



Healthscope

Healthscope Limited

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19 July 2010

Healthscope Board unanimously recommends cash offer of \$6.26 per share from The Carlyle Group and TPG Capital

Healthscope announces today that it has entered into a Scheme Implementation Agreement ("SIA") with funds advised by The Carlyle Group and TPG Capital (the "Consortium") under which it is proposed the Consortium will acquire all of the ordinary shares in Healthscope under a Scheme of Arrangement ("Scheme").

Under the terms of the Scheme, Healthscope shareholders will receive \$6.26 in cash per share, valuing Healthscope at approximately \$2.7 billion. The price will be reduced by any future dividends that Healthscope pays to shareholders prior to completion.

The Board of Healthscope unanimously recommends that Healthscope shareholders vote in favour of the Scheme at the Scheme meeting, in the absence of a superior proposal and subject to an independent expert concluding that the Scheme is in the best interests of Healthscope shareholders.

The price of \$6.26 per share represents:

- A premium of 39% to the closing price of \$4.50 on 13 May 2010, the day prior to the announcement that Healthscope had received an indicative proposal;
- A premium of 43% to the three month volume weighted average price prior to 13 May 2010 of \$4.36;
- A premium of 46% to the closing price on 13 May 2010 adjusted for movements in the S&P/ASX 200 between 13 May 2010 and 16 July 2010 of \$4.28; and
- A premium of 51% to the three month volume weighted average price prior to 13 May 2010 adjusted for movements in the S&P/ASX 200 between 13 May 2010 and 16 July 2010 of \$4.15.

As previously announced on 31 May 2010, following receipt of a number of indicative and non-binding proposals the Board determined that it was in the interests of shareholders that a formal process be conducted to evaluate whether a change of control offer, at a price and on terms that the Board would recommend, could be secured. A comprehensive process was established including access to due diligence materials for a number of interested parties to enable them to make binding proposals.

Following the receipt of proposals from parties after market close on 16 July 2010, the Board has concluded that the Consortium's proposal provides the best outcome for Healthscope shareholders, both in terms of value and associated terms and conditions. The Board unanimously recommends 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 Healthscope shareholders. Subject to those same qualifications, each Director of Healthscope intends to

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vote all the Healthscope shares held or controlled by them in favour of the Scheme at the Scheme meeting.

The transaction is subject to certain conditions precedent including Healthscope shareholder and court approval of the Scheme and other regulatory approvals. A copy of the executed SIA entered into by Healthscope and the Consortium is attached to this announcement, which includes the conditions precedent for the Scheme and exclusivity provisions, including providing for the payment of a break fee to the Consortium and a reverse break fee to Healthscope in certain circumstances. Importantly for Healthscope, under the SIA the Consortium has provided substantial financing certainty and there is limited conditionality for a transaction of this nature.

A Scheme booklet containing information relating to the proposed acquisition, reasons for the Directors' unanimous recommendation, and details of the Scheme meeting is expected to be sent to Healthscope shareholders in September with a shareholder meeting to vote on the proposed Scheme to be held in early October. Subject to the approval of the Scheme by shareholders and the court and the timely satisfaction (or waiver) of conditions, Healthscope expects the transaction to be completed by October.

Linda Nicholls, Healthscope Chairman, said: "Following the receipt of a number of approaches in May, the Board determined that it was in shareholders' best interests that a formal process was undertaken to thoroughly evaluate whether a change of control offer, at a price and on terms that the Board would recommend, could be secured. This process has maximized shareholder value through encouraging competitive tension.

"After careful consideration the Board has unanimously concluded that the Consortium's offer provides shareholders with an excellent opportunity to realise considerable value from their investment in Healthscope. Whilst the Board is of the strong belief that the Company is well positioned to continue to deliver strong growth for shareholders into the future, the Board determined that the relative certainty delivered by this cash offer at a substantial premium was in the best interests of Healthscope shareholders."

The Consortium comprises two of the world's leading private equity firms, collectively managing over US\$135 billion in equity capital. In addition, the members of the Consortium have a longstanding track record of investing in and growing businesses within the healthcare sector both in Asia and globally. We have been informed that that Consortium intends to retain management and support management's strategy, business plans and growth initiatives for all parts of the business.

Healthscope is being advised by Goldman Sachs JBWere, Lazard and Minter Ellison.

For further information please contact:

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Scheme Implementation Agreement

Healthscope Limited (**Healthscope**)

Asia Pacific Healthcare Group Pty Ltd (**BidCo**)

TPG Asia V, L.P. and TPG Partners VI, L.P. (together, **TPG**)

Carlyle Asia Partners III, L.P. (**Carlyle**)

MinterEllison

L A W Y E R S

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Scheme Implementation Agreement

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Details

Date

Parties

Name Healthscope Limited
ABN 85 006 405 152
Short form name **Healthscope**
Notice details Level 1, 312 St. Kilda Road, Melbourne VIC 3004
Facsimile: + 61 3 9926 7533
Attention: General Counsel

Name Asia Pacific Healthcare Group Pty Ltd
ACN 145 126 012
Short form name **BidCo**
Notice details c/- Freehills, Level 43, 101 Collins Street, Melbourne, Victoria, 3000
Facsimile: +61 3 9288 1567
Attention: Baden Furphy/Stefanie Allen

Name TPG Asia V, L.P.
Name TPG Partners VI, L.P.
Short form name (together, **TPG**)
Notice details 301 Commerce Street, Suite 3300
Fort Worth, TX 76102
United States of America
Facsimile: +1-817-871-4088
Attention: Legal Department

Name Carlyle Asia Partners III, L.P.
Short form name **Carlyle**
Notice details c/o The Carlyle Group, 1001 Pennsylvania Ave NW, Washington, DC 20004
USA
Facsimile: +1-202-347-1818
Attention: Thomas Mayrhofer

Background

- A Healthscope and BidCo have agreed to implement the Proposed Transaction on and subject to the terms and conditions of this agreement.
- B Healthscope and BidCo have agreed certain other matters in connection with the Proposed Transaction as set out in this agreement.
- C Each Consortium Member has agreed to guarantee certain of the obligations of, and to provide funding to, BidCo in connection with the Proposed Transaction.

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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:

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 TPG Capital Asia, Inc., Carlyle Australia Investment Advisors Limited and Blackstone Management Partners L.L.C. under the Confidentiality Agreement.

Adviser means any person who is engaged to provide professional advice of any type (including legal, accounting, consulting or financial advice) to Healthscope, the Consortium, BidCo, any Consortium Member or any Consortium Related Person.

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 Healthscope was the designated body.

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

Authorised Person means, in respect of a person, including the Consortium or a Consortium Member:

- (a) a director, officer, member or employee of the person;
- (b) an Adviser of the person;
- (c) a director, officer or employee of an Adviser of the person; and
- (d) where the person is a Consortium Member, a Consortium Related Person of that Consortium Member.

BidCo Facility Agreements means the debt facility agreements to be entered into pursuant to the Debt Commitment Letters.

Bidco Warranties means the representations and warranties of Bidco set out in clause 9.1.

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

Competing Proposal means any offer, proposal or expression of interest (including, by way of takeover bid or scheme of arrangement) under which, if ultimately completed, a person or two or more persons who are Associates would:

- (a) acquire an interest in or become the holder of:
 - (i) more than 50% of the Shares; or
 - (ii) the whole or a material part of the business or property of Healthscope or the Healthscope Group; or

- (b) acquire control of Healthscope, within the meaning of section 50AA of the Corporations Act; or
- (c) otherwise acquire or merge with Healthscope.

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

Confidentiality Agreement means the confidentiality agreement between Healthscope, TPG Capital Asia, Inc., Carlyle Australia Investment Advisors Limited and Blackstone Management Partners L.L.C. dated 8 June 2010.

Consortium means TPG and Carlyle and **Consortium Member** means either of them.

Consortium Indemnified Parties means each Consortium Member, their respective Related Bodies Corporate and Authorised Persons.

Consortium Information means such information regarding BidCo and the Consortium that is provided by or on behalf of BidCo or the Consortium to Healthscope or the Independent Expert:

- (a) to enable the Explanatory Booklet to be prepared and completed in compliance with all applicable laws;
- (b) to enable applications for Regulatory Approvals to be made; and
- (c) otherwise in compliance with BidCo's obligations under clause 6.2(a).

Consortium Prescribed Occurrence means the occurrence of an Insolvency Event in relation to BidCo or a Consortium Member.

Consortium Related Person means, in respect of a Consortium Member:

- (a) a Related Body Corporate of that Consortium Member; and
- (b) any director, officer, member or employee of that Consortium Member or of a Related Body Corporate of that Consortium Member.

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

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

Debt Commitment Letters means the credit-approved, executed commitment letters and accompanying term sheets from certain banks or other financial institutions addressed to BidCo and dated on or about the date of this agreement.

Deed Poll means the deed poll to be executed by BidCo prior to the date the Explanatory Booklet is despatched to Healthscope Shareholders, in the form set out in Schedule 2 or in such other form as is acceptable to Healthscope acting reasonably.

Disclosure Letter means the letter so entitled from Healthscope provided to BidCo prior to the date of this agreement.

Due Diligence Material means the information disclosed by or on behalf of Healthscope and its Subsidiaries (including management presentations and in response to requests for information) to BidCo, the Consortium, a Consortium Member or any of their respective Authorised Persons prior to the date of this agreement, as evidenced conclusively by schedule 2 to the Disclosure Letter.

EBITDA means earnings from ordinary, continuing activities of the Healthscope Group before interest, tax, depreciation and amortisation calculated in accordance with the accounting policies and practices applied by Healthscope as at the date of this agreement, excluding:

- (a) all costs and expenses incurred by Healthscope associated with the Scheme process and the Scheme, including all fees payable to external advisers of Healthscope; and
- (b) the impact of any transaction entered by a member of the Healthscope Group or any other event that is of a non-recurring nature.

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 that Scheme.

Effective Date, with respect to the Scheme, means the date on which the Scheme becomes Effective.

End Date means;

- (a) 10 December 2010; or
- (b) such other date and time agreed in writing between BidCo and Healthscope.

Equity Commitment Letters means the binding, executed commitment letters dated on or about 16 July 2010 addressed to BidCo and Healthscope from each Consortium Member, in each case agreed to and accepted by Healthscope and BidCo.

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.

Excluded Shareholder means any Healthscope Shareholder who is BidCo, a Consortium Member or a Related Body Corporate of BidCo or a Related Body Corporate of a Consortium Member.

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

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

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.

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 Healthscope Shareholders present and voting, either in person or by proxy.

Healthscope Board means the board of directors of Healthscope as constituted from time to time (or any committee of the board of directors of Healthscope constituted from time to time to consider the Proposed Transaction on behalf of Healthscope).

Healthscope Final Dividend means a cash dividend, not exceeding 12 cents per Share, to be declared and paid by Healthscope (in its absolute discretion) between the date of this agreement and the Implementation Date in respect of the year ended 30 June 2010 and which is not franked in excess of the then available franking credits of Healthscope.

Healthscope Group means Healthscope and its Subsidiaries.

Healthscope Indemnified Parties means each member of the Healthscope Group and their Related Bodies Corporate and Authorised Persons.

Healthscope Information means information to be included by Healthscope 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 Healthscope Shareholders whether or not to vote in favour of the Scheme, being information that is within the knowledge of Healthscope's directors and has not previously been disclosed to Healthscope Shareholders, other than the Consortium Information and the Independent Expert's Report.

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

- (a) Healthscope 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 Healthscope Group resolves to reduce its share capital in any way;
- (c) any member of the Healthscope 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 Healthscope Group issues shares, or grants a performance right or an option over its shares, or agrees to make such an issue or grant such a right or an option other than pursuant to the exercise of an Option or Performance Right on issue immediately before the date of this agreement;
- (e) any member of the Healthscope Group issues, or agrees to issue, convertible notes;
- (f) any member of the Healthscope Group disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;
- (g) any member of the Healthscope Group creates or agrees to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property, other than in the usual and ordinary course of business consistent with past practice;
- (h) any member of the Healthscope Group resolves to be wound up.
- (i) a liquidator or provisional liquidator of any member of the Healthscope Group is appointed;
- (j) a court makes an order for the winding up of any member of the Healthscope Group;
- (k) an administrator of any member of the Healthscope Group is appointed under section 436A, 436B or 436C of the Corporations Act;
- (l) any member of the Healthscope Group executes a deed of company arrangement;
- (m) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of any member of the Healthscope Group; or
- (n) Healthscope pays a dividend, other than:
 - (i) the Healthscope Final Dividend; or
 - (ii) a Permitted Additional Dividend,

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

- (iii) required to be done or procured by Healthscope pursuant to, or which is otherwise contemplated by, this agreement or the Scheme;

- (iv) Fairly Disclosed in filings of Healthscope with the ASX prior to the date of this agreement;
- (v) to the extent it is Fairly Disclosed in the Due Diligence Material or the Disclosure Letter;
or
- (vi) the undertaking of which Bidco has approved in writing.

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

Healthscope Warranties means the representations and warranties of Healthscope set out in clause 9.3.

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

Independent Expert means an expert, independent of the parties, engaged by Healthscope in good faith to opine on whether the Scheme is in the best interest of Healthscope Shareholders.

Independent Expert's Report means the report prepared by the Independent Expert and stating whether the Scheme is in the best interest of Healthscope Shareholders.

Insolvency Event means in relation to a person:

- (a) **insolvency official:** the appointment of a liquidator, provisional liquidator, administrator, statutory manager, controller, receiver, 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 14 days;
- (b) **arrangements:** the entry by the person into a compromise or arrangement with its creditors generally;
- (c) **winding up:** 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 14 days;
- (d) **suspends payments:** the person suspends or threatens to suspend payment of its debts as and when they become due;
- (e) **ceasing business:** the person ceases or threatens to cease to carry on business;
- (f) **insolvency:** 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) **deregistration:** the person being deregistered as a company or otherwise dissolved;
- (h) **deed of company arrangement:** the person executing a deed of company arrangement;
- (i) **person as trustee or partner:** 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; or
- (j) **analogous events:** anything analogous to those set out in any of paragraphs (a) to (g) inclusive occurs in relation to the person under the laws of a foreign jurisdiction.

Interest Rate means the 30 day Bank Bill Swap Reference Rate as published as at the relevant due date for payment in the "Money & Bond Markets" section of *The Australian Financial Review*

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

Material Adverse Change means a matter, event or circumstance that occurs, is announced or becomes known to Bidco or the Healthscope Board (whether or not it becomes public) where that matter, event or circumstance:

- (a) has, has had or could reasonably be expected to have individually or when aggregated with all such matters, events or circumstances the effect of diminishing the net assets (excluding borrowings) of the Healthscope Group by an amount of \$270 million or more; or
- (b) will have or could reasonably be expected to have individually or when aggregated with all such matters, events or circumstances the result that the 2010 or 2011 financial year EBITDA of the Healthscope Group will be reduced by \$40 million or more (after deducting from the amount of the reduction any increase in EBITDA derived from an unrelated matter, event or circumstance),

other than:

- (c) a matter, event or circumstance required to be done or procured by Healthscope pursuant to this agreement or the Scheme;
- (d) a matter, event or circumstance to the extent that it was Fairly Disclosed in the Due Diligence Material or the Disclosure Letter;
- (e) a matter, event or circumstance to the extent that it was Fairly Disclosed in documents that were publicly available prior to the date which is two Business Days prior to the date of this agreement from public filings of Healthscope with ASX or ASIC or public registers relating to leasehold property and statutory or title searches relating to freehold property;
- (f) a matter, event or circumstance comprising a change in any applicable law;
- (g) a matter, event or circumstance relating to any material adverse change or disruption to the existing financial markets, political or economic conditions of Australia, Japan, the United Kingdom, the United States of America, Singapore, Hong Kong, China or the international financial markets or any change in national or international political, financial or economic conditions; or
- (h) payment by Healthscope of the Healthscope Final Dividend or a Permitted Additional Dividend.

Option means an option granted by Healthscope to acquire by way of issue one or more Shares.

Option Cancellation Deed means the optionholder cancellation deed the form of which has been provided to Bidco prior to the date of this agreement pursuant to which the Optionholder agrees, subject to the Scheme becoming Effective, to the cancellation of all of his Options in return for the payment by Healthscope of the applicable consideration set out in the deed.

Optionholder means the person who is recorded in the register maintained by Healthscope under section 168(1) of the Corporations Act as the holder of Options.

Performance Right means a right granted under Healthscope's executive 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.

Permitted Additional Dividend means a fully franked special dividend which is declared and paid by Healthscope (in its absolute discretion) between the date of this agreement and the Implementation Date (in addition to the Healthscope Final Dividend), which does not exceed an amount which would cause Healthscope's franking account to not have a positive balance on the Implementation Date (taking into account any tax refunds Healthscope expects to receive and any dividend payments made before the Implementation Date).

Proposed Transaction means the proposed acquisition by BidCo, in accordance with the terms and conditions of this agreement, of all of the Shares (other than the Shares held by an Excluded Shareholder) through the implementation of the Scheme.

Record Date means, in respect of the Scheme, 7.00pm on the fifth 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) 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; and
- (b) in respect of a Consortium Member, includes any fund, limited partnership or other collective investment vehicle which is managed or controlled by that Consortium Member (or its general partner) or a related body corporate (as referred to paragraph (a) above) of that Consortium Member,

and of the Consortium means a related body corporate under paragraph (a) or any entity, fund, limited partnership or other collective investment vehicle in respect of any Consortium Member.

RG 60 means Regulatory Guide 60 issued by ASIC on 11 December 2009.

Rollover Performance Rights means Performance Rights that are eligible to be rolled over pursuant to section 83A-130 of the *Income Tax Assessment Act 1997 (Cth)* and which have been agreed by BidCo and the relevant Performance Rights Holder as being "Rollover Performance Rights" pursuant to clause 15.3.

Scheme means the proposed scheme of arrangement pursuant to Part 5.1 of the Corporations Act between Healthscope 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 made or required by the Court under section 411(6) of the Corporations Act and approved in writing by each party.

Scheme Consideration means, in respect of each Scheme Share held by a Scheme Shareholder, \$6.26 cash (as reduced by the amount of any Healthscope Final Dividend and any Permitted Additional Dividend).

Scheme Meeting means the meeting of Healthscope 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 Shareholder means a person who holds one or more Scheme Shares.

Scheme Share means a Share on issue as at the Record Date other than any Share then held by an Excluded Shareholder (but including any such Share held on behalf of one or more third parties or otherwise in a fiduciary capacity).

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, means the date on which the adjourned application is heard or scheduled to be heard.

Senior Manager means an employee of any member of the Healthscope Group reporting directly to the managing director, chief financial officer or group chief operating officer of Healthscope.

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

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.

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

Superior Proposal means a bona fide Competing Proposal which in the determination of the Healthscope Board acting in good faith and in order to satisfy what the Healthscope Board reasonably considers to be its fiduciary or statutory duties would, if completed substantially in accordance with its terms, be likely to result in a transaction more favourable to Healthscope Shareholders as a whole than the Proposed Transaction having regard to matters including consideration, conditionality, funding, certainty and timing.

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.

Treasurer means the Treasurer of the Commonwealth of Australia.

1.2 Interpretation

In this agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Melbourne, Australia time;
- (g) 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;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (l) 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;
- (m) 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
- (n) a reference to **Fairly Disclosed** means disclosed to any of BidCo the Consortium, a Consortium Member or any of their respective Authorised Persons in sufficient detail so as to enable a reasonable and sophisticated buyer (or one of its Authorised Persons) experienced in transactions similar to the Proposed Transaction and experienced in a business similar to any business conducted by the Healthscope Group, 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.

2. Agreement to propose Scheme

- (a) Healthscope agrees to propose and implement the Scheme on and subject to the terms and conditions of this agreement, and substantially in accordance with the Timetable.
- (b) BidCo agrees to assist Healthscope in proposing and implementing the Scheme on and subject to the terms and conditions of this agreement, and substantially in accordance with the Timetable.

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 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 8.00am on the Second Court Date, ASIC and ASX issue or provide such consents or approvals as are necessary or which Healthscope and Bidco agree are necessary or desirable to implement the Scheme and such consent, approval or other act has not been withdrawn or revoked before 8.00am on the Second Court Date;
- (ii) **(FIRB)** before 8.00am on the Second Court Date, either:
- (A) the Treasurer (or his delegate) has provided a notice in writing (without any term or condition which Bidco reasonably considers unacceptable) stating or to the effect that, in terms of Australia's foreign investment policy, the Australian Government does not object to BidCo acquiring the Scheme Shares pursuant to the Scheme; or

- (B) the period provided for under the FATA during which the Treasurer may make orders under section 18 or 22 of the FATA prohibiting the acquisition of the Scheme Shares by BidCo has elapsed without any such order being made; or
 - (C) if an interim order under section 22 of the FATA prohibiting such acquisition is made, the subsequent period for making a final order prohibiting the acquisition of the Scheme Shares by BidCo having elapsed without any such order being made; and
- (iii) **(New Zealand Overseas Investment Office)** before 8.00am on the Second Court Date, receipt by BidCo in writing of all consents required under the Overseas Investment Act 2005 (New Zealand) for the implementation of the Scheme either unconditionally or on terms acceptable to BidCo acting reasonably;
- (b) **(No Material Adverse Change)** no Material Adverse Change occurs between the date of this agreement and 8.00am on the Second Court Date;
 - (c) **(No Healthscope Prescribed Occurrence)** no Healthscope Prescribed Occurrence occurs between the date of this agreement and 8.00am on the Second Court Date;
 - (d) **(No Consortium Prescribed Occurrence)** no Consortium Prescribed Occurrence occurs between the date of this agreement and 8.00am on the Second Court Date;
 - (e) **(No change of Healthscope Board recommendation)** between the date of this agreement and the date of the Scheme Meeting, none of the Directors of Healthscope changing, qualifying or withdrawing their unanimous recommendation to Healthscope Shareholders to vote in favour of the Scheme, which recommendation may be expressed to be given:
 - (i) in the absence of a Superior Proposal; and
 - (ii) subject to the Independent Expert opining that the Scheme is in the best interest of Healthscope Shareholders;
 - (f) **(Healthscope Warranties)** the Healthscope Warranties being true and correct in all material respects on the date of this agreement and at 8.00am on the Second Court Date;
 - (g) **(Bidco Warranties)** the BidCo Warranties being true and correct in all material respects on the date of this agreement and at 8.00am on the Second Court Date;
 - (h) **(Shareholder approval)** the Scheme is approved by Healthscope Shareholders at the Scheme Meeting by the majorities required under section 411(4)(a)(ii) of the Corporations Act;
 - (i) **(Court approval)** the Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act either unconditionally or on conditions that do not impose unduly onerous obligations upon either party (acting reasonably); and
 - (j) **(Independent Expert)** the Independent Expert concluding in the Independent Expert's Report that in its opinion the Scheme is in the best interest of Healthscope Shareholders and the Independent Expert not having publicly withdrawn or qualified this conclusion on or before the Second Court Date.

3.2 Benefit and waiver of conditions precedent

- (a) The Condition in clause 3.1(a) is 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.

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- (b) The Conditions in clauses 3.1(b), 3.1(c), 3.1(e) and 3.1(f) are for the sole benefit of BidCo and any breach or non-fulfilment of them may only be waived by BidCo giving its written consent.
 - (c) The Conditions in clauses 3.1(d), 3.1(g) and 3.1(j) are for the sole benefit of Healthscope and any breach or non-fulfilment of them may only be waived by Healthscope giving its written consent.
 - (d) A party entitled to waive a Condition pursuant to 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 8.00am on the Second Court Date. The Conditions in clauses 3.1(h) and 3.1(i) 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 without limitation a breach that resulted in the non-fulfilment of the Condition that was waived.

3.3 Reasonable endeavours

- (a) Healthscope and BidCo will use their respective reasonable endeavours to procure that each of the Conditions 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).
- (b) Without limiting clauses 3.4 and 3.5 below, each of Healthscope and BidCo must:
 - (i) promptly apply for all relevant Regulatory Approvals and provide the other party with a copy of all applications for Regulatory Approvals;
 - (ii) take all the steps for which it is responsible as part of the Regulatory Approvals process;
 - (iii) respond to all requests for information in respect of the applications for Regulatory Approvals at the earliest practicable time;
 - (iv) provide the other with all information and assistance reasonably requested in connection with the applications for Regulatory Approvals; and
 - (v) so far as it is able, allow the other and its Authorised Persons the opportunity to be present and make submissions at any meetings with any regulatory body relating to the Regulatory Approvals in respect of the Scheme.

3.4 Notifications

Each of BidCo and Healthscope 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; and
- (c) promptly notify the other in writing if it becomes aware that any Condition is or has become incapable of being satisfied (having regard to the respective obligations of each party under clause 3.3).

3.5 Certificate

On the Second Court Date:

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- (a) BidCo and Healthscope will provide a joint certificate to the Court confirming whether or not the Condition set out in clauses 3.1(a) and 3.1(h) have been satisfied or waived in accordance with the terms of this agreement;
 - (b) Healthscope will provide a certificate to the Court confirming whether or not the Conditions set out in clauses 3.1(b), 3.1(c), 3.1(e), 3.1(f) and 3.1(j) have been satisfied or waived in accordance with the terms of this agreement;
 - (c) BidCo will provide a certificate to the Court confirming whether or not the Conditions set out in clauses 3.1(d) and 3.1(g) have been satisfied or waived in accordance with the terms of this agreement;
 - (d) Healthscope will provide a certificate to Bidco confirming whether or not it has breached any of its obligations under this agreement (including a breach of a representation or warranty), and if its has, giving details of such breach(es); and
 - (e) Bidco will provide a certificate to Healthscope confirming whether or not it has breached any of its obligations under this agreement (including a breach of a representation or warranty), and if its has, giving details of such breach(es).

3.6 Scheme voted down

If the Scheme is not approved by Healthscope Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and Healthscope or Bidco 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 then Healthscope 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 Healthscope to represent it in Court proceedings related to the Scheme, in consultation with Bidco, 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.

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 precedent 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 five Business Days after the occurrence of the circumstance; or
 - (iii) the Scheme does not become Effective by the End Date,and neither of the following has occurred:
 - (i) the Independent Expert opines to the effect that the Scheme is not in the best interest of Healthscope Shareholders; or
 - (ii) a Superior Proposal has been publicly announced,

then Healthscope and BidCo must consult in good faith with a view to determining whether:

- (i) the Scheme may proceed by way of alternative means or methods;
 - (ii) to extend the relevant time or date for satisfaction of the Condition;
 - (iii) 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
 - (iv) 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 Healthscope and BidCo are unable to reach agreement under clause 3.7(a) within five Business Days of the date on which they both become aware that the Condition has become incapable of being satisfied (or, if earlier, by 8.00am on the Second Court Date), then unless the relevant Condition (where capable of waiver) is waived:
- (i) in relation to the Conditions in clause 3.1(a) or 3.1(h) either BidCo or Healthscope may terminate this agreement by giving the other notice without any liability to any party by reason of that termination alone;
 - (ii) in relation to the Conditions in clause 3.1(b), 3.1(c), 3.1(e) and 3.1(f), BidCo may terminate this agreement by giving Healthscope notice without any liability to any party by reason of that termination alone; and
 - (iii) in relation to the Conditions in clauses 3.1(d), 3.1(g) and 3.1(j), Healthscope may terminate this agreement by giving BidCo 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 pursuant to clause 3.7(b) if the relevant Condition has not been satisfied as a result of:
- (i) a breach of this agreement by that party; or
 - (ii) a deliberate act or omission of that party which either alone or together with other circumstances prevents that Condition being satisfied.

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 a Regulatory Approval – the relevant regulatory authority 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. Scheme

4.1 Scheme

Healthscope must, as soon as reasonably practicable after the date of this agreement and substantially in compliance with the Timetable, propose the Scheme under which, subject to the Scheme becoming Effective, all of the Scheme Shares will be transferred to BidCo and the

Scheme Shareholders will be entitled to receive, for each Scheme Share held at the Record Date, the Scheme Consideration.

4.2 Scheme Consideration

BidCo covenants in favour of Healthscope, in consideration for and simultaneously with the transfer to BidCo of the Scheme Shares held by each Scheme Shareholder under the terms of the Scheme, to provide to each Scheme Shareholder the Scheme Consideration on the Implementation Date and otherwise in accordance with the Scheme.

4.3 Deed Poll

BidCo covenants in favour of Healthscope (in its own right and separately as trustee for each of the Scheme Shareholders) to execute, deliver and perform the Deed Poll prior to the despatch of the Explanatory Booklet.

5. Consortium's guarantee

5.1 Guarantee and indemnity

In consideration of Healthscope executing this agreement at the request of the Consortium Members, the Consortium Members unconditionally, irrevocably and joint and severally:

- (a) guarantee to Healthscope the due and punctual performance and observance by BidCo of all of the obligations contained in or implied under clause 13 of this agreement that must be performed and observed by BidCo (**Guaranteed Obligations**); and
- (b) indemnify Healthscope against all losses, damages, costs and expenses which Healthscope may now or in the future suffer or incur consequent on or arising directly or indirectly out of any breach or non-observance by BidCo of a Guaranteed Obligation.

5.2 Extent of guarantee and indemnity

This clause 5 applies and the obligations of each Consortium Member remain unaffected despite:

- (a) an amendment of this agreement; or
- (b) a rule of law or equity to the contrary; or
- (c) an insolvency event affecting a person or the death of a person; or
- (d) a change in the constitution, membership, or partnership of a person; or
- (e) the partial performance of the Guaranteed Obligations; or
- (f) the Guaranteed Obligations not being enforceable at any time (whether by reason of a legal limitation, disability or incapacity on the part of BidCo and whether this agreement is void *ab initio* or is subsequently avoided) against BidCo; or
- (g) Healthscope granting any time or other indulgence or concession to, compounding or compromising with, or wholly or partially releasing BidCo or the Consortium of an obligation; or
- (h) another thing happening that might otherwise release, discharge or affect the obligations of each Consortium Member under this agreement.

5.3 No deductions or withholdings

Each Consortium Member must make all payments required of it under this clause 5 in full, without set off and free and clear of any withholding or deduction. If a Consortium Member is required to withhold or deduct any tax, duty, impost, charge, withholding, rate, levies or other

governmental imposition of any nature together with associated costs, charges, interest, penalties, fines or expenses (**Taxes**) so that Healthscope would not actually receive on the due date the full amount then the Consortium Member must ensure that the amount payable is increased so that, after making that deduction and deductions applicable to additional amounts payable under this paragraph, Healthscope is entitled to receive, and does receive, the amount it would have received if no deductions had been required. The Consortium Member must ensure any deductions required are made and pay the full amount deducted to the relevant governmental body in accordance with applicable law.

5.4 Continuing guarantee

Each Consortium Member's obligations under this clause 5 are absolute, unconditional and irrevocable. The liability of each Consortium Member under this clause 5 extends to and is not affected by any circumstance, act or omission which, but for this paragraph, might otherwise affect it at law or in equity. The guarantee in this clause 5 is a continuing security, and remains in full force until all of the Guaranteed Obligations have been fully paid and satisfied. This clause 5 survives any termination or full or partial discharge of this agreement.

5.5 Avoidance

Each Consortium Member agrees that if a payment or other transaction relating to the Guaranteed Obligations is void, voidable, unenforceable or defective for any reason or a related claim is upheld, conceded or settled (each an **Avoidance**), then even though Healthscope knew or should have known of the Avoidance:

- (a) each right, power, discretion or remedy of Healthscope and each Consortium Member's liability under this clause 5 will be what it would have been, and will continue, as if the payment or transaction the subject of the Avoidance had not occurred; and
- (b) each Consortium Member will immediately execute and do anything necessary or required by Healthscope to restore Healthscope to its position immediately before the Avoidance.

5.6 Principal and independent obligation

This clause 5 is:

- (a) a principal obligation and is not to be treated as ancillary or collateral to another right or obligation; and
- (b) independent of and not in substitution for or affected by another security interest or guarantee or other document or agreement which Healthscope or another person may hold concerning the Guaranteed Obligations.

5.7 Enforcement against Consortium

Healthscope may enforce this clause 5 against a Consortium Member without first having to resort to another guarantee or security interest or other agreement relating to the Guaranteed Obligations.

6. Scheme – parties' respective implementation obligations

6.1 Healthscope's obligations

Healthscope must take all steps reasonably necessary to implement the Scheme as soon as reasonably practicable 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 6.4;

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- (b) (**Independent Expert**) promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Explanatory Booklet;
 - (c) (**approval of draft for ASIC**) as soon as reasonably practicable after the preparation of an advanced draft of the Explanatory Booklet suitable for review by ASIC, procure that a meeting of the Healthscope Board, or of a committee of the Healthscope 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;
 - (d) (**liaison with ASIC**) 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 6.1(c) and 6.2(e), to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act; and
 - (ii) liaise with ASIC during the period of its consideration of that draft of the Explanatory Booklet and keep Bidco reasonably informed of any matters raised by ASIC in relation to the Explanatory Booklet and use reasonable endeavours, in consultation with Bidco, to resolve any such matters;
 - (e) (**approval of Explanatory Booklet**) as soon as reasonably practicable after the conclusion of the review by ASIC of the Explanatory Booklet, procure that a meeting of the Healthscope Board, or of a committee of the Healthscope Board appointed for the purpose, is held to consider approving the Explanatory Booklet for despatch to the Healthscope Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act;
 - (f) (**section 411(17)(b) statements**) apply to ASIC for the production of statements in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
 - (g) (**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 6.1(e) and 6.2(f) have been received, an application is heard by the Court for an order under section 411(1) of the Corporations Act directing Healthscope to convene the Scheme Meeting;
 - (h) (**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;
 - (i) (**convening Scheme Meeting**) take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Explanatory Booklet to the Healthscope Shareholders and convening and holding the Scheme Meeting;
 - (j) (**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 (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme;

- (k) (**appeal process**) if the Court refuses to make any orders directing Healthscope to convene the Scheme Meeting or approving the Scheme, Healthscope and Bidco must:
- (i) consult with each other in good faith as to whether to appeal the Court's decision; and
 - (ii) 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;
- (l) (**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 BidCo 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;
- (m) (**Regulatory notifications**) in relation to the Regulatory Approvals, lodge with any regulatory authority within the relevant time periods all documentation and filings required by law to be so lodged by Healthscope in relation to the Proposed Transaction;
- (n) (**Consortium Information**) without the prior written consent of the Consortium, not use the Consortium Information for any purposes other than those expressly contemplated by this agreement or the Scheme;
- (o) (**Documents**) consult with the Consortium 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);
- (p) (**Shareholder support**) promote to its shareholders the merits of the Scheme, including soliciting proxy votes in favour of the Scheme; and
- (q) (**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.

6.2 BidCo's obligations

BidCo must take all steps reasonably necessary to assist Healthscope 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) (**Consortium Information**) provide to Healthscope, in a form appropriate for inclusion in the Explanatory Booklet, all information regarding BidCo and the Consortium Members, the arrangements BidCo and the Consortium Members have in place to fund the Scheme Consideration, and BidCo's intentions with respect to the assets, business and employees of Healthscope if the Scheme is approved and implemented that is required by all applicable law, the Listing Rules and ASIC Regulatory Guides for inclusion in the Explanatory Booklet, which information must (without limiting the foregoing):
- (i) contain all information necessary to enable Healthscope to ensure that the Explanatory Booklet complies with the requirements of RG 60;

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- (ii) 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
 - (iii) be updated by all such further or new material information which may arise after the Explanatory Booklet has been despatched 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, lodge with any regulatory authority within the relevant time periods all documentation and filings required by law to be so lodged by BidCo 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 for inclusion in the Explanatory Booklet;
 - (d) (**review of Explanatory Booklet**) as soon as reasonably practicable after delivery, review the drafts of the Explanatory Booklet prepared by Healthscope and provide comments on those drafts in good faith;
 - (e) (**approval of draft for ASIC**) as soon as reasonably practicable after the preparation of an advanced draft of the Explanatory Booklet suitable for review by ASIC, procure that a meeting of the appropriate decision-making organ of BidCo is held to consider approving those sections of that draft that relate to BidCo or the Consortium as being in a form appropriate for provision to ASIC for review;
 - (f) (**approval of Explanatory Booklet**) as soon as reasonably practicable after the conclusion of the review by ASIC of the Explanatory Booklet, procure that a meeting of the appropriate decision-making organ of BidCo is held to consider approving those sections of the Explanatory Booklet that relate to BidCo or the Consortium as being in a form appropriate for despatch to Healthscope Shareholders, subject to approval of the Court;
 - (g) (**Representation**) procure that, if requested by Bidco or Healthscope, BidCo is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act;
 - (h) (**Healthscope Information**) without the prior written consent of Healthscope, not use Healthscope Information for any purposes other than those expressly 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.

6.3 Scheme Implementation

At 10.00 am on the Implementation Date, the transactions which form part of the Scheme will be implemented in the following sequence:

- (a) BidCo will provide to Healthscope an amount equal to the Scheme Consideration (for the avoidance of doubt, in respect of all Scheme Shares) to be held by Healthscope on trust for the Scheme Shareholders in proportion to their respective holdings of Scheme Shares, in each case in accordance with the Scheme;
- (b) BidCo will acquire the whole of the issued capital of Healthscope (other than any Share held by an Excluded Shareholder) pursuant to the Scheme; and

- (c) Healthscope will disburse the Scheme Consideration in accordance with the Scheme.

6.4 Explanatory Booklet - preparation principles

- (a) As soon as reasonably practicable after the date of this agreement and substantially in accordance with the Timetable, Healthscope 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 6.4.
- (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 Healthscope Information;
 - (iv) the Consortium Information;
 - (v) a copy of this agreement (without the schedules or annexures);
 - (vi) a copy of the executed Deed Poll; and
 - (vii) a copy of the Independent's Expert Report.
- (c) Healthscope must make available to BidCo drafts of the Explanatory Booklet (excluding any draft of the Independent Expert's Report), consult with BidCo in relation to the content of those drafts (other than the Consortium Information), and consider in good faith, for the purpose of amending those drafts, comments from BidCo on those drafts. BidCo acknowledges and agrees that Healthscope has ultimate discretion with respect to the preparation, form and content of the Explanatory Booklet, other than as expressly provided in this agreement with respect to the Consortium Information.
- (d) Healthscope must seek approval from BidCo for the form and context in which the Consortium Information appears in the Explanatory Booklet, which approval BidCo must not unreasonably withhold or delay, and Healthscope must not lodge the Explanatory Booklet with ASIC until such approval is obtained from BidCo.
- (e) Healthscope must take all reasonable steps to ensure that the Explanatory Booklet (other than the Consortium Information) is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date it is despatched to Healthscope Shareholders.
- (f) BidCo must take all reasonable steps to ensure that the Consortium 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 despatched to Healthscope Shareholders.
- (g) Healthscope must provide to BidCo all such further or new information of which Healthscope becomes aware that arises after the Explanatory Booklet has been despatched 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.

- (h) BidCo must provide to Healthscope all such further or new information of which BidCo becomes aware that arises after the Explanatory Booklet has been despatched until the date of the Scheme Meeting where this is or may be necessary to ensure that the Consortium Information continues to comply with the Corporations Act, RG 60 and the Listing Rules.
- (i) Healthscope and BidCo each agree that the efficient preparation of the Explanatory Booklet and the implementation of the Scheme are in the interests of Healthscope Shareholders and BidCo 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 6.4 and to implement the Scheme as soon as reasonably practicable and substantially in accordance with the Timetable.

6.5 Healthscope Board recommendation

- (a) Subject to clauses 6.5(b), the Healthscope Board must:
- (i) unanimously recommend (in Healthscope's public announcements and the Explanatory Booklet) that Healthscope Shareholders vote in favour of the Scheme, including that each Healthscope Director states (in Healthscope's public announcements and the Explanatory Booklet) that he or she intends to vote all Shares held or controlled by him or her in favour of the Scheme (qualified only by the words to the effect of "in the absence of a superior proposal" and, other than in respect of the Explanatory Booklet or any document issued after the issue of the Explanatory Booklet, "subject to the Independent Expert opining at all times prior to the Second Court Date that the Scheme is in the best interest of Healthscope Shareholders"); and
 - (ii) not subsequently change or withdraw its recommendation or his/her statement.
- (b) Clause 6.5(a) will cease to apply in either of the following circumstances:
- (i) the Independent Expert opines either prior to the despatch of the Explanatory Booklet or prior to the Scheme Meeting to the effect that the Scheme is not in the best interest of Healthscope Shareholders; or
 - (ii) a Superior Proposal is publicly announced.

7. Conduct of business before the Implementation Date

7.1 Conduct of Healthscope business

- (a) Subject to clause 7.2(a), from the date of this agreement up to and including the Implementation Date, Healthscope must conduct and must cause each of its Subsidiaries to conduct their businesses in the ordinary and usual course of business and:
- (i) operate those businesses consistent with past practice, in substantially the same manner as previously conducted;
 - (ii) use reasonable endeavours to preserve their relationships with suppliers, landlords, licensors, licensees and others having material business dealings with them, and to retain the services of all key employees;
 - (iii) use reasonable endeavours to ensure that all assets are maintained in the normal course consistent with past practice;

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- (iv) use reasonable endeavours to comply in all material respects with all material contracts to which a member of the Healthscope Group is a party, and with laws, authorisations and licenses applicable to each member of the Healthscope Group; and
 - (v) not take or fail to take any action that constitutes a Healthscope Prescribed Occurrence or that could reasonably be expected to result in a Healthscope Prescribed Occurrence.
- (b) Without limiting clause 7.1(a) but subject to clause 7.2(a), Healthscope 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) incur any additional financial indebtedness (except for draw-downs on existing banking facilities or utilisation of existing securitisation programs) or guarantee or indemnify the obligations of any person other than a member of the Healthscope Group, other than in the usual and ordinary course of business and consistent with past practice;
 - (ii) (except as required by law or as provided in an existing contract in place as at the date of this agreement) make any material change to the terms of employment of (including increasing the remuneration or compensation of), or grant or pay any bonus, retention, severance or termination payment to, any director, executive or Senior Manager;
 - (iii) (except as pursuant to contractual arrangements in effect on the date of this agreement) enter into any enterprise bargaining agreement or similar collective employment agreement;
 - (iv) in respect of any single transaction or series of related or similar transactions, acquire or dispose of any interest in a business, real property, entity or undertaking, the value of which exceeds \$30 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;
 - (v) incur or enter into commitments involving capital expenditure of more than \$5 million whether in one transaction or a series of related transactions; or
 - (vi) enter into, vary or terminate any contract, joint venture, partnership or commitment for a duration of over two years involving total expenditure greater than \$10 million per annum, individually or when aggregated with all such contracts, joint ventures, partnerships or commitments.

7.2 Permitted activities

- (a) The obligations of Healthscope under clause 7.1 do not apply in respect of any matter:
- (i) undertaken by a member of the Healthscope Group in conducting its businesses in the usual and ordinary course and consistent with past practice;
 - (ii) required to be done or procured by Healthscope pursuant to, or which is otherwise contemplated by, this agreement or the Scheme;
 - (iii) subject to clause 7.2(b), Fairly Disclosed in the Disclosure Letter as being actions that the Healthscope Group may carry out between the date of this agreement and the Implementation Date; or

- (iv) the undertaking of which BidCo has approved in writing (which approval must not be unreasonably withheld or delayed).
- (b) Healthscope must, in respect of any matter referred to in clause 7.2(a)(iii) above that it proposes to undertake:
- (i) if the Disclosure Letter 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 BidCo; and
 - (iii) promptly provide BidCo with any information regarding the matter reasonably requested by BidCo.

For the avoidance of doubt, clause 7.2(b) does not operate to provide BidCo with a veto right in respect of any matter referred to in clause 7.2(a)(iii).

7.3 Access

In the period from the date of this agreement to the Implementation Date and for so long as the Healthscope Board considers the Proposed Transaction to be in the best interests of Healthscope Shareholders and continues to publicly recommend that Healthscope Shareholders vote in favour of the resolution to be proposed at the Scheme Meeting to approve the Scheme, Healthscope must:

- (a) procure that at least three members of Healthscope's executive management team meet with representatives of the Consortium Members on a fortnightly basis to assist with, among other things:
 - (i) keeping Bidco fully informed of the matters contemplated by clause 7.3(b) below; and
 - (ii) providing Bidco with access to information and people it has requested under clause 7.3(c) below;
- (b) keep Bidco fully informed of all material developments relating to the Healthscope Group and provide to Bidco monthly management, financial and operational reports provided to the Healthscope Board; and
- (c) promptly following a request by Bidco, provide Bidco (and its Authorised Persons) with access to:
 - (i) documents and information relating to the Healthscope Group; and
 - (ii) executives and Senior Management of the Healthscope Group,for the purpose of or in connection with:
 - (iii) planning the transition of the Healthscope Group and other matters relating to the conduct of the Healthscope Group following the Implementation Date;
 - (iv) the financing arrangements in respect of the Proposed Transaction, including any refinancing of existing financial indebtedness of the Healthscope Group; and
 - (v) otherwise facilitating the Proposed Transaction.
- (d) Nothing in this clause 7.3 obliges Healthscope to provide to BidCo or its Authorised Persons any information:
 - (i) concerning the Healthscope Directors' consideration of the Scheme; or

- (ii) which would breach an obligation of confidentiality to any person or any applicable privacy laws.
- (e) For the avoidance of doubt, the parties agree and acknowledge that nothing in this clause 7.3 requires Healthscope to provide any information that is different or in addition to the information Healthscope provides to its Board and Senior Managers in the usual and ordinary course consistent with past practice.

7.4 Change of control rights

As soon as practicable after the date of this agreement, Healthscope and BidCo must seek to identify any change of control or similar provisions in leases and material contracts to which Healthscope or a Healthscope Group company is a party which may be triggered by the implementation of the Proposed Transaction. In respect of those leases and contracts, the parties agree as follows:

- (a) Healthscope and BidCo will agree a proposed course of action and then jointly initiate contact with the relevant landlords and other counter-parties and request that they provide any consents required. None of the Consortium, each Consortium Member, BidCo or any of their Authorised Persons may contact any landlords or other counter-parties without Healthscope;
- (b) Healthscope must cooperate with, and provide reasonable assistance to, BidCo to obtain such consents as expeditiously as possible, including by:
 - (i) promptly provide any information reasonably required by landlords or counterparties; and
 - (ii) make representatives available, where necessary, to meet with landlords or counterparties to deal with issues arising in relation to the change of control of Healthscope.

A failure by a member of the Healthscope Group to obtain any landlord or third party consent will not constitute a breach of this agreement by Healthscope and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this agreement.

8. Reconstitution of the board of each member of the Healthscope Group

On the Implementation Date, but subject to the Scheme Consideration having been paid in full to the Scheme Shareholders and receipt by Healthscope of signed consents to act, Healthscope must:

- (a) take all actions necessary to appoint the persons nominated by BidCo as new Healthscope Directors and new directors of each Subsidiary; and
- (b) procure that all Healthscope Directors (other than the new Healthscope Directors appointed pursuant to clause 8(a)) resign from the Healthscope Board,

in each case in accordance with Healthscope's constitution, the Corporations Act and the Listing Rules.

9. Representations and warranties

9.1 BidCo representations

- (a) BidCo represents and warrants to Healthscope (on its own behalf and separately as trustee for each of the other Healthscope Indemnified Parties) each of the matters set out in clause

9.1(b) as at the date of this agreement and on each subsequent day until 8.00am 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) BidCo represents and warrants that:
- (i) BidCo 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 BidCo 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 BidCo is a party or is bound;
 - (iv) the Consortium Information provided to Healthscope in accordance with clause 6.2(a) for inclusion in the Explanatory Booklet will:
 - (A) be provided in good faith;
 - (B) comply in all material respects with the requirements of the Corporations Act, the Listing Rules and RG 60; and
 - (C) be provided on the understanding that each of the Healthscope Indemnified 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;
 - (v) all information provided by or on behalf of BidCo to the Independent Expert to enable the Independent Expert's Report to be included in the Explanatory Booklet to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's Report for inclusion in the Explanatory Booklet;
 - (vi) as at the date the Explanatory Booklet is despatched to Healthscope Shareholders, the Consortium 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);
 - (vii) BidCo will, as a continuing obligation, provide to Healthscope all such further or new information which may arise after the Explanatory Booklet has been despatched until the date of the Scheme Meeting which is necessary to ensure that the Consortium 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);
 - (viii) all factual information BidCo has provided to Healthscope prior to this agreement is, to the best of BidCo's knowledge, accurate in all material respects and not misleading in any material respect;
 - (ix) no Consortium Prescribed Occurrence has occurred;

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- (x) the Equity Commitment Letters have each been duly executed by the parties thereto and constitute legally binding obligations of those parties that are enforceable in accordance with their respective terms and neither of the Equity Commitment Letters have been terminated;
 - (xi) the representations and warranties given by the Consortium Members in paragraphs 10 and 10A of the Equity Commitment Letters are true and accurate;
 - (xii) as a continuing obligation, without the prior written consent of Healthscope:
 - (A) BidCo and each Consortium Member will not amend any of the Equity Commitment Letters in any respect which will, or is reasonably likely to, prejudice BidCo's ability to pay the Scheme Consideration in accordance with this agreement and the Deed Poll; and
 - (B) BidCo will not waive any of its rights under the Equity Commitment Letters in any respect which will, or is reasonably likely to, prejudice BidCo's ability to pay the Scheme Consideration in accordance with this agreement and the Deed Poll;
 - (xiii) the Debt Commitment Letters have each been duly executed by Bidco and constitute legally valid and binding obligations of Bidco that are enforceable against Bidco in accordance with their respective terms and none of the Debt Commitment Letters have been terminated;
 - (xiv) as a continuing obligation, without the prior written consent of Healthscope:
 - (A) BidCo will not amend any of the Debt Commitment Letters in any respect which will, or is reasonably likely to, prejudice BidCo's ability to pay the Scheme Consideration in accordance with this agreement and the Deed Poll; and
 - (B) BidCo will not waive any of its rights under the Debt Commitment Letters in any respect which will, or is reasonably likely to, prejudice BidCo's ability to pay the Scheme Consideration in accordance with this agreement and the Deed Poll;
 - (xv) on each date from the date on which the BidCo Facility Agreements are entered into until the 8.00am on the Implementation Date:
 - (A) the BidCo Facility Agreements have been duly executed by BidCo and constitute legally valid and enforceable obligations on, and rights of, BidCo that are enforceable in accordance with their terms; and
 - (B) without the prior written consent of Healthscope, BidCo will not amend or agree to amend the BidCo Facility Agreements in any respect which will, or is reasonably likely to, prejudice BidCo's ability to pay the Scheme Consideration in accordance with this agreement and the Deed Poll;
 - (xvi) as at the date of this agreement BidCo 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 BidCo's obligation to pay the Scheme Consideration in accordance with its obligations under this agreement, the Scheme and the Deed Poll;
 - (xvii) by 8.00am on the Second Court Date, BidCo 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 Bidco) sufficient cash amounts (whether from internal cash resources or external funding arrangements (including debt and equity financing) or a combination of both) to satisfy BidCo's obligation to pay the Scheme Consideration in accordance with its obligations under this agreement, the Scheme and the Deed Poll;

- (xviii) BidCo 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 BidCo's obligation to pay the Scheme Consideration in accordance with its obligations under this agreement, the Scheme and the Deed Poll.

9.2 BidCo's indemnity

BidCo agrees with Healthscope (on Healthscope's own behalf and separately as trustee or nominee for each of the other Healthscope Indemnified Parties) to indemnify and keep indemnified the Healthscope Indemnified 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 Healthscope Indemnified Parties may suffer or incur by reason of any breach of any of the representations and warranties in clauses 9.1(a) or 9.1(b).

9.3 Healthscope representations

- (a) Healthscope represents and warrants to Bidco (on its own behalf and separately as trustee for each of the Consortium Indemnified Parties) each of the matters set out in clause 9.3(b) as at the date of this agreement and on each subsequent day until 8.00am 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) Healthscope represents and warrants that:
 - (i) Healthscope is a validly existing corporation registered under the laws of its place of incorporation;
 - (ii) the execution and delivery of this agreement by Healthscope has been properly authorised by all necessary corporate action and Healthscope 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 Healthscope and the execution of this agreement of itself does not result in a breach of or default under any agreement or deed or any writ, order or injunction, rule or regulation to which Healthscope or any of its Subsidiaries is a party or to which they are bound;
 - (iv) the Healthscope Information contained in the Explanatory Booklet:
 - (A) will be prepared and included in the Explanatory Booklet in good faith; and
 - (B) 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 despatched to Healthscope Shareholders, the Explanatory Booklet registered by ASIC under section 412(6) of the Corporations Act (excluding the Consortium 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, Healthscope 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 Bidco on or before the date of this agreement);

(vii) as at the date of this agreement, the total issued capital of Healthscope is:

(A) 317,335,186 Shares;

(B) 100,001 Options; and

(C) 1,399,419 Performance Rights,

and there are no other Healthscope options, performance rights, shares, convertible notes or other securities (or offers or agreements to issue any of the foregoing); and

(viii) between 16 July 2010 and the date of this agreement Healthscope has not taken any action, or failed to take any action which if it had taken, or failed to take (as applicable) after the date of this agreement it would have been a breach of clause 7 of this agreement (subject to any matter permitted under clause 7.2) or constituted a Healthscope Prescribed Occurrence.

9.4 Healthscope's indemnity

Healthscope agrees with Bidco (on Bidco's own behalf and separately as trustee for each of the Consortium Indemnified Parties) to indemnify and keep indemnified the Consortium Indemnified 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 Consortium Indemnified Parties may suffer or incur by reason of any breach of any of the representations and warranties in clauses 9.3(a) or 9.3(b).

9.5 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 9.

9.6 Survival of representations

Each representation and warranty in clauses 9.1 and 9.3:

(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.

9.7 Survival of indemnities

Each indemnity in this agreement (including those in clauses 9.2, and 9.4) 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.

9.8 Liability of directors and Authorised Persons

- (a) Each party releases its rights against, and will not make any claim against, any past or present director or Authorised Person of any other party in relation to information provided to it or in relation to its execution or delivery this agreement to the extent that the past or present director or Authorised Person has acted in good faith.
- (b) Each party holds the releases in clause 9.8(a) in respect of its directors and Authorised Persons as trustee for its directors and Authorised Persons.

10. Confidentiality and Public Announcement

10.1 Confidentiality

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

10.2 Public Announcements on execution

Immediately after the execution of this agreement, the parties must issue public announcements in a form previously agreed to in writing between them.

10.3 Further public announcements

Any further public announcements by Healthscope, the Consortium or BidCo in relation to, or in connection with, the Proposed Transaction or any other transaction the subject of this agreement or the Scheme may only be made in a form approved by each party in writing (acting reasonably) subject to where a party is required by law or the Listing Rules to make any announcement or to make any disclosure in relation to, or in connection with, the Proposed Transaction or any other transaction the subject of this agreement or the Scheme.

11. Termination

11.1 Termination by notice

- (a) BidCo or Healthscope 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 (including a material breach of a representation or warranty and in the case of BidCo includes:
 - (A) any failure by it to pay an amount when due (including an amount of damages or amounts due under an indemnity); or
 - (B) any breach of clause 13.2(a)),and the other party has failed to remedy that breach within five Business Days (or 8.00am 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 Healthscope to convene the Scheme Meeting, provided that both Healthscope and BidCo 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) Healthscope may, by notice in writing to the Consortium, terminate this agreement at any time prior to 8.00am on the Second Court Date if at any time before then:
- (i) each of that number of Healthscope Directors as constitutes a majority of the Healthscope Board publicly recommend a Superior Proposal and do not, within three Business Days, reinstate their recommendation of the Proposed Transaction; or
- (ii) BidCo materially breaches a representation or warranty contained in clause 9.1(b) (for this purpose any breach of clauses 9.1(b)(x) to 9.1(b)(xviii) (inclusive) is deemed to be a material breach) and BidCo fails to remedy that breach within five Business Days of receipt by it of a notice in writing from Healthscope setting out details of the relevant circumstance and requesting BidCo to remedy the breach or the breach cannot be remedied by subsequent action on the part of BidCo before 8.00am on the Second Court Date.
- (c) BidCo may, by notice in writing to Healthscope, terminate this agreement at any time prior to 8.00am on the Second Court Date if at any time before then any director of Healthscope withdraws or adversely modifies their recommendation of the Proposed Transaction or recommends or supports a Competing Proposal.

11.2 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.

11.3 Effect of termination

- (a) In the event of termination of this agreement under clause 3.7, 11.1 or 11.2, this agreement will become void and have no effect, except that the provisions of clauses 9.6, 9.7, 10, 12, 13 and 17.3 to 17.18 (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.

12. Healthscope Break Fee

12.1 Background

- (a) Healthscope and Bidco acknowledge that, if they enter into this agreement and the Scheme is subsequently not implemented, Bidco will incur significant costs including those described in clause 12.2.
- (b) In the circumstances referred to in clause 12.1(a), Bidco has requested that provision be made for the payments outlined in clause 12.3, without which Bidco would not have entered into this agreement.
- (c) The Healthscope Board believes that the Scheme will provide benefit to Healthscope and Healthscope Shareholders and that it is appropriate for Healthscope to agree to the

payments referred to in this clause 12 in order to secure Bidco's participation in the Proposed Transaction.

12.2 Costs incurred by Bidco

- (a) The fee payable under clause 12.3 has been calculated to reimburse Bidco 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;
 - (v) costs associated with the financing arrangements in respect of the Proposed Transaction; and
 - (vi) any damage to the Consortium Members' reputation associated with a failed transaction and the implications of those damages if the Consortium Members seek to execute alternative acquisitions in the future,
- in each case, incurred by Bidco 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 12.2 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 12.3 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).

12.3 Payment by Healthscope to BidCo

- (a) Healthscope agrees to pay to BidCo \$19.9 million (exclusive of GST) (**Healthscope Break Fee**) if:
- (i) a Superior Proposal is publicly announced during the period commencing on the date of this agreement and ending on:
 - (A) if this agreement is terminated by Healthscope other than in circumstances where it is entitled to the Bidco Break Fee, the End Date; or
 - (B) if this agreement is terminated by Bidco, the earlier of the End Date and the date of termination of this agreement by Bidco; and
 - (ii) within six months from the date of the public announcement of the Superior Proposal under clause 12.3(a)(i):
 - (A) the proponent of that Superior Proposal acquires a relevant interest in at least 50% of Healthscope Shares; and
 - (B) that Superior Proposal is (or becomes) free from any defeating conditions.

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- (b) Healthscope must pay BidCo the Healthscope Break Fee within five Business Days of receipt by Healthscope of a demand for payment from BidCo made after the occurrence of the event referred to in clause 12.3(a).
 - (c) For the avoidance of doubt, the Healthscope 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.
 - (d) The Healthscope Break Fee is only payable once and the maximum amount payable by Healthscope under this clause 12.3 is \$19.9 million (exclusive of GST).
 - (e) For the avoidance of doubt, the Healthscope Break Fee is not payable where Healthscope has become entitled to the Bidco Break Fee.

12.4 Compliance with law

If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a Court that all or any part of the Healthscope Break Fee (**Healthscope Impugned Amount**):

- (a) is unlawful;
- (b) involves a breach of directors' duties; or
- (c) constitutes unacceptable circumstances or breaches an order of the Takeovers Panel, then:
 - (d) the requirement to pay the Healthscope Break Fee does not apply to the extent of the Healthscope Impugned Amount; and
 - (e) if BidCo has received the Healthscope Impugned Amount, it must refund it within five Business Days of the final determination being made.

Healthscope must not seek any such determination and must use all reasonable endeavours to ensure that no such determination is made.

13. BidCo Break Fee

13.1 Bidco Break Fee

- (a) BidCo agrees to pay to Healthscope US\$30 million (exclusive of GST) (**BidCo Break Fee**) if:
 - (i) Healthscope terminates this agreement in accordance with clause 11.1(a)(i) or clause 11.1(b)(ii); or
 - (ii) BidCo does not pay the Scheme Consideration in accordance with the terms and conditions of this agreement and the Deed Poll.
- (b) BidCo must pay Healthscope the BidCo Break Fee within five Business Days of receipt by BidCo of a demand for payment from Healthscope made after the occurrence of the event referred to in clause 13.1(a).
- (c) The maximum aggregate amount which BidCo is required to pay in relation to a breach of this agreement by BidCo is the BidCo Break Fee, and in no event will the aggregate liability of Bidco under or in connection with a breach of this agreement exceed the BidCo Break Fee.

- (d) The BidCo Break Fee is only payable once and the maximum amount payable by BidCo under clause 13.1(a) is US\$30 million (exclusive of GST).

13.2 Letters of credit

- (a) Within 10 Business Days after the date of this agreement, BidCo must deliver to Healthscope standby letters of credit issued by one or both of Bank of America and Wells Fargo in an amount in aggregate equal to the BidCo Break Fee on the terms provided to Healthscope prior to the date of this agreement, except that:
- (i) any reference to the beneficiary having to provide five days written notice of intent to draw on the letters of credit will be deleted; and
 - (ii) the expiry date of the letters of credit will be no earlier than one month after the End Date,

(Letters of Credit).

- (b) Healthscope acknowledges and agrees that it is only entitled to draw down under a Letter of Credit if:
- (i) all of the conditions precedent in clause 3.1 of this agreement have been satisfied or waived in accordance with this agreement and the Scheme becomes Effective in accordance with clause 4.1 of the Scheme; and
 - (ii) BidCo fails to pay the Scheme Consideration in accordance with clause 4.2 of the Deed Poll,

and if it does so draw down, such draw down satisfies BidCo's obligation to pay the Bidco Break Fee under this agreement (and for the avoidance of doubt the guarantee and indemnity in clause 5 of this agreement cannot also be enforced).

- (c) If:
- (i) this agreement is terminated (other than as a result of the failure by Bidco to pay the Scheme Consideration in accordance with clause 4.2 of the Deed Poll); or
 - (ii) Bidco satisfies its obligations under clause 4.2 of the Deed Poll,
- Healthscope must immediately return any Letters of Credit and any Replacement Letters of Credit (undrawn) to Bidco.
- (d) If Healthscope draws down any sum under the Letters of Credit in circumstances where it is not entitled to do so under clause 13.2(b) Healthscope must pay to Bidco the amount drawn down.

14. Exclusivity

14.1 No shop

During the Exclusivity Period, Healthscope must not, and must ensure that its Authorised Persons do not, except with the prior written consent of the Consortium, solicit, invite or encourage any Competing Proposal or initiate discussions with any third party with a view to obtaining any expressions of interest, offer or proposal from any person in relation to a Competing Proposal.

14.2 No Talk and no due diligence

Subject to clause 14.3, during the Exclusivity Period, Healthscope must not and must ensure that its Authorised Persons do not, except with the prior written consent of the Consortium:

- (a) participate in any negotiations in relation to a Competing Proposal or which may reasonably be expected to lead to a Competing Proposal;
- (b) enter into any relevant agreement in connection with a Competing Proposal; or
- (c) provide any information to a third party for the purposes of enabling that party to make a Competing Proposal.

14.3 Exceptions

Clause 14.2 does not apply if the Healthscope Board, acting in good faith, determines:

- (a) where there is a written Competing Proposal, that the Competing Proposal is a Superior Proposal or the steps which the Healthscope Board proposes to take may reasonably be expected to lead to a Competing Proposal which is a Superior Proposal; and
- (b) after receiving written legal advice from Healthscope's external legal advisers, that failing to respond to the Competing Proposal may constitute a breach of its fiduciary or statutory duties.

14.4 Healthscope warranty and undertakings

- (a) Healthscope warrants as at the date of this agreement:
 - (i) that it has, and its Authorised Persons have, ceased any existing discussions or negotiations with any party which may reasonably be expected to lead to a Competing Proposal; and
 - (ii) that it has requested the return of Healthscope's confidential information in accordance with the terms of any relevant confidentiality agreement from all third parties conducting due diligence investigations on the Healthscope Group prior to the date of this agreement.
- (b) During the Exclusivity Period, without limiting clause 14.3, Healthscope must not provide any non-public information to a person in connection with or to directly or indirectly encourage a Competing Proposal unless:
 - (i) that person has entered into an Acceptable Confidentiality Agreement; and
 - (ii) any non-public information provided to that person is also provided to Bidco (unless the information has already been provided to Bidco, the Consortium or an Authorised Person).
- (c) During the Exclusivity Period, Healthscope must:
 - (i) diligently enforce all its rights under each confidentiality agreement entered into in connection with a Competing Proposal (before the date of this agreement), including its rights to require the return of confidential information as referred to in clause 14.4(a)(ii), and keep Bidco fully informed of its progress in doing so;
 - (ii) as soon as reasonably practicable, ensure that the electronic data room access granted to any third party prior to the date of this agreement in connection with a Competing Proposal is withdrawn; and
 - (iii) not grant any waivers or agree to any amendments under any confidentiality agreements entered into in connection with a Competing Proposal (before the date of this agreement)

14.5 Notice of Competing Proposal

- (a) During the Exclusivity Period, Healthscope must:

- (i) promptly notify the Consortium if it or any of its Authorised Persons receive any Competing Proposal or written proposal which may reasonably be expected to lead to a Competing Proposal (including any variation of a Competing Proposal made prior to the date of this deed);
 - (ii) as soon as reasonably practicable provide written notice of the identity of the party or parties involved in the written proposal and the material terms of the proposal; and
 - (iii) provide the Consortium with regular updates on the status of any such written proposal,

(each a **Competing Proposal Notice**).
- (b) If Healthscope gives BidCo a Competing Proposal Notice, Healthscope agrees that it will not, until the expiration of three Business Days following the receipt of the Competing Proposal Notice by BidCo:
 - (i) enter into any legally binding agreement with respect to the Competing Proposal; or
 - (ii) publicly recommend the Competing Proposal.
- (c) If Healthscope gives BidCo a Competing Proposal Notice, BidCo agrees that the notice will be Confidential Information of Healthscope (as defined in the Confidentiality Agreement).
- (d) If Healthscope gives a Competing Proposal Notice, BidCo will have the right, but not the obligation, at any time until the expiration of three Business Days following receipt of the notice to:
 - (i) offer to amend the terms of the Scheme; or
 - (ii) to propose any other transaction,

which must be submitted to Healthscope in writing (each a **BidCo Counterproposal**), and if BidCo does so, the Healthscope Board must review the BidCo Counterproposal in good faith and in what the Healthscope Board considers is required to comply with its fiduciary and statutory duties, to determine whether the BidCo Counterproposal is more favourable to Healthscope Shareholders than the Competing Proposal.
- (e) If the Healthscope Board determines, in good faith and in order to satisfy what the Healthscope Board considers to be its fiduciary and statutory duties, that the BidCo Counterproposal is more favourable to Healthscope Shareholders than the Competing Proposal, then:
 - (i) if the BidCo Counterproposal contemplates an amendment to the Scheme, the parties must enter into a deed amending this agreement in relation to the Scheme and reflecting the BidCo Counterproposal;
 - (ii) if the BidCo Counterproposal contemplates any other transaction, Healthscope must make an announcement as soon as reasonably practicable recommending the BidCo Counterproposal, in the absence of a more favourable proposal, and the parties must pursue implementation of the BidCo Counterproposal in good faith; and
 - (iii) Healthscope must not take any of the steps referred to in clause 14.5(b).

15. Private treaty arrangements

15.1 Options

Simultaneous with the signing of this agreement, Healthscope will execute the Option Cancellation Deed, both on its own behalf and for the Optionholder under power of attorney, having the effect of cancelling all Options subject to the Scheme becoming Effective.

15.2 Performance Rights

- (a) Within one Business Day of any such date on which the Court makes an order under section 411(1) of the Corporations Act directing Healthscope to convene the Scheme Meeting, the Healthscope Board must give a written notice to each Performance Rights Holder pursuant to Rule 15 of the Performance Rights Plan Rules stating that:
- (i) the Performance Rights Holder may exercise his or her Performance Rights, subject to Healthscope Shareholders approving the Scheme at the Scheme Meeting, between the date of the Scheme Meeting and the Second Court Date; and
 - (ii) subject to the Performance Rights Holder exercising his or her rights in accordance with clause 15.2(a)(i), Healthscope agrees to issue to each Performance Rights Holder such number of Shares prior to the Record Date to which the Performance Rights Holder is entitled under the terms of the Performance Rights Plan Rules.
- (b) Without limiting clause 15.2(a), Healthscope must take all necessary steps in accordance with the Performance Rights Plan Rules to permit each Performance Rights Holder to exercise his or her Performance Rights prior to the Record Date.
- (c) Healthscope agrees that if any Performance Rights Holder exercises his or her Performance Rights after the Second Court Date, Healthscope will not after the Record Date issue or transfer any Shares to such Performance Rights Holder and will in lieu of such issue or transfer, satisfy the Performance Rights by paying the appropriate amount to the Performance Rights Holder in cash in accordance with Rule 9.3(a) of the Performance Rights Rules.

15.3 Rollover Performance Rights

At any time prior to the Second Court Date, a Performance Rights Holder and BidCo may agree that some or all of the Performance Rights held by a Performance Rights Holder will be Rollover Performance Rights in which event the Performance Rights Holder, Healthscope and BidCo, as applicable, will enter into appropriate agreements and any other necessary documents and take all necessary actions to effect the cancellation or transfer of the Rollover Performance Rights on the Implementation Date in exchange for the issue to the Performance Rights Holder of equity securities in BidCo, a Related Body Corporate of BidCo or a Consortium Member.

16. Notices

Any communication under or in connection with this agreement:

- (a) must be in writing;
- (b) must be addressed as shown below:

Healthscope Limited

Address: Level 1, 312 St. Kilda Road, Melbourne VIC 3004

Facsimile: + 61 3 9926 7533
For the attention of: General Counsel

Bidco

Address: c/- Freehills, Level 43, 101 Collins Street, Melbourne VIC 3000
Facsimile: +61 3 9288 1567
For the attention of: Baden Furphy/Stefanie Allen

(or as otherwise notified by that party to the other party from time to time);

- (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 fax to the number, of the addressee, in accordance with clause 15(b); and
- (e) will be deemed to be received by the addressee:
 - (i) **(in the case of prepaid post)** 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) **(in the case of fax)** at the local time (in the place of receipt of that fax) which then equates to the time at which that fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety, unless that local time is not a Business Day, or is after 5.00 pm on a Business Day, when that communication will be deemed to be received at 9.00 am on the next Business Day; and
 - (iii) **(in the case of delivery by hand)** on delivery at the address of the addressee as provided in clause 15(b), unless that delivery is not made on a Business Day, or after 5.00 pm on a Business Day, when that communication will be deemed to be received at 9.00 am on the next Business Day.

17. General

17.1 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.

17.2 Timetable

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

17.3 Payments

Unless otherwise expressly provided in this agreement, where an amount is required to be paid to a party (the **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.

17.4 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 17.4(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.

17.5 Consents or approvals

A party may:

- (a) give conditionally or unconditionally; or
- (b) withhold,

its approval or consent in its absolute discretion unless this agreement expressly provides otherwise.

17.6 GST

- (a) Any reference in this clause 17.6 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 17.6(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 17.6(c) does not apply to any taxable supply under or in connection with this agreement that is expressly stated to include GST.
- (d) The amount on account of GST payable in accordance with this clause 17.6 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.
- (e) 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.

17.7 Stamp duty

BidCo 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 pursuant to the Scheme).

17.8 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.

17.9 Amendments

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

17.10 Assignment

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.

17.11 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.

17.12 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.

17.13 Release of officers and directors

- (a) Subject to the Corporations Act, none of the past, present or future officers and directors of Healthscope will be liable for anything done or purported to be done in connection with the Scheme or any transaction contemplated by this agreement in good faith, but nothing in this clause excludes any liability that may arise from wilful misconduct or bad faith on the part of such a person. Healthscope receives and holds the benefit of this release, as agent for its directors and officers.
- (b) Subject to the Corporations Act, none of the past, present or future officers and directors of BidCo or a Consortium Member will be liable for anything done or purported to be done in connection with the Scheme or any transaction contemplated by this agreement in good faith, but nothing in this clause excludes any liability that may arise from wilful misconduct or bad faith on the part of such a person. BidCo and each Consortium Member receives and holds the benefit of this release, as agent for its directors and officers.

17.14 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 15, 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.

17.15 Entire agreement

- (a) This agreement and the Equity Commitment Letters:
 - (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 17.15(a), the Confidentiality Agreement continues to apply to the parties in accordance with its terms, except to the extent of any express inconsistency, in which case this agreement prevails.

17.16 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 expressly set out in this agreement, the Equity Commitment Letters or the Debt Commitment Letters.
- (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 expressly set out in this agreement, the Equity Commitment Letters or the Debt Commitment Letters.

17.17 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.

17.18 Governing law

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

Schedule 1 – Indicative Timetable

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Schedule 2 – Deed Poll

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Schedule 3 – Scheme

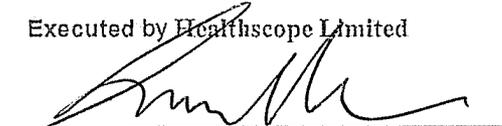
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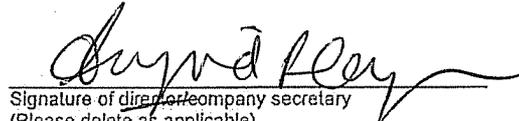
Signing page

EXECUTED as an agreement.

Executed by Healthscope Limited


Signature of director

LINDA BARDO NITALLIS
Name of director (print)

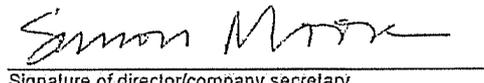

Signature of director/company secretary
(Please delete as applicable)

INGRID PLAYER
Name of director/company secretary (print)

Executed by Asia Pacific Healthcare Group Pty Ltd


Signature of director

David C. Reintjes
Name of director (print)

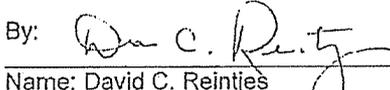

Signature of director/company secretary
(Please delete as applicable)

SIMON MOORE
Name of director/company secretary (print)

Executed by TPG Asia V, L.P.

By: TPG Asia GenPar V, L.P., its general partner

By: TPG Asia GenPar V Advisors, Inc., its general partner

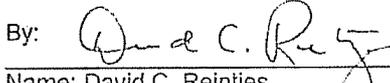
By: 
Name: David C. Reintjes

Title: CCO

Executed by TPG Partners VI, L.P.

By: TPG GenPar VI, L.P., its general partner

By: TPG GenPar VI Advisors, LLC, its general partner

By: 
Name: David C. Reintjes

Title: CCO

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Executed by Carlyle Asia Partners III, L.P.
By: CAP III General Partner, L.P., its general partner

By: CAP III Ltd., its general partner

By: Wayne Bannon

Name: WAYNE J.W. BANNON

Title: AUTHORIZED SIGNATORY / ATTORNEY



