preclude it from suing the other party for any breach of this agreement including a breach that resulted in the non-fulfilment of the Condition that was waived.

3.3 Reasonable endeavours

- (a) Target and Bidder will use their respective reasonable endeavours to procure that:
 - (i) each of the Conditions (as applicable) is satisfied as soon as reasonably practicable after the date of this agreement or continues to be satisfied at all times until the last time they are to be satisfied (as the case may require); and
 - (ii) it does not take, or omit to take, any action that prevents, or would be reasonably likely to prevent, the satisfaction or any Condition (except to the extent such action is required to be taken or procured pursuant to, or is otherwise permitted by, this agreement or the Scheme, or is required by law).
- (b) Without limiting clauses 3.4 and 3.5 below, each of Target and Bidder must:
 - (i) consult and co-operate with the other party in relation to the satisfaction of the Conditions, including keeping each other reasonably informed and, to the extent permitted by law and the relevant Governmental Agency, providing reasonable details of all material communications with any Governmental Agency in relation to Regulatory Approvals;
 - (ii) to the extent not done so prior to the date of this agreement, promptly (and, in any event, in relation to the Regulatory Approval under clause 3.1(a)(ii), within 4 Business Days after the date of this agreement) apply for all relevant Regulatory Approvals and provide the other party with a copy of all applications for Regulatory Approvals and, to the extent permitted by law and the relevant Governmental Agency, all material communications with any Governmental Agency in relation to Regulatory Approvals;
 - (iii) take all the steps for which it is responsible as part of the Regulatory Approvals process;
 - (iv) respond to all requests for information in respect of the applications for Regulatory Approvals at the earliest practicable time; and
 - (v) provide the other with all information and assistance reasonably requested in connection with the applications for Regulatory Approvals,
 provided that:
 - (vi) the party applying for a Regulatory Approval may withhold or redact information or documents from the other party if and to the extent that they are either confidential to a third party or commercially sensitive and confidential to the applicant; and
 - (vii) neither party is required to disclose commercially sensitive or privileged information to the other party.
- (c) In respect of the Condition in clause 3.1(c) (no Target Prescribed Occurrence) and clause 3.1(g) (no Material Adverse Change), if:
 - (i) a Target Prescribed Occurrence occurs between the date of this agreement and the Delivery Time, the Condition in clause 3.1(c) (no Target Prescribed Occurrence) will not be taken to have been breached or not satisfied; or

- (ii) a Material Adverse Change occurs between the date of this agreement and the Delivery Time, the Condition in clause 3.1(g) (no Material Adverse Change) will not be taken to have been breached or not satisfied,

unless:

- (iii) Target or Bidder has given written notice to the other party in accordance with clause 3.4, and such notice also sets out the relevant circumstances of the breach (or should have given such notice under clause 3.4);
- (iv) Target has failed to remedy the breach within 10 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which such notice is given (or should have been given); and
- (v) Bidder has not otherwise provided a waiver of the breach within 10 Business Days of receiving notice of the breach (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date).

3.4 Notifications

Each of Bidder and Target must:

- (a) keep the other promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) promptly notify the other in writing if it becomes aware that any Condition has been satisfied, in which case, the notifying party must also provide reasonable evidence that the Condition has been satisfied; and
- (c) promptly (and in any event within 2 Business Days) notify the other in writing if it becomes aware that any Condition is or has become unsatisfied or incapable of being satisfied (having regard to the respective obligations of each party under clause 3.3).

3.5 Certificate

At or before the hearing on the Second Court Date:

- (a) Bidder and Target will provide a joint certificate to the Court confirming whether or not the Conditions set out in clause 3.1(a) (Regulatory Approvals) and clause 3.1(b) (restraints) have been satisfied or waived in accordance with the terms of this agreement. Target must provide a draft joint certificate to Bidder at least 48 hours before the Delivery Time on the Second Court Date;
- (b) Target will provide a certificate to the Court confirming whether or not the Conditions set out in clauses 3.1(c) (no Target Prescribed Occurrences), 3.1(d) (Target Shareholder approval), 3.1(f) (Independent Expert) and 3.1(g) (no Material Adverse Change) have been satisfied or waived in accordance with the terms of this agreement. Target must provide a draft certificate to Bidder at least 48 hours before the Delivery Time on the Second Court Date;
- (c) Target will provide a certificate to Bidder confirming whether or not the Target has breached any of its obligations under this agreement (including a breach of a representation or warranty), and if it has, giving details of such breach; and
- (d) Bidder will provide a certificate to Target confirming whether or not Bidder has breached any of its obligations under this agreement (including a breach of a representation or warranty), and if it has, giving details of such breach.

3.6 Scheme voted down

If the Scheme is not approved by Target Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test, then either Target or Bidder may by written notice to the other within 5 Business Days after the date of the conclusion of the Scheme Meeting require the approval of the Court to be sought, pursuant to the Court's discretion in subparagraph 411(4)(a)(ii)(A) of the Corporations Act, provided the party has, in good faith formed the view that the prospect of the Court exercising its discretion in that way is reasonable (including, but not limited to, because the relevant party considers (acting reasonably) that Share Splitting or some abusive or improper conduct may have caused or contributed to the Headcount Test not having

been satisfied). If such a notice is given, neither party is permitted to terminate this agreement under clause 3.7(b), then Target must:

- (a) apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
- (b) make such submissions to the Court and file such evidence as Counsel engaged by Target to represent it in Court proceedings related to the Scheme, in consultation with Bidder, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Act by making an order to disregard the Headcount Test.

If the Court's approval is given, the Condition given in clause 3.1(d) (Target Shareholder approval) is deemed to be satisfied for all purposes

3.7 Conditions not capable of being fulfilled

- (a) If:
 - (i) any Condition is not satisfied or (where capable of waiver) waived by the date specified in this agreement for its satisfaction (or an event occurs which would or is likely to prevent a Condition being satisfied by the date specified in this agreement);
 - (ii) a circumstance occurs with the result that a Condition is not capable of being fulfilled and, if the Condition is able to be waived by a party under clause 3.2 the party does not waive the Condition within 5 Business Days after the occurrence of the circumstance; or
 - (iii) it becomes more likely than not that the Scheme does not become Effective by the End Date,
 then Target and Bidder must consult in good faith with a view to determining whether:
 - (iv) the Scheme may proceed by way of alternative means or methods;
 - (v) to extend the relevant time or date for satisfaction of the Condition;
 - (vi) to change the date of the application to be made to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed by the parties; or
 - (vii) to extend the End Date.
- (b) Subject to clause 3.7(c), if a Condition becomes incapable of being satisfied before the End Date and Target and Bidder are unable to reach agreement under clause 3.7(a) within 5 Business Days of the date on which they both become aware that the Condition has become incapable of being satisfied (or, if earlier, by the Delivery Time on the Second Court Date), then unless the relevant Condition (where capable of waiver) is waived:
 - (i) in relation to the Conditions in clauses 3.1(a) (Regulatory Approval), 3.1(b) (restraints), 3.1(a)(iii) (Regulator) and 3.1(d) (Target Shareholder approval), either Bidder or Target may terminate this agreement by giving the other notice without any liability to any party by reason of that termination alone; and
 - (ii) in relation to the Conditions in clauses 3.1(c) (no Target Prescribed Occurrences), and 3.1(g) (no Material Adverse Change), Bidder may terminate this agreement by giving Target notice without any liability to any party by reason of that termination alone; and
 - (iii) in relation to the Condition in clause 3.1(f) (Independent Expert), Target may terminate this agreement by giving Bidder notice without any liability to any other party by reason of that termination alone.
- (c) A party will not be entitled to terminate this agreement under clause 3.7(b) if the relevant Condition has not been satisfied as a result of a breach of this agreement by that party, where such breach contributed in a material respect to the Condition to which the notice

relates becoming incapable of satisfaction, or being breached of not fulfilled by the End Date.

3.8 Interpretation

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

- (a) in the case of a Condition relating to a Regulatory Approval – the relevant Governmental Agency makes or has made a final adverse determination in writing to the effect that it will not provide the Regulatory Approval; and
- (b) in all other cases – there is an act, failure to act or occurrence that will prevent the Condition being satisfied by the End Date (and the breach or non-fulfilment that would otherwise have occurred has not already been waived in accordance with this agreement).

4. Transaction steps

4.1 Scheme

- (a) Target must, subject to the terms and conditions of this agreement, propose the Scheme to the Scheme Shareholders.
- (b) Target must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of the Scheme without the prior written consent of Bidder.

4.2 Scheme Consideration

Bidder covenants in favour of Target (in Target's own right and separately as trustee for the Scheme Shareholders) that, in consideration of the transfer to Bidder of the Scheme Shares under the terms of the Scheme, Bidder will:

- (a) accept that transfer on the Implementation Date; and
- (b) pay (or procure the payment), into a trust account operated by Target as trustee for the Scheme Shareholders of an amount equal to the aggregate amount of the Scheme Consideration for all Scheme Shares, by no later than the Business Day before the Implementation Date (provided that any interest on the amount so deposited (less bank fees and other charges) will accrue for the benefit of Bidder) so that the Scheme Consideration can be provided to the Scheme Shareholders on the Implementation Date, in accordance with the Scheme.

4.3 Deed Poll

Bidder covenants in favour of Target (in Target's own right and separately as trustee for each of the Scheme Shareholders) to execute and deliver the Deed Poll by no later than the Business Day prior to the First Court Date.

5. Performance Rights and employee incentives

5.1 Treatment of Performance Rights

- (a) Target must ensure that, by no later than the Record Date, there are no Performance Rights on issue.
- (b) In order to comply with its obligations under clause 5.1(a), Target may (in its sole discretion):
 - (i) cause some or all of the outstanding Performance Rights to vest (including by modifying or waiving any conditions for vesting) and, following such vesting, cause the relevant number of Shares to be transferred or issued (as applicable) to allow the relevant former Performance Rights Holders to participate in the Scheme;

- (ii) apply to ASX for any necessary waivers under the Listing Rules;
 - (iii) with respect to any Performance Rights that have vested as at the date of this agreement, cause the relevant number of Shares to be transferred or issued (as applicable) to the relevant Performance Rights Holders to participate in the Scheme; and
 - (iv) take such action as may be necessary to cancel any outstanding Performance Rights which it does not cause to vest in accordance with clause 5.1(b)(i) (if any), including arranging for cash settlement of Performance Rights.
- (c) For the avoidance of doubt, the Target and Bidder agree that the exercise of any discretion by the Target Board, or any other action, provided that such exercise or other action is at all times in accordance with this clause 5 and the terms of the Performance Rights Plan or as otherwise agreed between Target and Bidder, will not be a Target Prescribed Occurrence or a breach of any provision of this agreement, or give rise to any right to terminate this agreement, and will be disregarded when assessing the operation of any other part of this agreement.
- (d) In order to facilitate the provision of the Scheme Consideration, Target must provide, or procure the provision of, to Bidder a complete copy of the Target Register as at the Record Date, within two Business Days after the Record Date.

5.2 Employee incentives in 2024

- (a) On or before the Second Court Date, Target may pay or issue (in the absolute discretion of Target Board or any other person(s) delegated such authority by Target Board) the long and short term incentives in cash (provided that such cash amount does not exceed the amount which is agreed in writing between the parties) and/or Performance Rights (provided that the number of Performance Rights to be issued does not exceed that amount which is agreed in writing between the parties), in each case, on terms of the documents disclosed in the Due Diligence Materials (including as to performance and service conditions) to employees of Target Group for the following periods:
- (i) from 1 July 2022 to 30 June 2023; and
 - (ii) from 1 July 2023 to the Effective Date, provided that any and all such short term incentive and associated rights will be pro-rated to the Effective Date with the pro-rata portion attributable to the balance of the 2024 financial year lapsing on the Effective Date, as contemplated by the Due Diligence Materials, and subject to the aggregate amount of such payments and the aggregate number of Performance Rights and Shares transferred or issued not exceeding the amounts specified in the Due Diligence Materials.
- (b) For the avoidance of doubt, Bidder acknowledges and agrees that, notwithstanding any other provision of this agreement:
- (i) Target Board can exercise such discretions and authorise such actions under the terms of the Performance Rights Plan (or otherwise) as it considers necessary or desirable to give effect to the arrangements and payments contemplated by clause 5.2(a); and
 - (ii) any action or matter expressly permitted in this clause 5.2 or as otherwise agreed between Target and Bidder, will not be a Target Prescribed Occurrence or a breach of any provision of this agreement, or give rise to any right to terminate this agreement, and will be disregarded when assessing the operation of any other part of this agreement.

6. Recommendation, intentions and announcements

6.1 Target Board Recommendation and Voting Intention

- (a) Target must ensure that the Announcement and the Explanatory Booklet state that each Target Director:

- (i) considers the Scheme to be in the best interest of Target Shareholders and that the Target Director recommends that Target Shareholders vote in favour of the Scheme (**Recommendation**); and
- (ii) intends to vote, or cause to be voted, all Shares in which it has a Relevant Interest in favour of the Scheme (**Voting Intention**),

in each case qualified only by the words:

- (iii) *'in the absence of a Superior Proposal'*; and
 - (iv) in the case of any public announcement issued before the release of the Explanatory Booklet, *'subject to the Independent Expert concluding that the Scheme is in the best interest of Target Shareholders'* and in any public announcement issued after the release of the Explanatory Booklet (including in the Explanatory Booklet), *'subject to the Independent Expert continuing to conclude that the Scheme is in the best interest of Target Shareholders'*.
- (b) Target must ensure that the Target Board collectively, and the members of the Target Board individually, do not adversely change, withdraw or modify, its, his or her Recommendation or Voting Intention unless:
- (i) Target has received, other than as a result of a breach of clause 17, a Superior Proposal and (i) has entered into a legally binding agreement to undertake or give effect to that proposal or (ii) in the case of a proposal by way of takeover bid which is not subject to an agreement with Target, an announcement has been made which attracts section 631(1) of the Corporations Act;
 - (ii) if a court, ASIC or the Takeovers Panel requests that a Target Director change, withdraw, qualify or modify, or abstain from making, his or her Recommendation or Voting Intention; or
 - (iii) the Independent Expert concludes in the Independent Expert's Report (either in its initial report or any subsequent update of its report) that the Scheme is not in the best interest of the Target Shareholders (other than where the conclusion is due to the existence of a Competing Proposal), and, in respect of each of clause 6.1(a)(i) and 6.1(a)(ii), the Target has complied with its obligations under clause 17 (including ensuring that all of Bidder's rights under clause 17.7 have been exhausted).
- (c) Despite anything to the contrary in this clause 6.1 or elsewhere in this agreement, a statement made by Target, the Target Board or any Target Director to the effect that no action should be taken by Target Shareholders pending the assessment of a Competing Proposal by the Target Board or the completion of the matching right process set out in clause 17.7 shall not contravene this clause 6.1 or any other provision of this agreement.

6.2 Confirmation

Target represents and warrants to Bidder that each Target Director has by way of unanimous resolution of the Target Board confirmed his or her agreement with, and not to do anything inconsistent with, their Recommendation and Voting Intention (including withdrawing, changing or in any way qualifying their Recommendation or Voting Intention) other than in the circumstances referred to in clause 6.1(b), and to otherwise act in accordance with clause 6.1.

6.3 Promotion of Scheme

During the Exclusivity Period, Target must procure that the senior executives of Target or its Related Bodies Corporate, as reasonably requested by Bidder, participate in efforts to promote the merits of the Scheme and the Scheme Consideration, including:

- (a) meeting with key Target Shareholders and undertaking proxy solicitation actions;
- (b) communicating with Target's employees, customers and suppliers and the employees, customers and suppliers of Target's Related Bodies Corporate (other than residents of Target Group's aged care homes); and
- (c) communicating with the public to promote the merits of the Scheme,

other than in the circumstances referred to in clause 6.1(b).

7. Scheme – parties' respective implementation obligations

7.1 Target's obligations

Target must take all steps reasonably necessary to propose and (subject to all of the Conditions being satisfied or waived in accordance with their terms) implement the Scheme as soon as reasonably practicable and after the date of this agreement and substantially in accordance with the Timetable, including without limitation taking each of the following steps:

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

7.2(f) have been received, an application is heard by the Court for an order under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting;

- (j) **(registration of explanatory statement)** request ASIC to register the explanatory statement included in the Explanatory Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (k) **(information):**
 - (i) provide reasonable information about the Scheme and the Target Shareholders to Bidder and its Related Bodies Corporate, which Bidder requests and reasonably requires in order to:
 - (A) canvass views on the Scheme by Target Shareholders;
 - (B) facilitate the provision by, or on behalf of, Bidder of the Scheme Consideration; or
 - (C) review the tally of proxy appointments and directions received by Target before the Scheme Meeting;
 - (ii) within 10 Business Days after the date of this agreement, provide Bidder with:
 - (A) a copy of the Target Register as at the date of this agreement to the extent doing so does not breach applicable privacy laws; and
 - (B) the most recently available information in Target's possession regarding the beneficial ownership of Shares including a copy of the most recent beneficial ownership analysis report received by Target (which, for the avoidance of doubt, may be as at a date prior to the date of this agreement);
- (l) **(convene Scheme Meeting)** take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Explanatory Booklet to the Target Shareholders and convening and holding the Scheme Meeting;
- (m) **(updating Explanatory Booklet)** until the date of the Scheme Meeting, promptly update the Explanatory Booklet, in consultation with Bidder, with any information that arises after the Explanatory Booklet has been dispatched that is necessary to ensure that the Explanatory Booklet does not contain any material statement that is false or misleading in a material respect (including because of any material omission from that statement) including where, after dispatch of the Explanatory Booklet, Target becomes aware:
 - (i) that information included in the Explanatory 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 by Scheme Shareholders under any applicable law but was not included in the Explanatory Booklet.
- (n) **(Court approval application if parties agree that conditions are capable of being satisfied)** if the resolution submitted to the Scheme Meeting is passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act (or, where clause 3.6 applies, the majority required under section 411(4)(a)(ii)(B) of the Corporations Act) and, if necessary, the parties agree on the Business Day immediately following the Scheme Meeting that it can be reasonably expected that all of the Conditions will be satisfied or waived prior to the proposed Second Court Date, apply to the Court for orders approving the Scheme;
- (o) **(appeal process)** if the Court refuses to make any orders directing Target to convene the Scheme Meeting or approving the Scheme:
 - (i) Target and Bidder must consult with each other in good faith as to whether to appeal the Court's decision; and
 - (ii) Target must appeal the court decision unless the parties agree otherwise or an independent senior counsel opines that, in his or her view, an appeal would have no reasonable prospect of success;
- (p) **(implementation of Scheme)** if the Scheme is approved by the Court:

- (i) subject to the Listing Rules, promptly lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act;
- (ii) determine entitlements to the Scheme Consideration as at the Record Date in accordance with the Scheme;
- (iii) execute proper instruments of transfer of and effect and register the transfer of the Scheme Shares to Bidder on the Implementation Date; and
- (iv) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme;
- (q) **(regulatory notifications)** in relation to the Regulatory Approvals, lodge with any Governmental Agency within the relevant periods all documentation and filings required by law to be so lodged by Target in relation to the Proposed Transaction;
- (r) **(Bidder Information)** without the prior written consent of Bidder, not use the Bidder Information for any purposes other than those contemplated by this agreement or the Scheme;
- (s) **(documents)** consult with Bidder in relation to the content of the documents required for the purpose of the Scheme including originating process, affidavits, submissions and draft minutes of Court orders;
- (t) **(Target Shareholder support)** promote to its shareholders the merits of the Scheme;
- (u) **(compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this agreement are effected in accordance with all applicable laws and regulations; and
- (v) **(proxy reports)** keep Bidder reasonably informed on the status of proxy forms received for the Scheme Meeting, including on every second Business Day over the period commencing 10 Business Days before the Scheme Meeting and ending on the deadline for the receipt of proxy forms, and such other information Target and its Authorised Persons may receive concerning the voting intentions of Target Shareholders.

7.2 Bidder's obligations

Bidder must take all steps reasonably necessary to assist Target to implement the Scheme as soon as reasonably practicable and substantially in accordance with the Timetable including, without limitation, taking each of the following steps:

- (a) **(Bidder Information)** provide to Target, in a form appropriate for inclusion in the Explanatory Booklet, all Bidder Information that is required by all applicable law, the Listing Rules and RG 60 (to the extent relevant to the Bidder Information) for inclusion in the Explanatory Booklet, which information must:
 - (i) not be misleading or deceptive in any material respect (whether by omission or otherwise) including in the form and context in which it appears in the Explanatory Booklet; and
 - (ii) be updated by all such further or new material information which may arise after the Explanatory Booklet has been dispatched until the date of the Scheme Meeting which is necessary to ensure that it is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (b) **(regulatory notifications)** in relation to the Regulatory Approvals (and without limiting clause 3.3(b)(ii)), lodge with any regulatory authority within the relevant time periods all documentation and filings required by law to be so lodged by Bidder in relation to the Proposed Transaction;
- (c) **(Independent Expert)** promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report;
- (d) **(review of Explanatory Booklet)** as soon as reasonably practicable after delivery, review the drafts of the Explanatory Booklet prepared by Target and provide comments on those drafts in good faith;

- (e) **(approval of draft for ASIC and ASX)** as soon as reasonably practicable after the preparation of an advanced draft of the Explanatory Booklet suitable for review by ASIC and ASX, procure that a meeting of the appropriate representatives of Bidder is held to consider approving those sections of that draft that relate to Bidder as being in a form appropriate for provision to ASIC and ASX for review;
- (f) **(approval of Explanatory Booklet)** as soon as reasonably practicable after the conclusion of the review by ASIC and ASX of the Explanatory Booklet, procure that a meeting of the appropriate representatives of Bidder is held to consider approving those sections of the Explanatory Booklet that relate to Bidder as being in a form appropriate for dispatch to Target Shareholders, subject to approval of the Court;
- (g) **(representation)** procure that Bidder is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act;
- (h) **(Target Information)** without the prior written consent of Target, not use Target Information for any purposes other than those contemplated by this agreement or the Scheme; and
- (i) **(compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this agreement are effected in accordance with all applicable laws and regulations.

7.3 Explanatory Booklet – preparation principles

- (a) As soon as reasonably practicable after the date of this agreement and substantially in accordance with the Timetable, Target must prepare the Explanatory Booklet in compliance with:
 - (i) all applicable laws, in particular with the Corporations Act, RG 60 and the Listing Rules; and
 - (ii) this clause 7.3.
- (b) The Explanatory Booklet will include:
 - (i) the terms of the Scheme;
 - (ii) the notice of Scheme Meeting, and any other notice of meeting in respect of any resolution that is necessary, expedient or incidental to give effect to the Scheme, together with a proxy form for the Scheme Meeting and for any ancillary meeting;
 - (iii) the Target Information;
 - (iv) the Bidder Information;
 - (v) a summary of this agreement;
 - (vi) a copy of the executed Deed Poll; and
 - (vii) a copy of the Independent's Expert Report.
- (c) The Explanatory Booklet must include a statement that:
 - (i) other than the Bidder Information and the Independent Expert's Report, the Explanatory Booklet has been prepared by Target and is the responsibility of Target, and that to the maximum extent permitted by law, Bidder assumes no responsibility for the accuracy or completeness of the Explanatory Booklet (other than Bidder Information and will disclaim any liability for any information appearing in the Explanatory Booklet other than the Bidder Information); and
 - (ii) the Bidder Information has been provided by Bidder and is the responsibility of Bidder, and that to the maximum extent permitted by law, Target assumes no responsibility for the accuracy or completeness of the Bidder Information and will disclaim any liability for any Bidder Information appearing in the Explanatory Booklet.
- (d) Target must make available to Bidder drafts of the Explanatory Booklet (excluding any part of the draft of the Independent Expert's Report which contains the Independent Expert's opinion), consult with Bidder in relation to the content of those drafts (other than

the Bidder Information), and consider in good faith, for the purpose of amending those drafts, comments from Bidder on those drafts. Bidder acknowledges and agrees that Target has ultimate discretion with respect to the preparation, form and content of the Explanatory Booklet, other than as provided in this agreement with respect to the Bidder Information.

- (e) Target must seek approval from Bidder for the form and context in which the Bidder Information appears in the Explanatory Booklet, which approval Bidder must not unreasonably withhold, delay or condition, and Target must not lodge the Explanatory Booklet with ASIC until such approval is obtained from Bidder.
- (f) If Target and Bidder disagree on the form or content of the Explanatory Booklet, they must consult in good faith to try to settle an agreed form of the Explanatory Booklet. If complete agreement is not reached after reasonable consultation, then:
 - (i) if the disagreement relates to the form or content of any information appearing in the Explanatory Booklet other than the Bidder Information, the Target Board will, acting in good faith, decide the final form or content of the disputed part of the Explanatory Booklet; and
 - (ii) if the disagreement relates to the form or content of the Bidder Information, Target will make such amendments to the form or content of the disputed part of the Bidder Information as Bidder reasonably requires.
- (g) Target must take all reasonable steps to ensure that the Explanatory Booklet (other than the Bidder Information) is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date it is dispatched to Target Shareholders.
- (h) Bidder must take all reasonable steps to ensure that the Bidder Information is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date on which the Explanatory Booklet is dispatched to Target Shareholders.
- (i) Target must provide to Bidder all such further or new information of which Target becomes aware that arises after the Explanatory Booklet has been dispatched until the date of the Scheme Meeting where this is or may be necessary to ensure that the Explanatory Booklet continues to comply with the Corporations Act, RG 60 and the Listing Rules.
- (j) Bidder must provide to Target all such further or new information of which Bidder becomes aware that arises after the Explanatory Booklet has been dispatched until the date of the Scheme Meeting where this is or may be necessary to ensure that the Bidder Information continues to comply with the Corporations Act, RG 60 and the Listing Rules.
- (k) Target must undertake reasonable verification processes in relation to the information included in the Explanatory Booklet (other than the Bidder Information and the Independent Expert's Report) so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise).
- (l) Bidder must undertake reasonable verification processes in relation to the Bidder Information so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise).
- (m) Target and Bidder each agree that the efficient preparation of the Explanatory Booklet and the implementation of the Scheme are in the interests of Target Shareholders and Bidder and that they will use all reasonable endeavours and utilise all necessary resources (including management resources and the resources of external advisers) to comply with their respective obligations under this clause 7.3 and to implement the Scheme as soon as reasonably practicable and substantially in accordance with the Timetable.

7.4 Conduct of Court proceedings

- (a) Target and Bidder are entitled to separate representation at all Court proceedings affecting the Proposed Transaction.
- (b) Nothing in this agreement gives Target or Bidder any right or power to give undertakings to the Court for or on behalf of the other party without that other party's written consent.

- (c) Target and Bidder must give all undertakings to the Court in such Court proceedings which are reasonably required to obtain Court approval and confirmation of the Proposed Transaction as contemplated by this agreement.

7.5 Payment of Permitted Dividend and internal payments

- (a) Despite any other provision of this agreement, Target may in, its sole discretion, determine or declare, and pay, one or more fully franked dividends of up to \$0.12 per Share in aggregate in cash (**Permitted Dividend**) to Target Shareholders, provided that:
- (i) the Permitted Dividend is not in breach section 203-25 of the Tax Act;
 - (ii) the Permitted Dividend is to be declared on or prior to the Effective Date, and in any event by no later than the last date permitted by the Listing Rules to declare that dividend such that the record date for the Permitted Dividend will be on the same day as the Record Date;
 - (iii) the Permitted Dividend will be paid on or prior to the Implementation Date;
 - (iv) the Permitted Dividend will be franked to the maximum extent possible, subject to the franking account of Target not being in deficit after the payment of the Permitted Dividend;
 - (v) the Permitted Dividend is to be paid from accumulated profits, retained earnings or distributable reserves or available profits (or a combination of all or some of them) of Target existing immediately prior to the declaration of that dividend; and
 - (vi) payment of the Permitted Dividend must comply with the Corporations Act.
- (b) For the purpose of determining Target's franking account balance prior to the Implementation Date, the parties will undertake the following steps:
- (i) Target will supply a draft franking account to Bidder no later than 10 Business Days prior to the payment of any Permitted Dividend;
 - (ii) Bidder will provide any comments on the draft franking account no later than 2 Business Days after receiving the information; and
 - (iii) Target will update the franking account to take into account any reasonable comments by Bidder before paying any Permitted Dividend.
- (c) Despite any other provision of this agreement, Target may make any intra group distributions and payments between members of the Target Group, in order to be able to declare and pay the Permitted Dividend in accordance with clause 7.5(a).
- (d) The parties acknowledge and agree that if the Permitted Dividend is declared in accordance with clause 7.5(a), the Scheme Consideration will be reduced by the amount of the Permitted Dividend, but, for the avoidance of doubt if Target announces, determines or declares, and pays, a Permitted Dividend in accordance with this clause 7.5, the Permitted Dividend is to be paid from accumulated or available profits, retained earnings or distributable reserves (or a combination or some or all of them) of Target Group immediately prior to the declaration of that dividend.
- (e) The provisions of this clause 7.5 do not prevent the determination or payment of a dividend by Target if this agreement is terminated.
- (f) Bidder undertakes (on behalf of itself and the Bidder Group) that no amount of the Permitted Dividend shall be directly or indirectly funded on or after Implementation from the issue of equity interests (as defined in section 995-1 of the Tax Act) by any company, whether such equity interests are issued before or after the implementation of the Scheme. For the avoidance of doubt, this includes an undertaking that no proceeds from an equity issuance will be applied by the Bain Entities towards the repayment of any portion of any debt facility that has been drawn by Target prior to the Implementation Date to pay part or all of the Permitted Dividend.

8. Conduct of business before the Implementation Date

8.1 Conduct of Target business

- (a) Subject to clause 8.2(a), from the date of this agreement up to and including the Implementation Date, Target must, and must cause each of its Subsidiaries to:
- (i) conduct their businesses in the ordinary and usual course of business with the manner in which each business and operation has been conducted in the period prior to the date of this agreement;
 - (ii) operate those businesses consistent with past practice, in substantially the same manner as previously conducted in the 12 month period prior to the date of this agreement;
 - (iii) operate their businesses in compliance with, in all material respects, applicable laws and maintain (and, where necessary, use reasonable efforts to renew) each of its applicable necessary and material authorisations, accreditations, permits, approvals and licences;
 - (iv) use reasonable endeavours to preserve their relationships with applicable Governmental Agencies, customers, suppliers, landlords, licensors, licensees and others having material business dealings with them, and to retain the services of all Key Persons;
 - (v) use reasonable endeavours to ensure that the condition of its business and all assets are maintained in the normal course consistent with past practice;
 - (vi) use reasonable endeavours to comply in all material respects with all Material Contracts to which a member of the Target Group is a party, and with laws, authorisations and licences applicable to each member of the Target Group;
 - (vii) not take or fail to take any action that constitutes a Target Prescribed Occurrence or that could reasonably be expected to result in a Target Prescribed Occurrence;
- (b) Without limiting clause 8.1(a) but subject to clause 8.2(a), Target must not, and must procure that its Subsidiaries do not, from the date of this agreement up to and including the Implementation Date, do any of the following (or agree or offer to do any of the following):
- (i) give or agree to give a financial benefit to a related party of Target (other than a related party that is a Target Group Member), except on arm's length terms,
 - (ii) (except as required by law) enter into or make any material change to the terms of employment of (including increasing the remuneration or compensation of), any Key Person, in each case other than relating to rights or entitlements in effect on the date of this agreement and which are Fairly Disclosed or in accordance with Target's normal salary review procedure conducted in the ordinary and usual course of business consistent with past practice;
 - (iii) terminate or encourage the resignation of a Key Person, except for cause (acting reasonably) in accordance with contractual arrangements in effect on the date of this agreement or otherwise in accordance with current personnel practices in each case Fairly Disclosed in the Due Diligence Material;
 - (iv) settle or compromise any dispute, audit or inquiry in relation to tax or duty or amend any tax return, other than in the ordinary course of its business;
 - (v) cancel or terminate any insurance policy naming any Target Group Member as a beneficiary without obtaining comparable substitute insurance coverage;
 - (vi) not pay, or agree to pay or incur, any third party costs or expenses in connection with the transactions contemplated by this agreement (including legal, financial, tax, accounting, communications and public relations, counsel, expert and court fees and fees payable to Government Agencies) in excess of the amount Fairly Disclosed in the Due Diligence Material;
 - (vii) not make any change to its constitution;

- (viii) except for amendments, terminations, or non-renewals in the ordinary course of business consistent with past practice that would not be material to the Target Group, not modify, amend, waive, fail to enforce (in each case, in any material respect), assign or terminate any Material Contract of the Target Group;
- (ix) not alter in any material respect any accounting policy of any member of the Target Group, other than any change required by applicable accounting standards;
- (x) not waive any non-competition, non-disparagement, confidentiality or non-solicitation (or similar) obligation of any director, officer or Key Person of a Target Group Member; or
- (xi) not make, change or revoke any material election in respect in respect of Taxes, change any material method of Tax accounting, change any Tax accounting period, amend any material tax return, or settle, compromise or surrender any claim, audit, dispute, inquiry or proceeding with respect to a material amount of Taxes or duties or tax returns that relates to potential costs or liabilities of more than \$1 million, other than in the ordinary course of its business.

8.2 Permitted activities

- (a) The obligations of Target under clause 8.1 do not apply in respect of any matter:
 - (i) expressly required to be done or procured by Target under this agreement or the Scheme;
 - (ii) required by law (including to comply with the requirements of the Aged Care Act and associated aged care legislation and regulations), contract (but only to the extent such contract was entered into before the date of this agreement or otherwise in accordance with this agreement) or by an order of a court or Governmental Agency;
 - (iii) required for any Target Director to comply with his or her fiduciary or statutory duties, provided that, to the extent possible in the circumstances, Target first provides Bidder with reasonable details and consults in good faith with Bidder in relation to the act to be done (or not done) in reliance on this clause;
 - (iv) which, in the reasonable opinion of Target, is a necessary and prudent response to any emergency or disaster to preserve the financial position or operations of the business of the Target Group (including, but not limited to an epidemic or pandemic or the impact arising from such an event or a situation giving rise to a risk of personal injury or damage to property) and it is impractical to seek the approval of Bidder prior to giving effect to the response;
 - (v) subject to clause 8.2(b), Fairly Disclosed in the Due Diligence Material or in documents that were publicly available in the 12 months prior to the date of this agreement from public filings of Target with ASX, ASIC, or ACQSC as being actions that the Target Group may carry out between the date of this agreement and the Implementation Date; or
 - (vi) the undertaking of which Bidder has approved in writing (which approval must not be unreasonably withheld, delayed or conditioned).
- (b) Target must, in respect of any matter referred to in clause 8.2(a)(v) above that it proposes to undertake:
 - (i) if the Due Diligence Material permits the carrying out of the action only in accordance with certain conditions, ensure those conditions are met;
 - (ii) not undertake that matter (or commit to undertake that matter) without first consulting with Bidder; and
 - (iii) promptly provide Bidder with any information regarding the matter reasonably requested by Bidder.
- (c) Clause 8.2(b) does not operate to provide Bidder with a veto right in respect of any matter referred to in clause 8.2(a)(v).

8.3 Access

- (a) In the period from the date of this agreement to the Implementation Date, Target must, and must procure that each of its Subsidiaries to:
- (i) keep Bidder informed of all material developments relating to the Target Group;
 - (ii) promptly following a reasonable request by Bidder, provide Bidder (and its Authorised Persons) with access to:
 - (A) documents and information relating to the Target Group; and
 - (B) executives and Senior Management of the Target Group;
 for the purpose of or in connection with:
 - (C) planning the transition of the Target Group and other matters relating to the conduct of the Target Group following the Implementation Date;
 - (D) refinancing of any of the Target Group's debt facilities which may need to be repaid in connection with the Scheme;
 - (E) holding discussions with third parties, with the consent of Target (such consent not to be unreasonably withheld or delayed) that Bidder and its Authorised Persons reasonably wish to enter into with respect to the Proposed Transaction prior to the Implementation Date, including procuring that employees of any member of Target Group participate in such discussions;
 - (F) otherwise facilitating or implementing the Proposed Transaction; and
 - (G) any other purpose that is agreed in writing between Target and Bidder.
- (b) Nothing in this clause 8.3 obliges Target to provide to Bidder or its Authorised Persons any information:
- (i) concerning the Target Directors' consideration of the Scheme;
 - (ii) concerning any past, actual, proposed or potential Competing Proposal (including Target Directors' consideration of any actual, proposed or potential Competing Proposal), but this proviso does not limit Target's obligations under clause 17;
 - (iii) which would breach Target's obligations under the Aged Care Act;
 - (iv) which would breach an obligation of confidentiality to any person or any applicable laws; or
 - (v) which would result in a waiver of legal professional privilege, provided Target must use reasonable endeavours to facilitate the provision of such information without breaching confidentiality or waiving legal professional privilege,
- provided that Target takes reasonable steps to satisfy the reasonable information requests of Bidder concerning the matter (which includes, for the avoidance of doubt, redacting any competitively sensitive or privileged information).
- (c) Target will provide reasonable assistance to Bidder for the purpose of satisfying Target's obligations under this clause 8.3 but nothing in this clause 8.3 requires Target to provide access to its people or documentation or to take any other action which would involve refreshing or updating the Due Diligence Material or which would disrupt or interfere with the usual and ordinary course of Target's businesses and operations (it being noted that Target's businesses and operations will need to continue to operate with requisite management attention).
- (d) Bidder must:
- (i) provide Target with reasonable notice of any request for information or access; and
 - (ii) comply with the reasonable requirements of Target in relation to any access granted.

- (e) For the purposes of providing reasonable access to Bidder to premises, the parties agree that any request for any such access and the terms of access are to be agreed between the parties in writing.
- (f) The parties agree and acknowledge that nothing in this clause 8.3 requires Target to provide any information that is different or in addition to the information Target provides to its Board and Senior Managers in the usual and ordinary course consistent with past practice.

8.4 Change of control rights

- (a) As soon as practicable after the date of this agreement, Target must seek to identify any change of control or similar provisions in leases and material contracts to which Target or a Target Group company is a party which are or may be triggered by the implementation of the Proposed Transaction.
- (b) In respect of those leases and contracts, Target and Bidder will agree a proposed course of action (each acting reasonably and in good faith) which will involve Target initiating contact with the relevant landlords and other counterparties and request that they provide any consents required. None of Bidder or any of their Authorised Persons may contact any landlords or other counterparties without Target's approval (which approval must not be unreasonably withheld, delayed or conditioned).
- (c) A failure by a member of the Target Group to obtain any landlord or third party consent will not constitute a breach of this agreement by Target and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this agreement.
- (d) In respect of Material Contracts, the parties agree as follows:
 - (i) Target must consult with Bidder in good faith in relation to the method and content of communications with the relevant counterparty and, as soon as practicable after the date of this agreement, apply to the counterparties to these contracts for consent in relation to the Proposed Transaction.
 - (ii) Target must use reasonable endeavours to obtain the consents referred to in clause 8.4(d)(i) as expeditiously as possible and, in any event, prior to the Second Court Date and to ensure that once obtained, the consents are not withdrawn, cancelled or revoked, including by:
 - (A) cooperating with, and doing all things reasonably requested by, Target, Bidder or the counterparty to a Material Contract;
 - (B) promptly provide any information reasonably required by a counterparty to a Material Contract; and
 - (C) make representatives of Target available, where necessary, to meet with counterparties to Material Contracts to deal with issues arising in relation to the change of control of Target.
- (e) Bidder must provide any assistance (including providing factual information regarding Bidder and attending relevant meetings) reasonably requested by Target for the purposes of Target complying with its obligations under this clause 8.4, except that Bidder is not responsible for any costs incurred in connection with any application for or granting of consent from the counterparties to the Material Contracts.
- (f) Target must not, without the prior written consent of Bidder which must not be unreasonably withheld or delayed, incur any costs other than reasonable travel and legal expenses in connection with performing its obligations under this clause.

8.5 Existing Financing Agreements

- (a) Between the date of this agreement and the Implementation Date, Target must provide reasonable assistance as requested by Bidder in connection with any repayment and discharge of the Target Group's Financial Indebtedness, or otherwise developing a financing strategy for the Target Group's business, that Bidder reasonably requires in connection with the Transaction, including:

- (i) liaising with its creditors to obtain information on any Target Group Member's Financial Indebtedness or Security Interests granted by any of them;
 - (ii) providing Bidder with information reasonably requested by Bidder in relation to use of existing cash reserves of the Target Group for such purpose;
 - (iii) issuing repayment and/or cancellation notices in relation to the Existing Financing (other than in respect of Existing Financing between members of the Target Group); and
 - (iv) using reasonable endeavours to procure the discharge of any registrations on the PPS Register from secured parties in relation to any Security Interests granted by a Target Group Member in favour of that party.
- (b) Without limiting clause 8.5(a), Target must provide reasonable assistance requested by Bidder in connection with the orderly transition of any existing bank guarantee, letter of credit, performance bond or similar instrument issued to any person at the request or direction of any Target Group Member (**Instrument**), including:
- (i) providing details of existing Instruments to Bidder; and
 - (ii) communicating with and providing information to the issuers and beneficiaries (as applicable) of the Instruments to facilitate the timely replacement, cash backing or other arrangement for the transition or replacement of those Instruments in connection with the Transaction.
- (c) Bidder must promptly reimburse Target for all reasonable costs incurred by Target in connection with any cooperation provided under this clause 8.5 (including reasonable advisors' fees and expenses).
- (d) Between the date of this agreement and the Implementation Date, Target must promptly notify Bidder if:
- (i) it or any Target Group Member requests or grants a waiver or consent in respect of a material provision of the Target Group's Financial Indebtedness (other than in respect of Financial Indebtedness between members of the Target Group), with reasonable detail of the reason for the request;
 - (ii) it or any Target Group Member becomes aware of a breach of the Target Group's Financial Indebtedness or the occurrence of a Financing Default, together with reasonable information in relation to the Financing Default, event or circumstance giving rise to the breach or Financing Default; or
 - (iii) it or any Target Group Member enters into, unwinds, or closes out any Target Group's Financial Indebtedness in connection with derivative or similar transactions, including to manage exposure to fluctuations in the rate or price of currency or interest rates.
- (e) Target must:
- (i) consult in good faith with Bidder after the date on which a notice is given under clause 8.5(d) to consider and determine the steps that can be taken to avoid, remedy or cure (as the case may be) the relevant Financing Default, and
 - (ii) use reasonable endeavours to avoid the occurrence of, or to remedy or cure, any Financing Default, except in relation to any Financing Default that arises directly and solely by implementation of the Transaction.

8.6 Transaction Financing

- (a) Subject to entry into confidentiality arrangements acceptable to Target (acting reasonably), to the extent confidentiality arrangements have not been entered into between Bidder and the relevant financing source or Valuer prior to the date of this agreement, Target agrees to provide, and must procure that each member of the Target Group provides, reasonable assistance and cooperation in connection with:
- (i) the commitments set out or expressly contemplated in any Debt Commitment Letters disclosed to Target in writing on or before entry into this agreement or otherwise acceptable to Target acting reasonably; and

- (ii) the arrangement or syndication of any acquisition, debt or equity financings incurred, or intended to be incurred, by or on behalf of Bidder in connection with the Proposed Transaction,

(Transaction Financing), as may be reasonably requested by Bidder, including by:

- (iii) promptly providing any information and access to information with respect to Target Group (including any property owned, operated and/or under development (including any brownfields, greenfields and loose land) by Target Group from time to time, including any property (including land) acquired after the date of this agreement and any property (including land) proposed to be acquired by Target Group which it has access to or is able to take steps to gain access to (subject to complying with reasonable conditions of access) **(Target Group Property)**) required:
- (A) by financiers, bank regulatory authorities or prospective debt or equity financing sources (including any agent acting on their behalf) including under applicable “know your customer” or “client vetting” procedures and anti-money laundering rules and regulations (and sanctions regulations/requirements), as required or is otherwise necessary to satisfy the conditions of the Transaction Financing; and/or
 - (B) by Bidder:
 - (I) (or any property valuer(s) notified by Bidder to Target **(Valuers)**) in connection with, or necessary for, preparing valuations (including first mortgage valuations, in each case in form and substance consistent with the terms of any debt documents entered into or to be entered into by Bidder in connection with the Proposed Transaction) of any Target Group Property **(Valuations)**; and
 - (II) for inclusion in any offering memoranda, lender and investor presentation, confidential information memorandum, private placement memoranda, and other similar documents prepared for the purposes of any Transaction Financing (each, a **Transaction Financing Document**);
- (iv) making employees as may be nominated by Bidder (and agreed by Target, acting reasonably) available at mutually convenient times for participation in a reasonable number of meetings, due diligence sessions, and management presentations with ratings agencies, Valuers and/or prospective financing sources in connection with Transaction Financing and/or preparation of Valuations (as applicable), it being understood that such participation shall be done in a manner that reflects Bidder, not Target, is the borrower;
- (v) providing reasonable assistance to Bidder or any Valuers in connection with:
- (A) satisfying any conditions and obligations of any debt Transaction Financing or any debt documents entered into or to be entered into by Bidder in connection with the Proposed Transaction, to the extent it is within its reasonable control;
 - (B) preparing Valuations, including facilitating reasonable site visits and otherwise providing access to Target Group Properties as reasonably required and requested by Bidder or any Valuers (subject to such investors complying with reasonable conditions of access); and
 - (C) facilitating reasonable site visits requested by direct or indirect equity investors in Bidder (subject to such investors complying with reasonable conditions of access),

provided that no member of the Target Group will be required to incur any third party or out of pocket cost, expense or liability in connection with any Transaction Financing prior to implementation of the Scheme that is not reimbursed by Bidder.

- (b) Nothing in clause 8.6(a) will require Target to do anything to the extent that it would:

- (i) unreasonably interfere with the ongoing business or operations of Target Group, including materially and unreasonably interfering with employees' performance of their roles (including activities which require substantial time commitments or travel, other than assistance under clause 8.6(a)(v)(A));
 - (ii) require a member of Target Group to take any action that would reasonably be expected to conflict with or violate its constituent documents or any law or the rules of any stock exchange or would breach any obligation to any person including under a confidentiality agreement or arrangement;
 - (iii) cause any Condition to not be satisfied or otherwise cause or contribute to a breach of this agreement;
 - (iv) require the approval of shareholders of Target under section 260B of the Corporations Act or an equivalent or analogous restriction in any jurisdiction or under the rules of any stock exchange or financial market or the board of directors of any member of Target Group to approve the granting of financial assistance by any member of Target Group; or
 - (v) require any member of the Target Group of their respective, directors, officers and employees to execute prior to implementation of the Scheme any agreements, including any credit or other agreements, pledge or security documents or other certificates, legal opinions or documents in connection with any Transaction Financing.
- (c) Bidder indemnifies, and holds harmless, Target (in its own right and separately as trustee or nominee for each member of the Target Group or their respective, directors, officers and employees) and each member of the Target Group or their respective, directors, officers and employees against any claim, action, damage, loss, liability cost, expense or payment, of whatever nature and however arising, suffered or incurred by any of them in connection with any third party claim related to Transaction Financing undertaken by or on behalf of Bidder and any information utilised in connection with any Transaction Financing undertaken by or on behalf of Bidder, in each case other than remuneration of its employees or to the extent any of the foregoing arises from the fraud, wilful misconduct or wilful default of Target or member of the Target Group or their respective, directors, officers and employees.

9. Actions on and following Implementation Date

9.1 Reconstitution of the board of each member of the Target Group

- (a) On the Implementation Date, but subject to the Scheme Consideration having been paid in full by Bidder to Target and receipt by Target of signed consents to act, Target must take all actions necessary (and in accordance with the constitution of the Target Group member, the Corporations Act and the Listing Rules) to appoint the persons nominated by Bidder as new Target Directors and new directors of each Subsidiary.
- (b) Without limiting clause 9.1(a), on the Implementation Date, but subject to receipt by Target of written notices of resignation to the effect that the outgoing directors have no claim outstanding against any member of the Target Group, unless otherwise notified by Bidder, Target must procure that:
 - (i) all outgoing Target Directors resign from the Target Board; and
 - (ii) all outgoing directors of each Subsidiary of Target resign from their office.

9.2 Sequence of actions on the Implementation Date

On the Implementation Date, the transactions which form part of the Scheme will be implemented in the following sequence:

- (a) Bidder will provide the Scheme Consideration to Target in accordance with the Scheme;
- (b) Target will disburse the Scheme Consideration to Scheme Shareholders in accordance with the Scheme;

- (c) the Target Board and the board of each Subsidiary of Target will be reconstituted in accordance with clause 9.1;
- (d) Bidder will acquire all of the Scheme Shares in accordance with the Scheme;
- (e) in accordance with clause 5, all Performance Rights will be cancelled and Bidder will provide the consideration to those holders of Performance Rights with whom Bidder has entered into private treaty arrangements for the cancellation of their Performance Rights;
- (f) Target will lodge a notification pursuant to section 9-1 of the Aged Care Act which notifies the ACQSC of a change of circumstances that materially affects the suitability of an approved provider within 14 days of Implementation Date;
- (g) Target will apply to ASX to be removed from the official list of ASX with effect from a date nominated by Bidder.

10. Representations and warranties

10.1 Bidder representations

- (a) Bidder represents and warrants to Target (on Target's own behalf and separately as trustee for each of the other Target Parties) each of the matters set out in clause 10.1(b) as at the date of this agreement, the date of despatch of the Explanatory Statement, the date of the Scheme Meeting and at the Delivery Time on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date).
- (b) Bidder represents and warrants that:
 - (i) Bidder is a validly existing corporation registered under the laws of its place of incorporation;
 - (ii) the execution and delivery of this agreement has been properly authorised by all necessary corporate action and Bidder has full corporate power and lawful authority to execute and deliver this agreement and to perform or cause to be performed its obligations under this agreement;
 - (iii) this agreement constitutes legal, valid and binding obligations on it and this agreement does not result in a breach of or default under any deed or any writ, order or injunction, rule or regulation to which Bidder is a party or is bound;
 - (iv) the execution and performance by it of this agreement and each transaction contemplated by this agreement did not and will not violate any provision of its constituent documents;
 - (v) no Bidder Entity is affected by an Insolvency Event;
 - (vi) it does not require any approval, consent, clearance, waiver, ruling, relief, confirmation, exemption, declaration or notice from any Governmental Agency in order to execute and perform this agreement, other than the Regulatory Approvals;
 - (vii) the Bidder Information provided to Target in accordance with clause 7.2(a)(ii) for inclusion in the Explanatory Booklet will:
 - (A) comply in all material respects with the requirements of the Corporations Act, the Listing Rules and RG 60; and
 - (B) be provided on the understanding that each of the Target Parties will rely on that information for the purposes of preparing the Explanatory Booklet and proposing and implementing the Scheme in accordance with the requirements of the Corporations Act;
 - (viii) as at the date the Explanatory Booklet is dispatched to Target Shareholders, the Bidder Information, in the form and context in which that information appears in the version of the Explanatory Booklet registered by ASIC under section 412(6) of

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

- (ix) Bidder will, as a continuing obligation, provide to Target all such further or new information which may arise after the Explanatory Booklet has been dispatched until the date of the Scheme Meeting which is necessary to ensure that the Bidder Information, in the form and context in which that information appears in the version of the Explanatory Booklet registered by ASIC under section 412(6) of the Corporations Act, is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (x) all factual information Bidder has provided to Target prior to this agreement is, to the best of Bidder's knowledge, accurate in all material respects and not misleading in any material respect (whether by omission or otherwise), including that there are reasonable grounds for all statements as to future matters and a reasonable basis for all statements of opinion in that information;
- (xi) as at the date of this agreement Bidder has a reasonable basis to expect that it will, by the Implementation Date, have available to it sufficient cash amounts (whether from internal cash resources or external funding arrangements including debt and equity financing or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this agreement, the Scheme and the Deed Poll;
- (xii) by the Delivery Time on the Second Court Date, Bidder 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 Bidder) sufficient cash amounts (whether from internal cash resources or external funding arrangements including debt and equity financing or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this agreement, the Scheme and the Deed Poll;
- (xiii) Bidder will have available to it on the Implementation Date sufficient cash amounts (whether from internal cash resources or external funding including debt and equity financing arrangements or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this agreement, the Scheme and the Deed Poll;
- (xiv) Bidder will ensure that any directors it notifies Target that it proposes to appoint as new Target Directors or new directors of each Subsidiary of Target comply with the relevant provisions for satisfying the requirements in the Aged Care Act regarding composition of a board of directors;
- (xv) Bidder has disclosed a true and complete copy of the Debt Commitment Letters as at the date of this agreement and any amended, new or replacement Debt Commitment Letters to Target or its legal advisers subject to redactions for commercially sensitive information;
- (xvi) each Debt Commitment Letter has been duly executed by the relevant Bidder Group Member and constitute legally binding obligations of the relevant Bidder Group Member that are enforceable in accordance with their respective terms;
- (xvii) each Debt Commitment Letter has not been amended, terminated or rescinded where to do so will, or is reasonably likely to prejudice Bidder's ability to pay the Scheme Consideration in accordance with this agreement and the Deed Poll or cause any Regulatory Approval to not be obtained (including because it will be obtained on more adverse, or with additional, conditions not acceptable to the Bidder) or the Proposed Transaction to be materially delayed and, as far as Bidder is aware, no party to a Debt Commitment Letter is in default thereunder;
- (xviii) without the prior written consent of Target, Bidder will not and must procure that each other Bain Entity does not:
 - (A) terminate any of the Debt Commitment Letters;
 - (B) replace, amend, or agree to amend, any Debt Commitment Letter; or

- (C) waive, or agree to waive, any of its rights under any Debt Commitment Letter,

where to do so will, or is reasonably likely to prejudice Bidder's ability to pay the Scheme Consideration in accordance with this agreement and the Deed Poll or cause any Regulatory Approval to not be obtained (including because it will be obtained on more adverse, or with additional, conditions not acceptable to the Bidder) or the Proposed Transaction to be materially delayed;

- (xix) Bidder will enforce its rights under the Debt Commitment Letters to the extent that failure to do so is reasonably likely to prejudice Bidder's ability to pay any amount in accordance with this agreement and the Deed Poll;
- (xx) Bidder has disclosed a true and complete copy of each Equity Commitment Letter to Target;
- (xxi) each Equity Commitment Letter has been duly executed by the parties thereto and constitute legally binding obligations of those parties that are enforceable in accordance with their respective terms;
- (xxii) each Equity Commitment Letter has not been amended, terminated or rescinded, and no party to the Equity Commitment Letter is in default thereunder;
- (xxiii) without the prior written consent of Target, Bidder will not and must procure that each other Bain Entity does not:
 - (A) terminate any Equity Commitment Letter;
 - (B) replace, amend, or agree to amend, any Equity Commitment Letter; or
 - (C) waive, or agree to waive, any of its rights under any Equity Commitment Letter; and
 - (D) agree or consent to any novation, assignment or transfer of any counterparty's obligation under any Equity Commitment Letter (except as expressly permitted therein); and
- (xxiv) Bidder will enforce its rights under the Equity Commitment Letters to the extent that failure to do so is reasonably likely to prejudice Bidder's ability to pay any amount in accordance with this agreement and the Deed Poll.]

10.2 Bidder's indemnity

Bidder agrees with Target (on Target's own behalf and separately as trustee or nominee for each of the other Target Parties) to indemnify and keep indemnified the Target Parties from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which any of the Target Parties may suffer or incur by reason of any breach of any of the representations and warranties in clause 10.1(a) or 10.1(b).

10.3 Qualifications on Bidder's representations, warranties and indemnities

The representations and warranties in clause 10.1 and the indemnity in clause 10.2 are each subject to matters which:

- (a) are expressly provided for in this agreement;
- (b) are within the actual knowledge of Target, which for these purposes is taken to include (and be limited to) the facts, matters and circumstances of which the following individuals are actually aware or believe as at the date of this agreement, or the awareness or belief that any of the following individuals would have had if they had made reasonable enquiries of their direct reports:
 - (i) Sean Bilton; and
 - (ii) Anthony Rice.

10.4 Target representations

- (a) Target represents and warrants to Bidder each of the matters set out in clause 10.4(b) as at the date of this agreement, the date of despatch of the Explanatory Statement, the date of the Scheme Meeting and at the Delivery Time on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date).
- (b) Target represents and warrants that:
- (i) Target is a validly existing corporation registered under the laws of its place of incorporation;
 - (ii) the execution and delivery of this agreement by Target has been properly authorised by all necessary corporate action and Target has full corporate power and lawful authority to execute and deliver this agreement and to perform or cause to be performed its obligations under this agreement;
 - (iii) this agreement constitutes legal, valid and binding obligations on Target and the execution of this agreement of itself does not result in a breach of or default under:
 - (A) any provision of Target's constitution; or
 - (B) any agreement or deed or any writ, order or injunction, rule or regulation to which Target or any of its Subsidiaries is a party or to which they are bound,
 and is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this agreement;
 - (iv) the Target Information contained in the Explanatory Booklet was prepared and included in good faith and will comply in all material respects with the requirements of the Corporations Act, Listing Rules and RG 60;
 - (v) as at the date the Explanatory Booklet is dispatched to Target Shareholders, the Explanatory Booklet registered by ASIC under section 412(6) of the Corporations Act (excluding the Bidder Information and the Independent Expert's Report) will not be misleading or deceptive in any material respect (whether by omission or otherwise);
 - (vi) as at the date of this agreement, the total issued capital of Target is:
 - (A) 258,361,034 Shares; and
 - (B) 3,401,143 Performance Rights,
 and no other Target options, shares, performance rights, convertible notes, warrants or other securities (or offers or agreements to issue any of the foregoing) and no person has any right to call for the issue or grant of any Target options, shares, performance rights, convertible notes, warrants or other securities or instruments in Target.
 - (vii) all information provided by or on behalf of Target to the Independent Expert to enable the Independent Expert's Report to be included in the Explanatory Booklet will not be misleading or deceptive in any material respect (whether by omission or otherwise) and will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's Report for inclusion in the Explanatory Booklet;
 - (viii) any statement of belief or opinion contained in the Explanatory Booklet (other than with respect to the Bidder Information or Independent Expert's Report) is honestly held and there are reasonable grounds for Target holding that belief or opinion;
 - (ix) as at the date of this agreement, Target is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the exclusion in Listing Rule 3.1A to withhold any information from disclosure (other than in relation to the Proposed Transaction or as disclosed in writing to Bidder on or before the date of this agreement);

- (x) so far as Target is aware, each member of the Target Group has complied in all material respects with all laws or regulations applicable to them (or order of any Governmental Agency having jurisdiction over them);
- (xi) as at the date of this agreement, there is no judgment, injunction, order or decree binding on any member of the Target Group that has or would be likely to have the effect of prohibiting, materially restricting or materially impairing after the Effective Date any business of Target Group as presently being conducted;
- (xii) as at the date of this agreement, no member of the Target Group, nor the assets, properties or business of any member of the Target Group, is subject to any judgment, order, writ, injunction or decree of any court, Governmental Agency or arbitration tribunal and so far as Target is aware:
- (A) there are no material disputes, actions, suits, arbitrations, legal or administrative proceedings pending against any member of the Target Group; and
- (B) no member of the Target Group is the subject of any pending investigation, other than as Fairly Disclosed in the Due Diligence Material;
- (xiii) each member of the Target Group has all material licenses and permits necessary for it to conduct its business;
- (xiv) as at the date of this agreement, neither ASIC nor ASX (as applicable) has made a determination against any member of the Target Group for any contravention of the requirements of the Corporations Act or the Listing Rules or any rules, regulations or policy statements under the Corporations Act or the Listing Rules;
- (xv) during the 4 year period prior to the date of this agreement, no member of the Target Group nor, to the Target Group's knowledge, any of the officers, directors, employees, agents, intermediaries, representatives, suppliers or joint venture partners of any member of the Target Group has, directly or indirectly, in connection with the business of the Target Group:
- (A) requested, received, made, offered, authorised, solicited or promised to make or offer any unlawful payment, loan or transfer of anything of value or advantage to or for the benefit of or from any person, including any government official, candidate for public office, political party or political campaign;
- (B) requested, received, paid, offered or promised to make or offer any bribe, payoff, influence payment, kickback, unlawful rebate, or other similar unlawful payment of any nature;
- (C) requested, received, made, offered or promised to make or offer any unlawful contributions (including political or charitable contributions), gifts, entertainment or other unlawful expenditures;
- (D) established or maintained any unlawful fund of corporate monies or other properties;
- (E) created or caused the creation of any false or inaccurate books and records of any member of the Target Group related to any of the foregoing;
- (F) otherwise directly or indirectly violated any local or international anti-corruption or anti-bribery law (including, without limitation, the US Foreign Corrupt Practices Act of 1977 as amended and the UK Bribery Act of 2010) applicable to the Target Group; or
- (G) have sold or purchased goods or services from, or otherwise engaged in any such transaction with, any person in Cuba, Iran, North Korea, Syria, Sudan or the Crimea Region of Ukraine and no such sales, purchases or other transactions are pending or have any outstanding obligations involving any person in Cuba, Iran, North Korea, Syria, Sudan, Venezuela, Russia or the Crimea Region and so-called Donetsk People's Republic and Luhansk People's Republic of Ukraine;

- (xvi) during the 4 year period prior to the date of this agreement, no current or former director or officer of any member of the Target Group is or was a Sanctioned Person and, so far as Target is aware, no member of the Target Group or any of their respective current or former employees or their respective intermediaries is or was a Sanctioned Person. For the purposes of this representation, a Sanctioned Person means:
- (A) any person listed in any sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, the United Nations Security Council, the European Union, any Member State of the European Union, the United Kingdom, Canada, or Australia;
 - (B) any person operating organised or resided in a U.S. Sanctioned Country (including Iran, Syria, Sudan, Cuba, North Korea, Venezuela, Russia, or the Crimea Region and so-called Donetsk People's Republic and Luhansk People's Republic of Ukraine); or
 - (C) any person owned or controlled by any such person;
- (xvii) Target's financial statements as disclosed to ASX have been prepared in accordance with AIFRS or IFRS (as applicable) on a basis consistent with past practice financial statements and, so far as Target is aware, there has not been any event, change, effect or development which would require Target to restate its financial statements as disclosed to ASX;
- (xviii) the Target Group owns, or has the right to use, all of the assets that are material for the conduct of the business of the Target Group, and will continue to do so upon and immediately following the Implementation Date;
- (xix) no litigation, prosecution, arbitration, mediation, or other proceedings relating to the Target Group and which is material to the business of the Target Group is current or, as far as Target is aware, pending or threatened or might reasonably be expected to arise as a result of current circumstances;
- (xx) Target has provided all information relating to the expected availability, terms likely to apply to and any material development that would be reasonably likely to adversely affect any Financial Indebtedness or debt arrangements of the Target Group, from or after the date of this agreement;
- (xxi) Target has provided complete and accurate information regarding fee levels in all retainers and mandates with Advisers and fee estimates for other advisers in relation to the Proposed Transaction, any Competing Proposals as at the date of this agreement and any other transaction where such retainer or mandate is current, or under which the Target Group still has obligations;
- (xxii) the Due Diligence Material has been collated and prepared in good faith and, so far as the Target Board and the senior management of Target are aware after due enquiry, Target has not knowingly or recklessly:
- (A) omitted anything from such information such as to make any part of that information materially false or misleading; or
 - (B) included anything materially false or misleading in such information; or
 - (C) withheld information from disclosure to Bidder in the Due Diligence Material which could reasonably be expected to be material to Bidder's evaluation of the Target Group and the merits of the Transaction,
- noting that no warranty or representation, expressed or implied, is given in relation to any forecast, forward looking statement, budget or projection contained or referred to in the Due Diligence Material;
- (xxiii) with respect to Material Contracts, so far as Target is aware:
- (A) no member of the Target Group is in material default, or would be in material default but for the requirements of notice or lapse of time, under any Material Contract;

- (B) no other party to any Material Contract is in material default, or would be in material default but for the requirements of notice or lapse of time, under that agreement; or
- (C) no member of the Target Group has received, or given, any notice of termination of any Material Contract;
- (xxiv) as at the date of this agreement, and so far as the Target Board and the senior management of any member of the Target Group are aware after due and diligent inquiry, there are no material agreements to which any member of the Target Group is a party which contain any change of control provision that may be triggered by the implementation of the Proposed Transaction (except as otherwise Fairly Disclosed in the Due Diligence Material);
- (xxv) the Due Diligence Materials adequately describes all:
 - (A) arrangements for the award of any payments, bonus, incentive or severance pay to senior management of the Target Group; and
 - (B) other agreements or arrangements entered into by any member of the Target Group pursuant to which consideration becomes payable to any person in connection with the Proposed Transaction;
- (xxvi) as far as Target is aware, it has not knowingly or recklessly omitted to disclose any material information relating to the Target Group or its respective businesses or operations as at the date of this agreement, which could reasonably be expected to be material for a reasonable and sophisticated buyer to make an informed assessment of:
 - (A) the Target Group's material agreements and their respective change of control; and
 - (B) termination provisions which would be enlivened by implementation of the Proposed Transaction;
- (xxvii) as at the date of this agreement, no Insolvency Event has occurred or is reasonably likely to occur in the near term in relation to Target or another Target Group Member, nor has any regulatory action of any nature of which it is aware been taken that would reasonably be likely to prevent or restrict its ability to fulfil its obligations under this agreement or under the Scheme;
- (xxviii) Target is not aware of any information relating to the Target Group or its respective businesses or operations (having made reasonable enquiries) as at the date of this agreement that has or could reasonably be expected to give rise to a Material Adverse Change that has not been Fairly Disclosed in an announcement by Target to ASX or in the Due Diligence Material; and
- (xxix) all entities within the Target Group have a financial and tax year end date of 30 June.

10.5 Target's indemnity

Target agrees with Bidder (on Bidder's own behalf and separately as trustee or nominee for each of the other Bidder Parties) to indemnify and keep indemnified the Bidder Parties from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which Bidder may suffer or incur by reason of any breach of any of the Target Warranties.

10.6 Qualifications on Target's representations, warranties and indemnities

The representations and warranties in clause 10.4 are each subject to matters that have been Fairly Disclosed in:

- (a) the Due Diligence Material;
- (b) Target's announcements to ASX, or a publicly available document lodged with ASIC, the public registers maintained by the Trade Marks Office and IP Australia, the website maintained by ACQSC, the PPS Register or the public records maintained by any

Australian court in relation to Target or a Target Group Member (as applicable), in the 12 month period prior to the date of this agreement; or

- (c) are within the actual knowledge of Bidder as at the date of this agreement, which for these purposes will be taken to include (and be limited to) the facts, matters and circumstances of which the following individuals are actually aware or believe as at the date of this agreement, or the awareness or belief that any of the following individuals would have had if they had made reasonable enquiries of their direct reports:
 - (i) Michael Murphy;
 - (ii) Charles Lawson;
 - (iii) Sam Payne;
 - (iv) Nicholas Onie; and
 - (v) Mark Lin.

10.7 Notifications

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

10.8 Survival of representations

Each representation and warranty in clauses 10.1 and 10.4:

- (a) is severable;
- (b) will survive the termination of this agreement; and
- (c) is given with the intent that liability thereunder will not be confined to breaches which are discovered prior to the date of termination of this agreement.

10.9 Survival of indemnities

Each indemnity in this agreement (including those in clauses 10.2 and 10.5) will:

- (a) be severable;
- (b) be a continuing obligation;
- (c) constitute a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this agreement; and
- (d) survive the termination of this agreement.

11. Releases

11.1 Target Parties

- (a) Without limiting Bidder's rights under clause 10, Bidder (for itself and as agent of every Bain Entity) releases all rights against and agrees with Target that it will not make a Claim against, any Target Party (other than Target) in connection with:
 - (i) Target's execution or delivery of this agreement;
 - (ii) any breach of any representation, covenant and warranty of Target or any other member of Target Group in this agreement;
 - (iii) the implementation of the Scheme;
 - (iv) any disclosure made by any Target Party including in the Due Diligence Material that contains any statement which is false or misleading whether in content or by omission; or
 - (v) any failure to provide information in connection with the Scheme,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except to the extent the relevant Target Party has engaged in wilful misconduct, wilful concealment or fraud.

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

11.2 Bidder Parties

- (a) Without limiting Target's rights under clause 10, Target (for itself and as agent of every member of the Target Group) releases its rights against, and agrees with Bidder that it will not make a Claim against any Bidder Party or Bain Entity (other than Bidder) in connection with:
- (i) Bidder's execution or delivery of this agreement
 - (ii) any breach of any representation, covenant and warranty of Bidder or any other Bain Entity in this agreement;
 - (iii) the implementation of the Scheme;
 - (iv) any disclosure made by any Bidder Party that contains any statement which is false or misleading whether in content or by omission; or
 - (v) any failure to provide information in connection with the Scheme,
- whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except to the extent that the relevant Bidder Party has engaged in wilful misconduct, wilful concealment or fraud.
- (b) This clause is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. Bidder receives and holds the benefit of this clause as trustee for each other Bidder Party.

11.3 Deeds of indemnity

- (a) Subject to the Scheme becoming Effective, Bidder undertakes in favour of Target and each other person who is a Target Party that it will:
- (i) subject to clause 11.3(d), for 7 years from the Implementation Date, ensure that the constitutions of Target and each other member of the Target Group continue to contain such rules as are contained in those constitutions at the date of this agreement that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a member of the Target Group; and
 - (ii) procure that Target and each other member of the Target 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.
- (b) The undertakings contained in clause 11.3(a) are subject to any Corporations Act restriction, or any restriction in the law of a jurisdiction in which an entity is incorporated, and will be read down accordingly.
- (c) Target receives and holds for the benefit of clause 11.3(a), to the extent it relates to the other Target Parties, as trustee for them.
- (d) The undertakings contained in clause 11.3(a) are given:
- (i) in the case of clause 11.3(a)(i), until the earlier of 7 years from the Implementation Date or the relevant member of the Target Group ceasing to be part of the Bidder Group; or
 - (ii) in the case of clause 11.3(a)(ii), until the earlier of 7 years from the retirement of each director and officer or the relevant member of the Target Group ceasing to be part of the Bidder Group.

11.4 Directors' and officers' insurance

Bidder acknowledges that Target will, in respect of Target and all other members of the Target Group, by no later than the Implementation Date, to the extent practicable at normal commercial rates (provided that the costs of such insurance shall not exceed 500% of the annual premium currently payable by Target in respect to any current directors' and officers' insurance policy), arrange for the cover provided under the existing directors' and officers' insurance policy of the Target Group (**Policy**) to be amended so as to provide run off cover in accordance with the terms of the Policy for 7 years from the end of the term of the Policy, and pay all premiums required so as to ensure that insurance cover is provided under the Policy on those terms until that date, provided that:

- (a) Target must use reasonable endeavours to obtain the most attractive commercial terms for the Policy and run off Policy, from a reputable insurer on no less favourable terms to the directors than the Policy which Target has in place at the date of this agreement provided that Target will be deemed to have satisfied its obligation to use reasonable endeavours under this clause if it engages a reputable insurance broker to obtain quotes and/or proposals from reputable insurers in respect of the run off Policy and enters into arrangements to secure the run off Policy with one or more of those insurers selected by Target (acting reasonably, having regard to the insurer's proposed terms in respect of the run off Policy); and
- (b) Target keeps Bidder informed of progress in relation to the run off Policy and consult reasonably with the Bidder in relation to the applicable run off Policy prior to securing the relevant policy.
- (c) Target receives and holds for the benefit of clause 11.4 to the extent it relates to the other Target Parties, as trustee for them.

11.5 Obligations in relation to directors' and officers' insurance

From the Implementation Date, Target must not:

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

Nothing in clause 11.4 or 11.5 shall require Bidder or Target to incur any additional premium after the Implementation Date or require Target to not fulfil its contractual obligations under the Policy. Target receives and holds for the benefit of clause 11.5 to the extent it relates to the other Target Parties, as trustee for them.

12. Confidentiality and announcements

12.1 Confidentiality

Each party agrees and acknowledges that it is bound by the terms of the Confidentiality Deed save that the terms of this agreement will prevail over the Confidentiality Deed to the extent of any inconsistency.

12.2 Announcements

- (a) Immediately after the execution of this agreement, or if this agreement is executed after the close of trading, prior to the commencing of trading on the next Business Day, Target must issue its Announcement to ASX.
- (b) Subject to clause 12.2(c) any further public announcements by either of the parties (and, in the case of Bidder, by any Bain Capital Fund Entity) in relation to, or in connection with the Scheme may only be made in a form approved by the other party in writing (acting reasonably).
- (c) Where a party (and, in the case of Bidder, by any Bain Capital Fund Entity) is required by applicable law, the Listing Rules or any other applicable financial market regulation to make any announcement or to make any disclosure in connection with the Proposed

Transaction or any other transaction the subject of this agreement or the Scheme, it may do so but must use reasonable endeavours, to the extent practicable and lawful, to consult with the other party before making the relevant disclosure and must give the other party as much notice as reasonably practicable.

12.3 Statements on termination

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

13. Termination

13.1 Termination by notice

- (a) Bidder or Target may, by notice in writing to the other, terminate this agreement at any time prior to the Second Court Date:
 - (i) if the other is in material breach of any of its obligations under this agreement (other than the breaching of a party's respective representations and warranties which are regulated by clause 13.2), and the relevant breach is material in the context of the Scheme taken as a whole, and the other party has failed to remedy that breach within 5 Business Days (or the Delivery Time on the Second Court Date if earlier) of receipt by it of a notice in writing from the terminating party setting out details of the relevant circumstance and requesting the other party to remedy the breach;
 - (ii) in accordance with clause 3.7;
 - (iii) if the Court refuses to make any order directing Target to convene the Scheme Meeting, provided that both Target and Bidder have met and consulted in good faith and agreed that they do not wish to proceed with the Scheme; or
 - (iv) if the Effective Date for the Scheme has not occurred on or before the End Date.
- (b) Target may, by notice in writing to Bidder, terminate this agreement at any time prior to the Delivery Time on the Second Court Date if at any time before then each of that number of Target Directors as constitutes a majority of the Target Board publicly recommend a Superior Proposal where expressly permitted to do so under this agreement.
- (c) Bidder may, by notice in writing to Target, terminate this agreement at any time prior to the Delivery Time on the Second Court Date if at any time before then any director of Target:
 - (i) fails to recommend the Scheme;
 - (ii) withdraws or adversely revises or adversely modifies his or her Recommendation (other than where required under 6.1(b)(ii)); or
 - (iii) makes a public statement where he or she adversely revises or adversely modifies his or her Voting Intention or supports a Competing Proposal.

13.2 Termination for breach of representations and warranties

- (a) Bidder may, by notice in writing to Target, terminate this agreement at any time prior to the Delivery Time on the Second Court Date, if
 - (i) Target is in material breach of a Target Warranty; or
 - (ii) Target is in breach of the Target Warranty in clause 10.4(b)(vi),
and Target has failed to remedy that breach within 10 Business Days (or the Delivery Time on the Second Court Date if earlier) of receipt by it of a notice in writing from Bidder setting out details of the relevant circumstance and requesting Target to remedy the breach.
- (b) Target may, by notice in writing to Bidder, terminate this agreement at any time prior to the Delivery Time on the Second Court Date if Bidder is in material breach of a Bidder

Warranty and Bidder has failed to remedy that breach within 10 Business Days (or the Delivery Time on the Second Court Date if earlier) of receipt by it of a notice in writing from Target setting out details of the relevant circumstance and requesting Bidder to remedy the breach.

13.3 Automatic termination

Without limiting any other term of this agreement but subject to clause 3.6, this agreement will terminate automatically if the Scheme is not approved by the necessary majorities at the Scheme Meeting.

13.4 Effect of termination

- (a) In the event of termination of this agreement under clause 3.7, 13.1, 13.2 or 13.3, this agreement will become void and have no effect, except that the provisions of clauses 10.8, 10.9, 12, 15, 15.3(g) and 21.3 to 21.19 (inclusive) survive termination.
- (b) Termination of this agreement does not affect any accrued rights of a party in respect of a breach of this agreement prior to termination.

14. Process Deed

14.1 Termination

Subject to clause 14.2, Target and Bidder agree that, on and from the time of entry into this agreement, the Process Deed is hereby terminated and all obligations under the Process Deed are discharged.

14.2 Survival

Target and Bidder agree that each party retains the rights it has against the other in connection with any breach of the Process Deed before entry into this agreement.

15. Target Break Fee

15.1 Background

- (a) Target and Bidder acknowledge that, if they enter into this agreement and the Scheme is subsequently not implemented, Bidder will incur significant costs including those described in clause 15.2.
- (b) In the circumstances referred to in clause 15.1(a), Bidder has requested that provision be made for the payments outlined in clause 15.3, without which Bidder would not have entered into this agreement.
- (c) The Target Board believes that the Scheme will provide benefit to Target and Target Shareholders and that it is appropriate for Target to agree to the payments referred to in this clause 15 in order to secure Bidder's participation in the Proposed Transaction.

15.2 Costs incurred by Bidder

- (a) The fee payable under clause 15.3 has been calculated to reimburse Bidder for the following:
 - (i) fees for legal and financial advice in planning and implementing the Proposed Transaction;
 - (ii) reasonable opportunity costs incurred in engaging in the Proposed Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
 - (iii) costs of management and directors' time in planning and implementing the Proposed Transaction;

- (iv) out of pocket expenses incurred in planning and implementing the Proposed Transaction; and
- (v) costs associated with the financing arrangements in respect of the Proposed Transaction,

in each case, incurred by Bidder directly or indirectly as a result of having entered into this agreement and pursuing the Proposed Transaction.

- (b) The parties acknowledge that:
 - (i) the amount of fees, costs and losses referred to in this clause 15.2 is inherently unascertainable and that, even after termination of this agreement, the costs will not be able to be accurately ascertained; and
 - (ii) the amount of the costs payable under clause 15.3 is a genuine and reasonable pre-estimate of those fees, costs and losses (it being acknowledged by the parties that the costs would most likely be in excess of this amount).

15.3 Payment by Target to Bidder

- (a) Target agrees to pay to Bidder \$8,267,553 million (exclusive of GST) (**Target Break Fee**) in any of the following circumstances:
 - (i) **(Competing Proposal succeeds)** both of the following occur:
 - (A) a Competing Proposal is publicly announced during the period commencing on the date of this agreement and ending on:
 - (I) if this agreement is terminated by Target, the End Date; or
 - (II) if this agreement is terminated by Bidder, the earlier of the End Date and the date of termination of this agreement by Bidder; and
 - (B) within nine months from the date of the public announcement of such Competing Proposal (or variation):
 - (I) subject to clause 15.3(b), the Competing Proposal is implemented or completed substantially in the terms described in the public announcement; or
 - (II) a person or persons (other than a Bain Entity) acquires a Relevant Interest or Voting Power in at least 50% of the Shares; or
 - (ii) **(Change of recommendation)** at any time prior to the earlier of the Effective Date and the End Date, any director of Target:
 - (A) withdraws or adversely modifies or changes his or her Recommendation or Voting Intention or recommends or supports a Competing Proposal;
 - (B) does not state his or her Recommendation or Voting Intention in the Explanatory Booklet; or
 - (C) makes any public statement or recommendation to the effect that the Scheme is not, or is no longer, recommended or makes any public statement or recommendation that is inconsistent with his or her Recommendation or Voting Intention,

except where that act is:

 - (D) required under clause 6.1(b)(ii);
 - (E) as a result of the Independent Expert (either in its initial report or any updated, revised or supplemental report) opining that the Scheme is not in the best interest of Target Shareholders (other than where the reason for that opinion is a Competing Proposal); or
 - (F) as a result of any matter or thing giving Target the right to terminate this agreement under clause 13.1(a)(i); or
 - (iii) **(Material breach)** Bidder terminates this agreement in accordance with clause 13.1(a)(i) or 13.2(a) and the Proposed Transaction does not complete.

- (b) Target is not liable to pay Bidder the Target Break Fee under clause 15.3(a)(i)(B)(I), in circumstances where:
 - (i) an event of the kind described in paragraph (a)(ii) of the definition of Competing Proposal has occurred (but other than where this has occurred as a result of an issue of new Shares by Target); and
 - (ii) that Competing Proposal does not result in an event of the kind described in paragraphs a(i), a(iii) or (b) of the definition of Competing Proposal occurring.
- (c) Target must pay Bidder the Target Break Fee within 5 Business Days of receipt by Target of a demand for payment from Bidder made after the occurrence of the event referred to in clause 15.3(a).
- (d) The Target Break Fee is not payable merely because the resolution submitted to the Scheme Meeting in respect of the Scheme is not approved by the majorities required under section 411(4)(a)(ii) of the Corporations Act.
- (e) Save in respect of wilful or intentional breach of this agreement by Target, notwithstanding any other provision of this agreement, the Target Break Fee is only payable once and the maximum amount payable by Target under this clause 15.3 is the amount of the Target Break Fee.
- (f) Where the Target Break Fee becomes payable to Bidder under this clause 15.3 and is actually paid to Bidder following a demand from the Bidder under clause 15.3(b), Bidder (for itself and as agent of every Bain Entity):
 - (i) releases all rights against and agrees with Target that Bidder will not make a Claim against any Target Party (other than a claim under this clause 15.3) in connection with:
 - (A) the event that gave rise to the right to demand the payment of the Target Break Fee; nor
 - (B) any other event, matter or circumstance that may give rise to a separate right to the Target Break Fee or that constitutes or may constitute a breach of this agreement; and
 - (ii) indemnifies any Target Party against a Claim that is made contrary to the release under clause 15.3(f)(i),

with the effect that the payment of the Target Break Fee represents the sole and exclusive liability of any Bidder Group Member.
- (g) The Target Break Fee is not payable where Target has become entitled to the Bidder Break Fee.

16. Bidder Break Fee

- (a) Bidder agrees to pay to Target \$8,267,553 (inclusive of GST) (**Bidder Break Fee**) if:
 - (i) Target terminates this agreement in accordance with clause 13.1(a)(i); or
 - (ii) Bidder does not pay the Scheme Consideration in accordance with the terms and conditions of this agreement and the Deed Poll.
- (b) Bidder must pay Target the Bidder Break Fee within 5 Business Days of receipt by Bidder of a demand for payment from Target made after the occurrence of the event referred to in clause 16(a).
- (c) Notwithstanding any other provision of this agreement, the Bidder Break Fee is only payable once and, other than in the case of fraud, the maximum amount payable by Bidder in respect of the Scheme or in connection with this agreement is the amount of the Bidder Break Fee and in no event shall the aggregate liability of Bidder to the Target (including Target Shareholders) exceed the amount of the Bidder Break Fee.
- (d) The Bidder Break Fee is not payable where Bidder has become entitled to the Target Break Fee.

- (e) The Bidder Break Fee is not payable if the Scheme becomes Effective and proceeds to be implemented. In those circumstances, if any amount of the Bidder Break Fee has already been paid under clause 16(a), it must be refunded by Target to Bidder.
- (f) Where the Bidder Break Fee becomes payable to Target under this clause 16 and is actually paid to Target following a demand from Target under clause 16(b), Target (for itself and as agent of every member of the Target Group):
 - (i) releases all rights against and agrees with Bidder that Target will not make a Claim against any Bidder Party (other than a claim under this clause 16) in connection with:
 - (A) the event that gave rise to the right to demand the payment of the Bidder Break Fee; nor
 - (B) any other event, matter or circumstance that may give rise to a separate right to the Bidder Break Fee or that constitutes or may constitute a breach of this agreement; and
 - (ii) indemnifies any Bidder Party against a Claim that is made contrary to the release under clause 16(f)(i),

with the effect that the payment of the Bidder Break Fee represents the sole and exclusive liability of any member of the Target Group.
- (g) Bidder acknowledges that specific performance, injunctive relief or any other remedies which would otherwise be available in equity or law are available as a remedy for breach of this agreement by Bidder or for a breach of the Deed Poll by Bidder, notwithstanding the ability of the Target to demand payment of the Bidder Break Fee.
- (h) Nothing in clause 16(f) limits the liability of Bidder in connection with the Deed Poll or the obligations under clause 4.2(b).

17. Exclusivity

17.1 No existing discussions

Other than in relation to the discussions with Bidder in connection with the Proposed Transaction, Target represents and warrants to Bidder that, as at the date of this agreement it and its Related Bodies Corporate (and each of their Authorised Persons):

- (a) is not a party to any agreement with a third party entered into for the purpose of facilitating a Competing Proposal;
- (b) is not participating in any discussions, negotiations or other communications, and has terminated any existing discussions, negotiations or other communication, with a third party that concern, or that could reasonably be expected to lead to, a Competing Proposal;
- (c) has ceased to provide or make available any non-public information in relation to the Target Group to a Third Party where such information was provided for the purpose of facilitating, or could reasonably be expected to lead to, a Competing Proposal; and
- (d) has requested in writing (or will do so within 5 Business Days) the return or destruction of any non-public information (with such return or destruction to be effected as soon as practicable) in relation to the Target Group provided to a Third Party at any time within the six months prior to the date of this agreement where such information was provided for the purpose of facilitating, or could reasonably be expected to lead to, a Competing Proposal.

17.2 No shop restriction

During the Exclusivity Period, Target must not, and must ensure that none of its Related Bodies Corporate nor any of their Authorised Persons, directly or indirectly:

- (a) solicit, invite, encourage or initiate any Competing Proposal;

- (b) solicit, invite, encourage or initiate any enquiries, proposals, negotiations or discussions with any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal; or
- (c) communicate any intention to do any of those things.

17.3 No talk restriction

Subject to clause 17.5, during the Exclusivity Period, Target must not, and must ensure that none of its Related Bodies Corporate nor any of their Authorised Persons, (whether directly or indirectly):

- (a) negotiate or enter into or participate in negotiations or discussions with any person; or
 - (b) communicate any intention to do any of these things,
- in relation to, or that may reasonably be expected to lead to, a Competing Proposal, even if:
- (c) the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Target or any of its Related Bodies Corporate; or
 - (d) that person has publicly announced the Competing Proposal.

17.4 No due diligence

- (a) During the Exclusivity Period, Target must not, and must ensure that its Related Bodies Corporate and their respective Authorised Persons do not, directly or indirectly:
 - (i) (A) solicit, invite, initiate, or encourage, or (B) (subject to clause 17.5) facilitate or permit, any person (other than Bidder) to undertake due diligence investigations in respect of Target, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal; or
 - (ii) subject to clause 17.5, make available to any person (other than Bidder) or permit any such person to receive any non-public information relating to Target, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.
- (b) If Target proposes that any non-public information be provided to a Third Party in reliance on clause 17.5, then:
 - (i) before Target provides such information, the Third Party must enter into an Acceptable Confidentiality Agreement; and
 - (ii) any non-public information provided to that Third Party must also be provided to Bidder (unless the information has already been provided to Bidder or an Authorised Person).

17.5 Exceptions

Clauses 17.3 and 17.4 (other than clause 17.4(b)) do not apply if the Target Board, acting in good faith, receives a written Competing Proposal (which was not solicited, invited, encouraged or initiated in contravention of clause 17.2) determines:

- (a) after consultation with its financial advisers, that the Competing Proposal is a Superior Proposal or could reasonably be expected to lead to a Superior Proposal; and
- (b) after receiving written legal advice from Target's external legal advisers, that failing to respond to the Competing Proposal would, or would be reasonably likely to constitute a breach of its fiduciary or statutory duties.

17.6 Notice of Competing Proposal

- (a) During the Exclusivity Period, Target must promptly (and in any event, within 24 hours) notify Bidder in writing of:

- (i) any approach, inquiry or proposal made by any person to Target, any of its Related Bodies Corporate or any of their respective Authorised Persons that could reasonably be expected to lead to, a Competing Proposal; and
- (ii) any request made by any person to Target, any of its Related Bodies Corporate or any of their respective Authorised Persons, for any information relating to Target, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of a Competing Proposal,

(Competing Proposal Notice).

- (b) A Competing Proposal Notice must be accompanied by all material details of the relevant event, including (as the case may be):
 - (i) the identity of the person who made the relevant approach, inquiry or proposal to initiate discussions or negotiations referred to in clause 17.6(a)(i) or who made the relevant request for information referred to in clause 17.6(a)(ii); and
 - (ii) the material terms and conditions (including price, form of consideration, proposed deal protection provisions, financing, conditions precedent, timetable and any break or reimbursement fee) of any Competing Proposal or any proposed Competing Proposal (to the extent known).
- (c) If Target gives Bidder a Competing Proposal Notice, Bidder agrees that the notice will be Confidential Information of Target (as defined in the Confidentiality Agreement).
- (d) During the Exclusivity Period, if Target becomes aware that any material details in the Competing Proposal Notice are inaccurate or require updating, Target will promptly provide Bidder with a new Competing Proposal Notice setting out the correct and updated information.

17.7 Target's response to Competing Proposal and Bidder's right to respond

- (a) If Target receives a Competing Proposal, Target must
 - (i) ensure that no Target Director change, withdraw or modify his or her Recommendation or Voting Intention; or
 - (ii) ensure that no member of the Target Group enter into, any agreement, commitment, arrangement or understanding giving effect to the Competing Proposal (other than an Acceptable Confidentiality Agreement),
 unless and until each of the following has occurred:
 - (iii) the Target Board, acting in good faith determines that the Competing Proposal is bona fide;
 - (iv) Target has given Bidder written notice (**Relevant Notice**) of the Target Director's proposal to take the action referred to in clauses 17.7(a)(i) or 17.7(a)(ii) (subject to Bidder's rights under clause 17.7(b)), including details of the grounds on which the Target Directors propose to take such action;
 - (v) Target has given Bidder all information that would be required by clause 17.7(b);
 - (vi) Bidder's rights under clause 17.7(b) have been fully exhausted; and
 - (vii) the Target Board, acting in good faith in order to satisfy what the Target Board considers to be its statutory and fiduciary duties (having received written advice from its reputable external legal advisers), determines that the Competing Proposal is a Superior Proposal.
- (b) If Target gives a Relevant Notice to Bidder under clause 17.7(a)(iv), Bidder will have the right, but not the obligation, at any time during the 5 Business Days following the receipt of the Relevant Notice, to amend the terms of the Proposed Transaction including increasing the amount of consideration offered under the Proposed Transaction or proposing another form of transaction (each a **Counter Proposal**), and if it does so then the Target Directors must review the Counter Proposal in good faith (and, for the avoidance of doubt, Bidder is entitled to provide more than one Counter Proposal during the period prescribed by this

clause 17.7). If the Target Board, acting in good faith, determines that a Counter Proposal would be more favourable, or at least no less favourable, to Target Shareholders than the Competing Proposal, then Target and Bidder must use their best endeavours to agree the amendments to this agreement that are reasonably necessary to reflect the Counter Proposal, and to enter into an amended agreement to give effect to those amendments and to implement the Counter Proposal, and Target must use its best endeavours to procure that the Target Directors recommend the Counter Proposal to the Target Shareholders and not recommend, endorse or support the applicable Competing Proposal.

- (c) For the purposes of this clause 17.7, each modification to the proposed price of any third party expression of interest, offer or proposal in relation to a Competing Proposal will constitute a new Competing Proposal.

17.8 Exceptions

Nothing in this clause 17 prevents the Company from:

- (a) providing information to a Target Party;
- (b) providing information to any Governmental Agency;
- (c) providing information to its auditors, customers, financiers, joint venturers and suppliers acting in that capacity in the ordinary course of business;
- (d) recommending that Target Shareholders take no action in relation to a Competing Proposal;
- (e) reserving the Target Board's position in relation to the recommendation of the Scheme;
- (f) engaging with Target Shareholders (in their capacity as a Target Shareholder), in the ordinary course and consistent with past practice and provided that such engagement does not relate to the Company soliciting, inviting, encouraging or initiating an actual, proposed or potential Competing Proposal;
- (g) providing information required to be provided by law, including to satisfy its obligations of disclosure under the Listing Rules or to any Governmental Agency;
- (h) making presentations or providing information to, or responding to enquiries from, or engaging with, brokers, portfolio investors, analysts and other Third Parties in the ordinary course of business; or
- (i) responding to queries or discussion points raised by a Target Shareholder with the Company in respect of that Target Shareholder's shareholding (including in relation to that Target Shareholder's future intentions regarding its shareholding), provided that these queries or discussion points were not initiated by the Company and that the Company's responses to these queries or discussion points do not result in a breach of clause 17.2, 17.3 or 17.4,

provided the actions permitted by paragraphs (f), (h) and (i) do not result in the disclosure of:

- (j) the identity of the person from whom the Competing Proposal has been received; or
 - (k) any of the material terms of the Competing Proposal, including the price,
- unless such information has already been disclosed publicly under paragraph (g).

18. Modification of Target Break Fee or exclusivity arrangements

18.1 Modifications following regulatory intervention

If any of the following occurs:

- (a) a Governmental Agency finds that all or any part of the payment required to be made under clause 14 or an exclusivity arrangement under clause 17 is unacceptable or unenforceable; or
- (b) as a result of an application to the Takeovers Panel by a third party, the Takeovers Panel indicates that, in the absence of a written undertaking under section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) to modify the amount of the Target Break Fee or the circumstances in which it is to be paid or the circumstances in relation to an exclusivity arrangement under clause 17, it will make a declaration of unacceptable circumstances,

then, subject to clause 18.2:

- (c) the parties must amend clause 14 and/or 17 to the extent required to give effect to the requirements of the Governmental Agency or the Takeovers Panel (as the case may be) and (in circumstances referred to in clause 18.1(b)) must give the required undertaking(s); and
- (d) neither the occurrence of any of the events referred to in clauses 18.1(a) or 18.1(b) nor the amendment of clause 14 and/or 17 will be taken to be a breach of, or permit any party to terminate, this agreement.

The parties must not make or cause or permit to be made, any application to a Governmental Agency or the Takeovers Panel for or in relation to a determination in this clause 18.1 only.

18.2 No requirement to act unless decision final

The parties are only required to take steps under 18.1(c) in relation to any requirement of a Governmental Agency or the Takeovers Panel if:

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

18.3 Appeals and review of regulatory decisions

Nothing in this agreement requires either party to appeal or seek review of any decision of a Governmental Agency or the Takeovers Panel referred to in clauses 18.1(a) or 18.1(b). If either Bidder and Target wishes to appeal or seek review of any such decision then the other must make submissions in the course of those proceedings supporting the review made by the first party.

18.4 Determination by Governmental Agency

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

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

19. Withholding tax

- (a) If Bidder is required to make any withholding, deduction or payment for or on account of Tax (including under Subdivision 14-D but excluding any stamp duty that is covered by clause 21.6) or by any Governmental Agency in respect of the acquisition of Scheme Shares from the Scheme Shareholders, Bidder (subject to clauses 19(b) and 19(c)):

- (i) must pay or procure the payment of the full amount of the withholding or deduction, or make or procure the making of the payment, to the appropriate Governmental Agency under applicable law; and
 - (ii) will not be required to pay any additional amount and will be deemed for all purposes to have paid the full amount of the Scheme Consideration (or other payment) required under this agreement.
- (b) Bidder acknowledges and agrees that it will not withhold or deduct any Subdivision 14-D amounts under clause 19(a) with respect to a Scheme Shareholder where Bidder receives a declaration in accordance with the requirements of section 14-225 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) that covers, at least, the period between (and including) the date of this agreement and the Implementation Date (**Scheme Shareholder Declaration**) from the Scheme Shareholder prior to the Implementation Date and does not know the Scheme Shareholder Declaration to be false. The Scheme Shareholder Declaration must be provided to Bidder no later than 60 days prior to the Implementation Date.
- (c) Where:
 - (i) Bidder either:
 - (A) knows that a particular Scheme Shareholder is not, or reasonably believes that a particular Scheme Shareholder is not, an Australian resident; or
 - (B) does not reasonably believe that a particular Scheme Shareholder is an Australian resident and either has an address outside of Australia or directs Bidder to pay some or all of the Scheme Consideration to a place outside of Australia; and
 - (ii) that Scheme Shareholder holds more than 10% of the issued shares of Target (on an associate inclusive basis),
 Bidder can withhold in accordance with clause 19(a) if required to do so.
- (d) Target agrees that Bidder may approach the Australian Taxation Office to obtain clarification as to the application of Subdivision 14-D to the Scheme and will provide all information and assistance that Bidder reasonably requires in making any such approach. Bidder agrees:
 - (i) to provide Target a reasonable opportunity to review the form and content of all materials to be provided to the Australian Taxation Office; and
 - (ii) not to contact any Scheme Shareholders in connection with the application of Subdivision 14-D to the Scheme without Target's prior written consent, such consent not to be unreasonably withheld.
- (e) The parties agree to consult in good faith as to the application of Subdivision 14-D, including taking into account any clarification provided by the Australian Taxation Office following any process described in clause 19(b). The parties agree to take all actions that they agree (each acting reasonably) are necessary or desirable following that consultation which may include, without limitation, making amendments to this agreement, the Scheme and the Deed Poll to ensure that relevant representations are obtained from Scheme Shareholders.

20. Notices

Any communication under or in connection with this agreement:

- (a) must be in writing;
- (b) must be sent to the address for service of the addressee specified in the Details;
- (c) must be signed by the party making the communication or by a person duly authorised by that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by email to the email address, of the addressee, in accordance with the Details; and

- (e) will be deemed to be received by the addressee, unless the time for delivery required by this agreement is before 9.00am or after 5.00pm on a Business Day:
 - (i) on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting to an address outside Australia;
 - (ii) on delivery at the address of the addressee as provided in the Details, unless that delivery is not made on a Business Day, or after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day; and
 - (iii) immediately after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered, unless that local time is not a Business Day, or is after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day.

21. General

21.1 Further acts

Each party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this agreement.

21.2 Timetable

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

21.3 Payments

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

- (a) in immediately available and irrevocable funds by electronic transfer to a bank account or accounts notified by the Receiving Party in writing on or before the due date for payment, or in other such immediately payable funds as the parties may agree; and
- (b) without deduction, withholding or set-off.

21.4 Interest

- (a) If a party fails to pay any amount payable under this agreement on the due date for payment, that party must pay interest on the amount unpaid at the higher of the Interest Rate plus 3% per annum or the rate (if any) fixed or payable under any judgment or other thing into which the liability to pay the amount becomes merged.
- (b) The interest payable under clause 21.4(a):
 - (i) accrues from day to day from and including the due date for payment up to the actual date of payment, before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the amount becomes merged; and
 - (ii) may be capitalised by the person to whom it is payable at monthly intervals.

21.5 GST

- (a) Any reference in this clause 21.5 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply under or in connection with this agreement does not include GST.

- (c) To the extent that any supply made by a party (**Supplier**) to another party (**Recipient**) under or in connection with this agreement is a taxable supply, the Recipient must pay to the Supplier, in addition to the consideration to be provided under this agreement but for the application of this clause 21.5(c) for that supply (**GST Exclusive Consideration**), an amount equal to the amount of the GST Exclusive Consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. This clause 21.5(c) does not apply to any taxable supply under or in connection with this agreement that is stated to include GST.
- (d) The amount on account of GST payable in accordance with this clause 21.5 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.
- (e) If an amount on account of GST is payable under clause 21.5(c), the Supplier must provide the Recipient with a tax invoice before such amount is payable.
- (f) If the GST payable in relation to a supply varies from the GST amount paid by the Recipient under clause 21.5(c), the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of the variation from the Recipient provided that the Supplier provides an adjustment note to the Recipient where there is an adjustment event. Any payment, credit or refund under this clause 21.5(f) is deemed to be a payment, credit or refund of the GST payable under clause 21.5(c).
- (g) Any reference in the calculation of any consideration or of any indemnity, reimbursement or similar amount to a cost, expense or liability incurred by a person (**Relevant Expense**) is a reference to the relevant expense reduced by an amount equal to any input tax credit entitlement of that person (or of the representative member of any GST group to which the person belongs) in relation to the Relevant Expense. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the relevant payment or consideration must be provided.

21.6 Stamp duty

Bidder must pay all stamp duties (if any) and any fines and penalties with respect to stamp duty in respect of this agreement or the Scheme or the steps to be taken under this agreement or the Scheme (including without limitation the acquisition or transfer of Scheme Shares under the Scheme).

21.7 Expenses

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

21.8 Amendments

This agreement may only be varied by a document signed by or on behalf of each of the parties.

21.9 Assignment

- (a) Subject to clause 21.9(b)(b), a party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of each other party, which consent that other party may give or withhold in its absolute discretion.
- (b) Bidder may grant a Security Interest over some or all of its rights under this agreement in favour of:
- (i) any bank or other financial institution that provides financial accommodation to any Bidder Group Member and/or any Target Group Member; and/or
 - (ii) a security trustee, facility agent or security agent, acting on behalf of any bank or other financial institution that provides financial accommodation to any Bidder Group Member and/or any Target Group Member,
- as security for the indebtedness of any Bidder Group Member and/or any Target Group Member.

21.10 Business Day

Except where otherwise expressly provided, where under this agreement the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing will be done on the next Business Day.

21.11 Waiver

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

21.12 Bain Parties limitations

Notwithstanding anything else that may be expressed or implied in this agreement:

- (a) other than in respect of Bidder, none of the provisions of this agreement in any way limit the activities of Bain Capital, Bain Capital Fund Entities or any portfolio company or investment of the Bain Capital Fund Entities (**Bain Parties**); and
- (b) no recourse will be had against:
 - (i) Bain Capital, any current or future Bain Parties or member of the Bidder Group (other than Bidder);
 - (ii) any current or future direct or indirect investor, shareholder, partner, controlling person or other beneficial owner of Bain Capital, any Bain Parties or any member of the Bidder Group referred to in clause 21.12(b)(i); or
 - (iii) any of the respective representatives, successors or assigns of any person referred to in clauses 21.12(b)(i) and 21.12(b)(ii),

it being expressly agreed and acknowledged that no liability whatsoever will attach to, be imposed on or otherwise be incurred by any person referred to in clauses 21.12(b)(i), 21.12(b)(ii) and 21.12(b)(iii) for any obligation of any party under this agreement or for any claim based on, in respect of, by reason of or arising out of or in connection with any such obligation,

except to the extent set out in the Equity Commitment Letter.

21.13 Counterparts

- (a) This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. Each counterpart is an original but the counterparts together are one and the same agreement.
- (b) This agreement is binding on the parties on the exchange of duly executed counterparts.
- (c) The parties agree that a copy of an original executed counterpart sent by facsimile machine to the facsimile number of the other party specified in clause 20, instead of the original, is sufficient evidence of the execution of the original and may be produced in evidence for all purposes in place of the original.

21.14 Electronic execution

Each party consents to the signing of this agreement by electronic means. The parties agree to be legally bound by this agreement signed in this way.

21.15 Electronic exchange of documents

In relation to the electronic exchange of documents:

- (a) parties may exchange executed counterparts of this document, or any other document required to be executed under this document, by delivery from one party to the other party by emailing a pdf (portable document format) copy of the executed counterpart to that other party (**Electronic Delivery**); and
- (b) Electronic Delivery of an executed counterpart will be deemed effective delivery of the original executed counterpart, from the date and time of receipt by the other party.

21.16 Entire agreement

- (a) This agreement and any other documents specified by the parties for the purposes of this clause 21.16:
 - (i) embodies the entire understanding of the parties and constitutes the entire terms agreed on between the parties; and
 - (ii) supersedes any prior agreement (whether or not in writing) between the parties.
- (b) Despite clause 21.16(a), the Confidentiality Deed continues to apply to the parties to that agreement in accordance with its terms (including, for the avoidance of doubt and without limitation the requirements of clause 13 of the Confidentiality Deed), except to the extent of any express inconsistency, in which case this agreement prevails.

21.17 No representation or reliance

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

21.18 No merger

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

21.19 Governing law

- (a) This agreement is governed by and will be construed according to the laws of New South Wales, Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia and of the courts competent to determine appeals from those courts.

Schedule 1 – Indicative timetable

Event	Date
Lodge Explanatory Booklet with ASIC and ASX for review and comment	September 2023
First Court Date	October 2023
Explanatory Booklet registered by ASIC	October 2023
Dispatch Explanatory Booklet to Target Shareholders	October 2023
Scheme Meeting	November 2023
Second Court Date	November 2023
Effective Date – lodge office copy of Court order approving the Scheme with ASIC	November 2023
Record Date	December 2023
Implementation Date	December 2023

Schedule 2 – Deed Poll

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Deed Poll

—
Firebird BidCo Pty Ltd
—

Deed Poll

Project Eclipse

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Details

Date

2023

Deed poll made by

Name	Firebird BidCo Pty Ltd ACN 669 884 824
Short form name	Bidder
Notice details	Address: c/o Bain Capital Private Equity (Australia) Pty Limited, Level 28, 88 Phillip Street Sydney, NSW 2000 Attention: Michael Murphy / Charles Lawson / Samuel Payne [REDACTED] [REDACTED] [REDACTED]

in favour of each person registered in the Share Register as a holder of fully paid ordinary shares in Estia Health Limited ACN 160 986 201 as at the Scheme Record Date.

Background

- A On or around 6 August 2023, Target and Bidder entered into the Scheme Implementation Agreement to provide for (among other matters) the implementation of the Scheme.
- B The effect of the Scheme will be to transfer all Scheme Shares to Bidder in return for the Scheme Consideration.
- C Bidder enters this deed poll to covenant in favour of Scheme Shareholders to:
 - (i) perform the actions attributed to it under the Scheme; and
 - (ii) provide the Scheme Consideration in accordance with the Scheme.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

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

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

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders, substantially in the form set out in Schedule 1, subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by Bidder and Target.

Scheme Consideration has the meaning given in the Scheme.

Scheme Implementation Agreement means the Scheme Implementation Agreement, dated on or around 6 August 2023, between Target and Bidder.

Scheme Share has the meaning given in the Scheme.

Scheme Shareholder has the meaning given in the Scheme.

Share Register has the meaning given in the Scheme.

Target means Estia Health Limited ACN 160 986 201.

Trust Account has the meaning given in the Scheme.

1.2 Terms defined in Scheme Implementation Agreement

Subject to clause 1.1, words and phrases defined in the Scheme Implementation Agreement have the same meaning in this deed poll unless they are otherwise defined in this deed poll or the context requires otherwise.

1.3 Incorporation by reference

The provisions of clauses 1.2, 1.3 and 1.4 of the Scheme Implementation Agreement form part of this deed poll as if set out at length in this deed poll but with *deed poll* substituted for *agreement* and with any reference to *party* being taken to include the Scheme Shareholders (as the context requires or permits).

2. Nature of this deed poll

Bidder agrees and acknowledges that:

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

3. Conditions

3.1 Conditions

Each of Bidder's obligations under this deed poll are subject to the Scheme becoming Effective.

3.2 Termination

This deed poll and the obligations of Bidder under this deed poll will automatically terminate and this deed poll will be of no further force or effect if:

- (a) the Scheme Implementation Agreement is terminated in accordance with its terms; or
- (b) the Scheme is not Effective on or before the End Date or any later date as the Court, with the consent of Bidder and Target, may order; or
- (c) the Scheme terminates and ceases to be of any further force or effect in accordance with its terms,

unless Bidder and Target otherwise agree in writing (and, if required, as approved by the Court).

3.3 Consequences of termination

If this deed poll terminates under clause 3.2, in addition and without prejudice to any other rights, powers or remedies available to them:

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

4. Performance of obligations

4.1 Generally

Subject to clause 3, Bidder covenants in favour of Scheme Shareholders to perform the actions attributed to it under, and otherwise comply with, the Scheme as if Bidder was a party to the Scheme, subject to and in accordance with the terms and conditions of the Scheme.

4.2 Provision of Scheme Consideration

- (a) Subject to clause 3, Bidder undertakes in favour of each Scheme Shareholder to:
 - (i) provide or procure the provision of the Scheme Consideration to each Scheme Shareholder; and
 - (ii) undertake all other actions, and give each acknowledgement, representation and warranty (if any), attributed to it under the Scheme,in each case, subject to and in accordance with the terms of the Scheme.
- (b) The obligations of Bidder under clause 4.2(a) will be satisfied if, in respect of the Scheme Consideration, Bidder deposits, no later than the Business Day before the Implementation Date, an amount equal to the aggregate amount of the Scheme Consideration payable to Scheme Shareholders who are entitled to the Scheme Consideration under the Scheme in cleared funds to the Trust Account in accordance with, and subject to, the provisions of the Scheme.

5. Warranties

Bidder represents and warrants to each Scheme Shareholder that:

- (a) **(status)** it is a corporation duly incorporated and validly existing under the laws of the place of its incorporation;
- (b) **(power)** it has the power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) **(corporate authorisations)** it has taken all necessary corporate action to authorise the entry into and performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) **(documents binding)** this deed poll is its valid and binding obligation enforceable in accordance with its terms;

- (e) **(transactions permitted)** the execution and performance by it of this deed poll and each transaction contemplated by this deed poll did not and will not violate in any respect a provision of:
- (i) a law or treaty or a judgment, ruling, order or decree of a Governmental Agency binding on it; or
 - (ii) its constitution or other constituent documents; and
- (f) **(solvency)** it is solvent and no resolutions have been passed nor has any other step been taken or legal action or proceedings commenced or threatened against it for its winding up, deregistration or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets.

6. Continuing obligations

6.1 Deed poll irrevocable

This deed poll is irrevocable and, subject to clause 3, remains in full force and effect until the earlier of:

- (a) Bidder having fully performed its obligations under this deed poll; and
- (b) termination of this deed poll under clause 3.2.

6.2 Variation

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

- (a) before the First Court Date, the variation is agreed to in writing by Target and Bidder; or
- (b) on or after the First Court Date, the variation is agreed to in writing by Target and Bidder, and is approved by the Court (or the Court has otherwise indicated that the variation or amendment would not of itself preclude approval by the Court of the Scheme),

and the Bidder enters into a further deed poll in favour of each Scheme Shareholder giving effect to the amendment.

7. Notices

Any notice, demand or other communication (**Notice**) to Bidder in respect of this deed poll:

- (a) must be in writing and signed by the sender or a person duly authorised by it;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand, email or to the address or email address specified in the Details;
- (c) will be conclusively taken to be duly given or made:
 - (i) **(in the case of delivery in hand)**, when delivered at the address of the addressee as provided in the Details, unless that delivery is not made on a Business Day, or is made after 5.00pm on a Business Day, in which case that Notice will be deemed to be received at 9.00am on the next Business Day;
 - (ii) **(in the case of delivery by post)**, on the third Business Days after the date of posting (if posted from an address within Australia) or the fifth Business Days after the date of posting (if posted from an address outside Australia); or
 - (iii) **(in the case of email)**, on the earlier of:
 - (A) when the sending party's email system confirms delivery of the email by way of a delivery notification; or
 - (B) when the recipient party confirms receipt to the sending party via email or telephone.

8. General provisions

8.1 Assignment

- (a) The rights and obligations created by this deed poll are personal to Bidder, Target and each Scheme Shareholder. They cannot be assigned, charged, encumbered or otherwise dealt with at law or in equity without the prior written consent of Bidder and Target.
- (b) Any purported dealing in contravention of clause 8.1(a) is invalid.

8.2 Cumulative rights

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

8.3 No waiver

- (a) Bidder may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (b) No failure to exercise nor any delay in exercising any right, power or remedy by the Bidder or any Scheme Shareholder under or in connection with this deed poll operates as a waiver.
- (c) No Scheme Shareholder may rely on words or conduct of Bidder as a waiver of any right unless the waiver is in writing and signed by Bidder.
- (d) The meanings of the terms used in this clause 8.4 are set out below.

conduct includes delay in the exercise of a right.

right means any right arising under or in connection with this deed poll and includes the right to rely on this clause.

waiver includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

8.4 Stamp duty

Bidder must:

- (a) pay or procure the payment of all stamp duty (if any), any related fines, penalties and interest payable in respect of the Scheme and this deed poll (including the acquisition or transfer of Scheme Shares pursuant to the Scheme), the performance of this deed poll and each transaction effected by or made under or pursuant to the Scheme and this deed poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from a failure to comply with clause 8.4(a).

8.5 Further assurances

Bidder will, at its own expense, do all things reasonably required of it to give full effect to this deed poll and the transactions contemplated by it.

8.6 Governing law and jurisdiction

This deed poll is governed by the laws of New South Wales, Australia. In relation to it and related non-contractual matters Bidder irrevocably:

- (a) submit to the non-exclusive jurisdiction of courts with jurisdiction there; and
- (b) waive any right to object to the venue on any ground.

Schedule 1 – Scheme

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Signing page

EXECUTED and delivered as a deed poll.

Executed by Firebird BidCo Pty Ltd in
accordance with Section 127 of the *Corporations*
Act 2001 (Cth)

Signature of sole director

Name of director (print)

By signing above, each director or secretary (as applicable) consents to electronic execution of this document (in whole or in part), represents that they hold the position or are the person named with respect to their execution and authorises any other director or secretary (as applicable) to produce a copy of this document bearing his or her signature for the purpose of signing the copy to complete its execution under section 127 of the Corporations Act. The copy of the signature appearing on the copy so executed is to be treated as his or her original signature.

Schedule 3 – Scheme

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Scheme of Arrangement

—
Estia Health Limited
Scheme Shareholders
—

Scheme of Arrangement

Project Eclipse

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Details

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

Date 2023

Parties

Estia Health Limited ACN 160 986 201 (**Target**) of Level 9, 227 Elizabeth Street, Sydney, NSW 2000

and

Each Scheme Shareholder

Background

- A Bidder and Target have entered into the Scheme Implementation Agreement, pursuant to which, among other things, Target agreed to propose this Scheme to Scheme Shareholders and each of Target and Bidder agreed to take certain steps to give effect to this Scheme and the Deed Poll.
- B If the Scheme becomes Effective, Bidder will provide or procure the provision of the Scheme Consideration to the Scheme Shareholders in accordance with the provisions of this Scheme and the Deed Poll, Bidder will acquire all Scheme Shares and all of the rights and entitlements attaching to them as at the Implementation Date and Target will enter Bidder's name and address in the Target Register as the holder of the Scheme Shares.

Agreed terms

1. Defined terms & interpretation

1.1 Definitions

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

ASIC means the Australian Securities and Investments Commission.

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

Bidder means Firebird BidCo Pty Ltd ACN 669 884 824.

Business Day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in New South Wales, Australia.

CHESS means the Clearing House Electronic Subregister System operated by ASX Settlement Pty Limited and ASX Clear Pty Limited.

CHESS Holding has the meaning given in the Settlement Rules.

Constitution means the constitution of Target.

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

Court means the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act agreed in writing between Target and Bidder.

Deed Poll means the deed poll substantially in the form of Schedule under which Bidder covenants in favour of the Scheme Shareholders to perform the obligations attributed to Bidder under this Scheme.

Delivery Time means, in relation to the Second Court Date, 2 hours before the commencement of the hearing or if the commencement of the hearing is adjourned, the commencement of the adjourned hearing, of the Court to approve the Scheme in accordance with section 411(4)(b) of the Corporations Act.

Effective means, when used in relation to this Scheme the coming into effect under 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.

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

End Date has the meaning given to it in the Scheme Implementation Agreement.

Governmental Agency has the meaning given to it in the Scheme Implementation Agreement.

Implementation Date means, with respect to the Scheme, the fifth Business Day, or such other Business Day as Target and Bidder agree in writing, after the Record Date.

Issuer Sponsored Holding has the meaning given in the Settlement Rules.

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

Market Integrity Rules means any rules made by ASIC under section 798G of the Corporations Act that apply to ASX or any other prescribed financial market on which the Shares are quoted.

Performance Rights has the meaning given to it in the Scheme Implementation Agreement.

Permitted Dividend has the meaning given to it in the Scheme Implementation Agreement.

Record Date means 7.00pm (Sydney time) on the second Business Day after the Effective Date, or such other Business Day (after the Effective Date) agreed to in writing by Target and Bidder.

Registered Address means, in relation to a Scheme Shareholder, the address shown in Target Register as at the Record Date.

Relevant Amount has the meaning given to that term in clause 5.3(a).

Scheme means this scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders, subject to any alterations or conditions that are:

- (a) agreed to in writing by Target and Bidder, and approved by the Court; or
- (b) made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing by Target and Bidder.

Scheme Consideration means, in respect of each Scheme Share held by a Scheme Shareholder, \$3.20 cash (as reduced by the amount of any Permitted Dividend declared in accordance with the Scheme Implementation Agreement).

Scheme Implementation Agreement means the Scheme Implementation Agreement, dated on or around 6 August 2023, entered into between Target and Bidder.

Scheme Meeting means the meeting of shareholders of Target ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on this Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

Scheme Share means a Share on issue at the Record Date.

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

Scheme Transfer means a duly completed and executed proper instrument of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, in favour of Bidder as transferee, which may be a master transfer of the Scheme Shares.

Second Court Date means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving this Scheme is heard or scheduled to be heard or, if the application is adjourned for any reason, means the date on which the adjourned application is heard or scheduled to be heard.

Separate Account has the meaning given in clause 5.2(c).

Settlement Rules means the ASX Settlement Operating Rules, being the official operating rules of the settlement facility provided by ASX Settlement Pty Ltd.

Share means an issued fully paid ordinary share in the capital of Target.

Share Registry means Link Market Services Limited.

Target Register means the register of members of Target maintained by or on behalf of Target in accordance with the Corporations Act.

Trust Account means an Australian dollar denominated trust account operated by Target as trustee for the benefit of Scheme Shareholders.

Unclaimed Money Act has the meaning given to that term in clause 5.6(c).

Withholding Amount has the meaning given in clause 5.3(a).

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. In this Scheme, except where the context otherwise requires:

- (a) the singular includes the plural, and the converse also applies;
- (b) gender includes other genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a clause or schedule is a reference to a clause of or schedule to this Scheme;
- (e) a reference to an **agreement** or **document** (including a reference to this Scheme) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Scheme or that other agreement or document, and includes, except to the extent this Scheme expressly provides otherwise the recitals, schedules and annexures to that agreement or document;
- (f) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;

- (g) a reference to time is to Sydney, Australia time;
- (h) a reference to a party to this Scheme, an agreement or document includes the party's executors, administrators, successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (j) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (k) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (l) the meaning of general words is not limited by specific examples introduced by **including**, **for example** or similar expressions;
- (m) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind; and
- (n) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.

1.3 Business Day

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

1.4 Listing requirements included as law

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

2. Preliminary

2.1 Target

- (a) Target is a public company limited by shares, registered in Victoria, Australia.
- (b) Target is included in the official list of ASX. Each Share in Target is quoted on ASX.
- (c) As at the date of the Scheme Implementation Agreement, Target had on issue or had granted:
 - (i) 258,361,034 Shares; and
 - (ii) 3,401,143 Performance Rights.

2.2 Bidder

Bidder is a proprietary company limited by shares registered in New South Wales.

2.3 General

- (a) This Scheme attributes certain actions to Bidder but does not impose an obligation on Bidder to perform those actions.
- (b) Bidder has agreed, by entering into the Deed Poll for the purpose of covenanting in favour of Scheme Shareholders to pay or procure payment of the Scheme Consideration to the Scheme Shareholders and otherwise performing the actions attributed to it under this Scheme.

2.4 Consequence of the Scheme

If this Scheme becomes Effective, then subject to the terms of the Scheme, on the Implementation Date:

- (a) Bidder will provide or procure the payment of the Scheme Consideration in accordance with this Scheme and the Deed Poll; and
- (b) all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares at the Implementation Date, will be transferred to Bidder, and Target will enter Bidder in the Target Register as the holder of the Scheme Shares.

3. Conditions

3.1 Conditions precedent

This Scheme is conditional on, and will have no force or effect (and will not become Effective) unless and until, the satisfaction of each of the following conditions precedent:

- (a) all the conditions precedent in clause 3.1 of the Scheme Implementation Agreement (other than the condition in clause 3.1(e) (Court approval)) having been satisfied or waived in accordance with the terms of the Scheme Implementation Agreement by no later than the Delivery Time;
- (b) neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with their terms by the Delivery Time;
- (c) approval of this Scheme by the Court under section 411(4)(b) of the Corporations Act, including with any modifications made or required by the Court under section 411(6) of the Corporations Act and agreed or consented to in writing by Target and Bidder;
- (d) such other conditions imposed by the Court under section 411(6) of the Corporations Act in relation to this Scheme, as are agreed or consented to in writing by Target and Bidder, having been satisfied; and
- (e) the orders of the Court made under section 411(4)(b) (and if applicable section 411(6)) of the Corporations Act approving this Scheme coming into effect, under section 411(10) of the Corporations Act, on or before the End Date.

3.2 Certificates

- (a) Bidder and Target will each provide to the Court on the Second Court Date a certificate signed by Bidder and Target (or such other evidence as the Court requests) confirming (in respect of matters within their knowledge and included for that party's benefit) whether or not the conditions in clauses 3.1(a) and 3.1(b) of this Scheme have been satisfied or waived.
- (b) The certificate referred to in clause 3.2(a) constitutes conclusive evidence that such conditions precedent were satisfied, waived or taken to be waived.

3.3 Effect of conditions precedent

- (a) The satisfaction of the conditions referred to in clause 3.1 is a condition precedent to the operation of clauses 4.2 and 5, and the binding effect of this Scheme.
- (b) Subject to clause 4.1, this Scheme takes effect for all purposes on and from the Effective Date.
- (c) Without limiting any rights of Bidder and/or Target under the Scheme Implementation Deed, this Scheme will lapse and be of no further force or effect if:
 - (i) the Effective Date has not occurred on or before the End Date; or
 - (ii) the Scheme Implementation Agreement or the Deed Poll is terminated in accordance with its terms,

unless Bidder and Target otherwise agree in writing.

4. Implementation of this Scheme

4.1 Lodgement of Court orders

If the conditions set out in clause 3.1(a) to 3.1(e) (inclusive) are satisfied, Target must lodge with ASIC an office copy of the orders made by the Court under section 411(4)(b) (and if applicable section 411(6)) of the Corporations Act approving this Scheme as soon as reasonably practicable after the Court approves this Scheme, and in any event no later than by 5.00pm (Sydney time) on

the first Business Day after the Court approves this Scheme or such other Business Day as agreed to in writing by Target and Bidder.

4.2 Transfer of Scheme Shares

Subject to this Scheme becoming Effective, on the Implementation Date:

- (a) subject to the payment of the Scheme Consideration in the manner contemplated by clause 5.2(b), the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares at the Implementation Date, will be transferred to Bidder, without the need for any further act by any Scheme Shareholder (other than acts performed by Target or its officers as agent and attorney of the Scheme Shareholders under clause 8.6 or otherwise), by:
 - (i) Target delivering a duly completed (and, if necessary, stamped) and executed Scheme Transfer to transfer all of the Scheme Shares to Bidder (which will take the form of a master transfer) to Bidder, executed on behalf of the Scheme Shareholders by Target (or any of its officers) as agent and attorney of the Scheme Shareholders; and
 - (ii) Bidder duly executing the Scheme Transfer and delivering it to Target for registration; and
- (b) immediately after receipt of the Scheme Transfer in accordance with clause 4.2(a)(ii), Target must enter, or procure the entry of, the name of Bidder in the Target Register as holder of all Scheme Shares in accordance with this Scheme.

5. Scheme Consideration

5.1 Amount of Scheme Consideration

Subject to the terms of this Scheme, each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder in consideration for the transfer to Bidder of the Scheme Shares.

5.2 Payment of Scheme Consideration

- (a) Subject to clauses 5.3(a) and 5.7, the obligation of Bidder to provide the Scheme Consideration under this Scheme and the Deed Poll will be satisfied by Bidder, by no later than the Business Day before the Implementation Date, depositing (or procuring the deposit of) in cleared funds an amount equal to the aggregate amount of the Scheme Consideration payable to each Scheme Shareholder who is entitled to the Scheme Consideration under this Scheme, into the Trust Account, such amount to be held by Target on trust for the Scheme Shareholders and for the purpose of paying the aggregate amount of the Scheme Consideration to the Scheme Shareholders (except that any interest on the amount deposited will be for the account of Bidder).
- (b) On the Implementation Date and subject to funds having been deposited into the Trust Account in accordance with clause 5.2(a), Target must pay (or procure the payment) from the Trust Account the Scheme Consideration to each Scheme Shareholder based on the number of Scheme Shares held by such Scheme Shareholder as set out in the Target Register on the Record Date, less any amounts retained by Target or Bidder under clauses 5.3 or 5.7, which obligation will be satisfied by:
 - (i) where a Scheme Shareholder has, before the Record Date, submitted a valid notification in accordance with the requirements of the Share Registry to receive payments from Target by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying (or procuring the payment) of the relevant amount in Australian currency by electronic means in accordance with that notification; and
 - (ii) otherwise, dispatching (or procuring the dispatch of) a cheque, drawn from the Trust Account in the name of the relevant Scheme Shareholder (or in the case of joint holders in accordance with the procedures set out in clause 5.4), for the relevant amount in Australian currency to the Scheme Shareholder by prepaid post to the Scheme Shareholder's Registered Address.

- (c) If either:
- (i) a Scheme Shareholder does not have a Registered Address or the Target, as trustee for the Scheme Shareholders, believes that a Scheme Shareholder is not known at the Scheme Shareholder's Registered Address, and no account has been notified in accordance with clause 5.2(b)(i) or a deposit into such an account is rejected or refunded; or
 - (ii) a cheque issued under this clause 5 has been cancelled in accordance with clause 5.6(a),

Target as the trustee for the Scheme Shareholders may credit the amount payable to the relevant Scheme Shareholder to a separate bank account of Target (**Separate Account**) to be held until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with clause 5.6. To avoid doubt, if the amount is not credited to a Separate Account, the amount will continue to be held in the Trust Account until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with clause 5.6. Until such time as the amount is dealt with in accordance with clause 5.6, Target must hold the amount on trust for the relevant Scheme Shareholder, but any interest or other benefit accruing from the amount will be to the benefit of Bidder. Target must maintain records of the amounts paid, the people who are entitled to the amount and any transfers of the amount(s).

- (d) To the extent that, following satisfaction of Target's obligations under clause 5.2(b), there is a surplus in the amount held by Target as trustee for the Scheme Shareholders in the Trust Account, that surplus must be paid by Target (or the Target Registry on Target's behalf) to Bidder.
- (e) If this Scheme lapses after Bidder has provided some or all of the Scheme Consideration in accordance with clause 5.2(a), but prior to Bidder being entered into the Target Register as the holder of the Scheme Shares in accordance with clause 4.2(b), Target must refund (or procure the refund) to Bidder of the amount deposited into the Trust Account in accordance with 5.2(a), together with any interest thereon (less bank fees and charges).

5.3 Foreign resident capital gains withholdings

- (a) If Bidder is required by law to withhold any amount from a payment to a Scheme Shareholder or is 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 Scheme Shares from a Scheme Shareholder (the **Relevant Amount**), then:
 - (i) Bidder shall be entitled to withhold an amount, in Australian dollars, equal to the amount of the Relevant Amount from the amount otherwise required to be paid into the Trust Account under clause 5.2(a) (**Withholding Amount**); or
 - (ii) if Bidder does not withhold the amount otherwise required to be paid into the Trust Account, Bidder by notice to Target may direct Target to withhold the Withholding Amount from the amount to be paid to the Scheme Shareholder under clause 5.2(b) and return the Withholding Amount to Bidder and Target must comply with the direction,

in which case payment of the reduced amount by Bidder into the Trust Account in accordance with clause 5.2(a) or by Target to the Scheme Shareholder in accordance with clause 5.2(b) as applicable, will constitute the full discharge of each of Bidder's and Target's obligations under clause 5.2(a) and 5.2(b) with respect to payment of Scheme Consideration to the relevant Scheme Shareholder, subject to Bidder paying the Withholding Amount to the relevant taxation authority.

- (b) Bidder must pay any Withholding Amount so withheld to the relevant taxation authority, and, if requested in writing by the relevant Scheme Shareholder, provide a receipt or other appropriate evidence (or procure the provision of such receipt or other evidence) of such payment to the relevant Scheme Shareholder.

5.4 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any Scheme Consideration payable in respect of those Scheme Shares is payable to the joint holders and any cheque required to be sent under this Scheme will be made payable to the joint holders and sent, at the sole discretion of Target, either to the holder whose name appears first in the Target Register as at the Record Date or to the joint holders; and
- (b) any other document required to be sent under this Scheme, will be forwarded, at the sole discretion of Target, either to the holder whose name appears first in the Target Register as at the Record Date or to the joint holders.

5.5 Fractional entitlements

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

5.6 Unclaimed monies

- (a) Target may cancel (or procure the cancellation of) a cheque sent under this clause 5 if the cheque:
 - (i) is returned to Target (or the Share Registry); or
 - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of six months commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Target (or the Share Registry) (which request may not be made until the date which is 20 Business Days after the Implementation Date), Target must reissue a cheque that was previously cancelled under clause 5.6(a).
- (c) The *Unclaimed Money Act 1995* (NSW) (**Unclaimed Money Act**) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 7 of the Unclaimed Money Act).
- (d) Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of Bidder.

5.7 Order of a court or Governmental Agency

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

- (a) requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder in accordance with this clause 5, then:
 - (i) Bidder shall be entitled to retain an amount, in Australian dollars, equal to the amount of the relevant payment from the amount otherwise required to be paid into the Trust Account in accordance with clause 5.2(a) and pay (or procure the provision of) that amount in accordance with that order or direction; or
 - (ii) if Bidder does not retain an amount from the amount otherwise required to be paid into the Trust Account under clause 5.7(a)(i), Target must pay (procure that payment is made) in accordance with that order or direction from the amount paid into the Trust Account by Bidder; or
- (b) prevents Bidder from making payment into the Trust Account in accordance with clause 5.2(a) or Target from making a payment to any particular Scheme Shareholder in accordance with clause 5.2(b), or such payment is otherwise prohibited by applicable law:
 - (i) Bidder may retain an amount, in Australian dollars, equal to the amount of the relevant payment from the amount otherwise required to be paid into the Trust Account in accordance with clause 5.2(a) until such time as payment in accordance with this clause 5 is permitted by that order or direction or otherwise by law; or
 - (ii) Target must retain an amount, in Australian dollars, equal to the amount of the relevant payment until such time as payment in accordance with this clause 5 is permitted by that order or direction or otherwise by law,

and the payment or retention by either of Bidder or Target (or the Share Registry), as applicable, will constitute the full discharge of each of Bidder's and Target's (or the Share Registry's), as applicable, obligations under clauses 5.2(a) and 5.2(b) with respect of the amount so paid or retained until, in the case of clause 5.6(b), it is no longer required to be retained.

6. Dealings in Scheme Shares

6.1 Determination of Scheme Shareholders

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

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

and Target must not accept for registration, nor recognise for any purpose (except a transfer to Bidder under this Scheme and any subsequent transfer by Bidder or its successors in title), any transfer or transmission application or other request in respect of Scheme Shares received after the Record Date, or received prior to the Record Date but not in registrable or actionable form, as appropriate.

6.2 Register

- (a) **(Registration of transfers)** Target must register, or cause to be registered, registrable transmission applications or transfers of the kind referred to in clause 6.1(b) by or as soon as reasonably practicable after 5.00pm (Sydney time) on the Record Date.
- (b) **(No registration after Record Date)** Target will not accept for registration or recognise for any purpose any transmission application or transfer in respect of Shares received after 7.00pm (Sydney time) in the case of dealings of the type effected using CHESS) on the date on which the Record Date occurs, other than to Bidder in accordance with this Scheme and any subsequent transfer by Bidder or its successors in title.
- (c) **(Maintenance of Target Register)** For the purpose of determining entitlements to the Scheme Consideration, Target must maintain the Target Register in accordance with the provisions of this clause until the Scheme Consideration has been delivered to the Scheme Shareholders and the name and address of Bidder have been entered into the Target Register as holder of all Scheme Shares. The Target Register in this form will solely determine entitlements to the Scheme Consideration and each entry on the Target Register as at the Record Date is the sole evidence of entitlement to the Scheme Consideration in respect of the Scheme Shares relating to that entry.
- (d) **(No disposal after Record Date)** If the Scheme becomes Effective, then, from the Record Date until registration of Bidder in respect of all Scheme Shares under clause 4, no Scheme Shareholder may dispose or otherwise deal with Shares (or purport to do so) in any way except as set out in this Scheme (and other than any subsequent transfers by Bidder and its successors in title) and any attempt to do so will have no effect and Target will be entitled to disregard any such disposal or dealing.
- (e) **(Statements of holding from Record Date)** All statements of holding for Scheme Shares will cease to have effect from the Record Date as documents of title in respect of those Scheme Shares. As from the Record Date, each entry current at that date on the Target Register will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Scheme Shares relating to that entry.
- (f) **(Provision of Scheme Shareholder details)** Within two Business Days after the Record Date, Target will ensure that details of the names, Registered Addresses and holdings of Shares for each Scheme Shareholder (as recorded in the Target Register) are available to Bidder.

7. Quotation

- (a) Target will apply to ASX to suspend trading on ASX of the Shares with effect from the close of trading on the Effective Date.
- (b) Target will apply:
 - (i) to ASX for termination of the official quotation of the Shares on ASX; and
 - (ii) to have itself removed from the official list of ASX,
 in each case with effect on and from the close of the trading day immediately following the Implementation Date or on such other date after the Implementation Date as determined by Bidder.

8. General Scheme provisions

8.1 Consent to amendments to this Scheme

If the Court proposes to approve this Scheme subject to any alterations or conditions under section 411(6) of the Corporations Act:

- (a) Target may, by its counsel or solicitors, consent on behalf of all persons concerned, including each Scheme Shareholder, to those alterations or conditions to which Bidder has agreed or consented to in writing; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions to which counsel for Target has consented.

8.2 Binding effect of Scheme

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

8.3 Scheme Shareholders' agreements and acknowledgment

Each Scheme Shareholder (by operation of this Scheme and without the need for any further act by that Scheme Shareholder):

- (a) irrevocably agrees to the transfer of their Scheme Shares together with all rights and entitlements attaching to those Scheme Shares to Bidder in accordance with this Scheme;
- (b) who holds their Scheme Shares in a CHESS Holding, agrees to the conversion of those Scheme Shares to an Issuer Sponsored Holding and irrevocably authorises Target to do anything necessary or expedient (whether required by the Settlement Rules or otherwise) to effect or facilitate such conversion;
- (c) irrevocably agrees to any variation, cancellation or modification (if any) of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
- (d) agrees to, on the direction of Bidder, destroy any holding statements or security certificates relating to their Scheme Shares; and
- (e) irrevocably consents to Bidder and Target doing all other things and executing all other documents as may be necessary, incidental or expedient to the implementation or performance of this Scheme.

8.4 Warranties by Scheme Shareholder

- (a) Each Scheme Shareholder is deemed to have warranted to Target, in its own right and for the benefit of Bidder, that as at the Implementation Date:
 - (i) all of its Scheme Shares which are transferred to Bidder under this Scheme, including any rights and entitlements attaching to those Scheme Shares, will, at the time of transfer, be free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any "security interests" within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind;

- (ii) all of its Scheme Shares which are transferred to Bidder under this Scheme will, on the date on which they are transferred to Bidder, be fully paid;
 - (iii) it has full power and capacity to transfer its Scheme Shares to Bidder together with any rights and entitlements attaching to those Scheme Shares; and
 - (iv) it has no existing right to be issued any Shares, options or rights exercisable into Scheme Shares, Target convertible notes or any other Target securities.
- (b) Target provides the warranties in clause 8.4(a) to Bidder as agent and attorney of each Scheme Shareholder.

8.5 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attached to Scheme Shares) transferred under this Scheme will be transferred free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any "security interests" within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind.
- (b) On and from the Implementation Date, subject to the payment of the Scheme Consideration by Target to each Scheme Shareholder in the manner contemplated by clause 5.2(b), Bidder will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by Target (or the Share Registry) of Bidder in the Target Register as the holder of the Scheme Shares in accordance with clause 4.2(b).

8.6 Authority given to Target

- (a) Each Scheme Shareholder, without the need for any further act, will be deemed to have authorised Target to do and execute all acts, matters, things and documents on the part of each Scheme Shareholder required by law or otherwise necessary, desirable, expedient for, or incidental to, the implementation of this Scheme, including (without limitation) executing and delivering, as agent and attorney of each Scheme Shareholder one or more Scheme Transfers as contemplated by clause 4.2.
- (b) Each Scheme Shareholder, without the need for any further act, irrevocably appoints Target and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney for the purpose of:
 - (i) enforcing the Deed Poll against Bidder, and Target accepts such appointment; and
 - (ii) executing any document necessary, and taking any other action, required by law or otherwise necessary, desirable or expedient, to give effect to this Scheme including (without limitation), executing and delivering to Bidder the Scheme Transfer under clause 4.2(a) and Target accepts such appointment.

8.7 Appointment of sole proxy

Immediately after the payment of the Scheme Consideration to each Scheme Shareholder by Target in the manner contemplated by clause 5.2(b) until Target registers (or procures the registration of) Bidder as the holder of all Scheme Shares in the Target Register, each Scheme Shareholder, without the need for any further act by that Scheme Shareholder:

- (a) is deemed to have irrevocably appointed Bidder as its agent and attorney (and directed Bidder in such capacity) to appoint any director, officer, secretary or agent nominated by Bidder as its sole proxy and, where applicable, corporate representative to attend shareholders' meetings of Target, exercise the votes attaching to the Scheme Shares registered in its name and sign any shareholders' resolution, whether in person, by proxy or by corporate representative;
- (b) undertakes not to otherwise attend shareholders' meetings, whether in person, by proxy or by corporate representative, exercise the votes attaching to Scheme Shares registered in their names or sign or vote on any resolutions (whether in person, by proxy or by corporate representative) other than pursuant to clause 8.7(a);
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder reasonably directs; and

- (d) acknowledges and agrees that in exercising the powers referred to in clause 8.7(a), Bidder and any director, officer, secretary or agent nominated by Bidder under clause 8.7(a) may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.

8.8 Instructions and elections

If not prohibited by law (and including where permitted or facilitated by relief granted by a Governmental Agency), all instructions, notifications or elections by a Scheme Shareholder to Target (or Share Registry) binding or deemed binding between the Scheme Shareholder and Target relating to Target or Shares (including any email addresses, instructions relating to communications from Target, whether dividends are to be paid by cheque or into a specific bank account, notices of meetings or other communications from Target) will be deemed from the Implementation Date (except to the extent determined otherwise by Bidder and in its sole discretion), by reason of this Scheme, to be made by the Scheme Shareholder to Bidder, and will be accepted by Bidder until that instruction, notification or election is revoked or amended in writing addressed to Bidder at the Share Registry.

9. General

9.1 Stamp duty

Bidder must pay all stamp duty payable in connection with the transfer of the Scheme Shares to Bidder under this Scheme.

9.2 Notices

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Target (or Share Registry), 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 Target's registered office or at the office of the Share Registry.
- (b) An accidental omission to give notice of the Scheme Meeting to any Scheme Shareholder, or the non-receipt of such a notice by any Scheme Shareholder may not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

9.3 Further assurances

- (a) Target must do anything necessary (including executing agreements and documents) or incidental to give full effect to this Scheme and the transactions contemplated by it.
- (b) Each Scheme Shareholder (by operation of this Scheme and without the need for any further act by the Scheme Shareholder) consents to Target doing all things necessary or incidental to give full effect to this Scheme and the transactions contemplated by it.

9.4 Governing law and jurisdiction

- (a) This Scheme is governed by the laws of New South Wales, Australia.
- (b) The parties irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this Scheme.

9.5 No liability when acting in good faith

Each Scheme Shareholder agrees (by operation of this Scheme and without the need for any further act by the Scheme Shareholder), that neither Target or Bidder, nor any of their respective directors, officers, secretaries or employees, will be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

Schedule 1 – Deed Poll

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Signing page

EXECUTED as an agreement.

Executed by Estia Health Limited in accordance
with Section 127 of the *Corporations Act 2001*
(Cth)

Signature of director

Gary Weiss
Name of director (print)

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

Leanne Ralph
Name of director/company secretary (print)

By signing above, each director or secretary (as applicable) consents to electronic execution of this document (in whole or in part), represents that they hold the position or are the person named with respect to their execution and authorises any other director or secretary (as applicable) to produce a copy of this document bearing his or her signature for the purpose of signing the copy to complete its execution under section 127 of the Corporations Act. The copy of the signature appearing on the copy so executed is to be treated as his or her original signature.

For personal use only

**Executed by Firebird BidCo Pty Ltd in
accordance with Section 127 of the Corporations
Act 2001 (Cth)**



Signature of sole director

Michael Andrew Murphy

Name of director (print)

By signing above, each director or secretary (as applicable) consents to electronic execution of this document (in whole or in part), represents that they hold the position or are the person named with respect to their execution and authorises any other director or secretary (as applicable) to produce a copy of this document bearing his or her signature for the purpose of signing the copy to complete its execution under section 127 of the Corporations Act. The copy of the signature appearing on the copy so executed is to be treated as his or her original signature.