

In the High Court of New Zealand
Auckland Registry
I Te Kōti Matua o Aotearoa
Tāmaki Makaurau Rohe

CIV-2020-404-1915

Under Part 19 of the High Court Rules

In the matter of a scheme of arrangement under Part 15 of the Companies Act 1993

And in the matter of:

Abano Healthcare Group Limited, a duly incorporated company, having its registered office at Level 11, AMP Centre, 29 Customs Street West, Auckland, 1010, New Zealand

Applicant

Final orders under section 236 of the Companies Act 1993 relating to an originating application for orders approving an arrangement under Part 15 of the Companies Act 1993

9 December 2020



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BEFORE THE HONOURABLE JUSTICE FITZGERALD

To: Abano Healthcare Group Limited; all Scheme Shareholders in terms of the Scheme Plan; Adams NZ Bidco Limited; and the Takeovers Panel

The originating application dated 14 October 2020 by Abano Healthcare Group Limited (“**Abano**”) for orders approving a scheme of arrangement under Part 15 of the Companies Act 1993, and as amended by the interlocutory application without notice dated 11 November 2020 by Abano for orders varying the initial orders dated 19 October 2020, was determined by the Honourable Justice Fitzgerald on 9 December 2020. The determination was made following a hearing held on 9 December 2020 at which D J Cooper and N W Starrenburg appeared as counsel for the applicant.

The following orders were made:

1. The scheme of arrangement described in the Scheme Plan annexed to this order (the “**Scheme**”) is approved and binding upon:
 - (a) Abano Healthcare Group Limited;
 - (b) Adams NZ Bidco Limited; and
 - (c) Every person who is a Scheme Shareholder in terms of the Scheme Plan.
2. Abano is granted leave to apply to the Court for approval of any amendment, modification or supplement to the Scheme.

Dated :9 December 2020



Registrar/Deputy Registrar

**I GAMAGE
DEPUTY REGISTRAR**



SCHEME PLAN

**SCHEME OF ARRANGEMENT RELATING TO ABANO
HEALTHCARE GROUP LIMITED**

Parties

ABANO HEALTHCARE GROUP LIMITED (“Abano”)

ADAMS NZ BIDCO LIMITED (“Bidco”)

SCHEME SHAREHOLDERS (as defined below)

Agreed Terms

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions: In this Scheme Plan:

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

“**Companies Act**” means the Companies Act 1993.

“**Conditions**” means:

- (a) the conditions set out in clause 3.1 of the Scheme Implementation Agreement; and
- (b) such other conditions made or required by the Court under section 236(1) of the Companies Act and approved in writing by Abano and Bidco.

“**Court**” means the High Court of New Zealand, Auckland Registry.

“**Deed Poll**” means the deed poll entered into by Bidco in favour of the Scheme Shareholders dated 31 August 2020.

“**Dispute Resolution Process**” has the meaning given to it in the Scheme Implementation Agreement.

“**Dispute Resolution Representatives**” means the individual or individuals appointed from time to time as the “Dispute Resolution Representatives” under the deed relating to post-implementation consideration adjustment disputes between, among others, Abano and Bidco dated 26 November 2020.

“**End Date**” means, subject to extension under clause 3.9(b) of the Scheme Implementation Agreement, 11 February 2021 or such other date as Bidco and Abano agree in writing.

“**Encumbrance**” means:

- (a) a mortgage, charge, lien, encumbrance, pledge, security interest (including any ‘security interest’ within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999); and
- (b) any other adverse interest or interest of a third party of any kind, whether legal or otherwise.

“Escrow Account” means a New Zealand dollar denominated trust account operated by the Registrar for the purposes of receiving any Disputed Consideration Adjustment Event Amounts and any Late Breaking Potential Adjustment Event Amounts.

“Escrow Funds” means all of the funds held in the Escrow Account from time to time.

“Escrow Agreement” means the escrow agreement dated 26 November 2020 between Bidco, Abano and the Registrar.

“Excluded Shares” means any Shares nominated in writing by Bidco to Abano not less than two Business Days prior to the Scheme Record Date which are held or controlled by Bidco or any of its associates (as that term is defined in the Takeovers Code) at the Scheme Record Date.

“Final Orders” means orders of the Court on application of Abano that the Scheme be binding on Abano, Bidco, Scheme Shareholders and/or such other person or class of persons as the Court may specify, subject to the conditions in clause 2, in accordance with section 236(1) (and section 237, if applicable) of the Companies Act.

“Final Orders Date” means the date on which the Final Orders are granted by the Court.

“Final Payment Date” means the date that is five Business Days after the position in respect of the last of the Disputed Consideration Adjustment Events and the Late Breaking Potential Adjustment Events has been agreed between Bidco and Abano in writing or determined under the Dispute Resolution Process.

“Government Authority” means any foreign or New Zealand government or governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity, or any minister of any government.

“Implementation Date” means:

- (a) the date on which the Scheme is to be implemented, being (at the election of Bidco) any date during the period beginning on the date that is three Business Days after the Scheme Record Date and ending on (and including) the date that is seven Business Days after the Scheme Record Date, provided that such election is made by Bidco before 11.59 pm on the Final Orders Date; or
- (a) such other date as Bidco and Abano agree in writing.

“Listing Rules” means the main board listing rules of NZX.

“NZX” means NZX Limited or the main board financial market that it operates, as the context requires.

“Register” means the register of Shares maintained by the Registrar on behalf of Abano.

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

“Registrar” means Computershare Investor Services Limited.

“**Scheme**” means this scheme of arrangement, subject to any alterations or conditions made or required by the Court under section 236(1) of the Companies Act and approved by Bidco and Abano in writing.

“**Scheme Booklet**” means the notice of meeting and scheme booklet dated 20 October 2020, prepared by Abano in relation to the Scheme.

“**Scheme Consideration**” means, in respect of each Share held by a Scheme Shareholder, the amount determined in accordance with clause 1 of the Schedule to this Scheme Plan, reduced (except for the purposes of clauses 1.6, 6.2(a)(iii), 6.2(c)(ii), 6.12(a)(ii), 6.14(b), 6.14(c), 6.14(d), 12.2(a)(v) and 13.4 of the Scheme Implementation Agreement) by the per Share value (including, for clarity, any withholding tax deducted from the dividend) of any dividend the record date for which falls between the date of the Scheme Implementation Agreement and the Implementation Date.

“**Scheme Implementation Agreement**” means the scheme implementation agreement dated 31 August 2020, as amended on 12 October 2020 and 11 November 2020, between Bidco and Abano.

“**Scheme Record Date**” means 5.00pm on:

- (a) the date which is four Business Days after the Final Orders Date; or
- (b) such other date agreed between Bidco and Abano in writing.

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

“**Scheme Shares**” means all of the Shares on issue at the Scheme Record Date other than Excluded Shares.

“**Share**” means a fully paid ordinary share in the capital of Abano.

“**Shareholder**” means a person who is registered in the Register as the holder of one or more Shares from time to time.

“**Special Meeting**” means the special meeting of Shareholders ordered by the Court to be convened pursuant to section 236A(2) of the Companies Act in respect of the Scheme (and includes any adjournment of that meeting).

“**Takeovers Code**” means the takeovers code approved in the Takeovers Regulations 2000 (SR 2000/210) as amended, including by any applicable exemption granted by the Takeovers Panel under the Takeovers Act 1993.

“**Trust Account**” has the meaning set out in clause 3.1.

“**Trust Funds**” means all of the funds held in the Trust Account from time to time.

“**Unconditional**” means the satisfaction of each of the conditions set out in clause 2.

1.2 **Other defined terms:** Words defined in the Schedule to this Scheme Plan which are not separately defined in clause 1.1 have the same meaning when used elsewhere in this Scheme Plan.

1.3 **Interpretation:** In this Scheme Plan:

- (a) headings are for convenience only and do not affect the interpretation of this Scheme Plan;

- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Authority, as well as an individual;
- (e) a reference to a clause, is a reference to a clause of this Scheme Plan;
- (f) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them (whether passed by the same or another Government Authority with legal power to do so);
- (g) a reference to a document (including this Scheme Plan) includes all amendments or supplements to, or replacements or novations of, that document;
- (h) the word 'includes' in any form is not a word of limitation;
- (i) a reference to '\$', 'NZ\$' or 'dollar' is to New Zealand currency, unless denominated otherwise;
- (j) a reference to any time is, unless otherwise indicated, a reference to that time in Auckland, New Zealand;
- (k) a reference to a party to a document includes that party's successors and permitted assignees; and
- (l) no provision of this Scheme Plan will be construed adversely to a party because that party was responsible for the preparation of this Scheme Plan or that provision.

1.4 **Business Day:** Where the day on, or by which, any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day, unless otherwise indicated.

2. **CONDITIONS**

The implementation of the Scheme is conditional in all respects on:

- (a) all of the Conditions having been satisfied or waived in accordance with the terms of the Scheme Implementation Agreement by 8.00am on the Implementation Date;
- (b) neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with their respective terms before 8.00am on the Implementation Date; and
- (c) such other conditions made or required by the Court under section 236(1) and 237 of the Companies Act and agreed to in writing by Abano and Bidco having been satisfied or waived (to the extent capable of waiver) before 8.00am on the Implementation Date.

3. **PAYMENT OF SCHEME CONSIDERATION INTO TRUST ACCOUNT**

3.1 **Obligation to pay Scheme Consideration into Trust Account:** Subject to the Scheme Implementation Agreement not having been terminated and the Scheme having become Unconditional (save for the Conditions set out in clauses 3.1(c) and 3.1(d) of the Scheme Implementation Agreement), Bidco must deposit (or procure the deposit of) an amount calculated as follows:

- (a) the number of Scheme Shares; multiplied by
- (b) the amount calculated as follows:
 - (i) NZ\$5.20; less
 - (ii) the aggregate of any Finalised Consideration Adjustment Event Amounts as at 1.00pm on the Business Day immediately prior to the Implementation Date,

in immediately available cleared funds in a New Zealand dollar denominated trust account operated by the Registrar and notified to Bidco at least 10 Business Days prior to the Implementation Date (“**Trust Account**”), by no later than 4.00pm on the Business Day before the Implementation Date.

4. IMPLEMENTATION OF THE SCHEME

4.1 **Implementation Date obligations:** Subject to the conditions set out in clause 2 being satisfied and the amount of the Scheme Consideration payable to Scheme Shareholders under clause 2.1(a) of the Schedule to this Scheme Plan having been deposited in accordance with clause 3.1, commencing at 1:00pm on the Implementation Date and in the following order:

- (a) without any further act or formality all the Scheme Shares, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred to Bidco, and Abano must enter, or procure the entry of, the name of Bidco in the Register in respect of all of the Scheme Shares; and then
- (b) subject to compliance in full with clause 4.1(a), Bidco is deemed to have authorised and instructed the Registrar to pay from the Trust Account the amount of the Scheme Consideration payable under clause 2.1(a) of the Schedule to this Scheme Plan to each Scheme Shareholder, multiplied by the number of Scheme Shares held by such Scheme Shareholder as set out in the Register on the Scheme Record Date in accordance with clause 7.

4.2 **Payment of Escrow Funds to Scheme Shareholders:** If there is a Disputed Consideration Adjustment Event or a Late Breaking Potential Adjustment Event and an amount becomes payable to Scheme Shareholders under clause 3.4(b) of the Schedule to this Scheme Plan, then Bidco and Abano must jointly instruct, or (if applicable) procure that the relevant expert or arbitrator instructs, the Registrar to pay from the Escrow Account on the Final Payment Date the amount of the Scheme Consideration payable under clause 3.4(b) of the Schedule to this Scheme Plan to each Scheme Shareholder, multiplied by the number of Shares held by such Scheme Shareholder as set out in the Register on the Scheme Record Date in accordance with clause 7.

5. THE ESCROW ACCOUNT

5.1 **Transfer of funds from Trust Account to Escrow Account:** If there is a Disputed Consideration Adjustment Event or a Late Breaking Potential Adjustment Event, then Bidco will instruct the Registrar to transfer the relevant amount or amounts from the Trust Account to the Escrow Account in accordance with clause 3.1 of the Schedule to this Scheme Plan (subject to clause 3.2 of the Schedule to this Scheme Plan).

5.2 **Payment of Escrow Funds to Bidco:** If there is a Disputed Consideration Adjustment Event or a Late Breaking Potential Adjustment Event and an amount becomes payable to Bidco under clause 3.4(a) of the Schedule to this Scheme Plan, then Bidco and Abano must jointly instruct, or (if

applicable) procure that the relevant expert or arbitrator instructs, the Registrar to pay that amount from the Escrow Account to Bidco on or before the Final Payment Date.

6. TRUST FUNDS AND ESCROW FUNDS

6.1 Registrar must hold funds on trust prior to implementation: The Registrar will hold:

- (a) the Trust Funds on trust for Bidco in accordance with the Escrow Agreement, until such funds are:
 - (i) paid to Scheme Shareholders in accordance with clause 4.1(b);
 - (ii) transferred into the Escrow Account in accordance with clause 5.1; or
 - (iii) returned to Bidco in accordance with clauses 6.2, 6.3(a) or clause 6.4(a);
- (b) the Escrow Funds on trust for Bidco in accordance with the Escrow Agreement, until such funds are:
 - (i) paid to Scheme Shareholders in accordance with clause 4.2; or
 - (ii) returned to Bidco in accordance with clauses 5.2, 6.2, 6.3(b) or 6.4(b).

6.2 Interest: Any interest on the Trust Funds or the Escrow Funds is payable to Bidco in accordance with Bidco's written instructions to the Registrar.

6.3 Surplus: To the extent that, following satisfaction of the obligations under:

- (a) clause 4.1(b), there is a surplus in the Trust Account, the Registrar must pay that surplus (less any amount retained under clause 7.4(b) and, for the avoidance of doubt, after transferring any relevant amounts from the Trust Account to the Escrow Account in accordance with clause 5.1) to Bidco in accordance with Bidco's written instructions to the Registrar; and
- (b) clauses 4.2 and 5.2, there is a surplus in the Escrow Account, the Registrar must pay that surplus (less any amount retained under clause 7.4(b)) to Bidco in accordance with Bidco's written instructions to the Registrar.

6.4 Not Unconditional: If the Scheme is not implemented for any reason by 5.00pm on the Implementation Date, the Registrar must repay to Bidco as soon as possible (and by no later than the Business Day after the scheduled Implementation Date):

- (a) all of the funds in the Trust Account (including as a result of any accrued interest, less any withholding required by law); and
- (b) all of the funds in the Escrow Account (including as a result of any accrued interest, less any withholding required by law),

in accordance with Bidco's written instructions to the Registrar.

7. PAYMENT OF THE SCHEME CONSIDERATION

7.1 Method of payment: The payment under clauses 4.1(b) and 4.2 will be satisfied by:

- (a) where a Scheme Shareholder has prior to the Scheme Record Date, made a valid election in accordance with the requirements of Abano and the Registrar to receive payments from Abano

by electronic funds, the Registrar must pay the relevant Scheme Consideration to the Scheme Shareholder by electronic transfer of the relevant amount to a bank account nominated by that Scheme Shareholder in accordance with the Scheme Shareholder's election (unless the Registrar in its absolute discretion elects to make payment in accordance with clause 7.1(b)); or

- (b) otherwise by the Registrar sending a cheque for the relevant amount to the Scheme Shareholder by prepaid post to the Scheme Shareholder's Registered Address, such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 7.2).

7.2 **Joint holders:** In the case of Scheme Shares held in joint names:

- (a) subject to clause 7.1, the Scheme Consideration is payable to the joint holders and any cheque required to be sent under this Scheme Plan will be made payable to the joint holders and sent to either, at the sole discretion of Abano, the holder whose name appears first in the Register as at the Scheme Record Date or to the joint holders; and
- (b) any other document required to be sent under this Scheme Plan, will be sent to either, at the sole discretion of Abano, the holder whose name appears first in the Register as at the Scheme Record Date or to the joint holders.

7.3 **Unclaimed monies:**

- (a) Bidco may cancel, and may instruct the Registrar to cancel, a cheque issued under clause 7.1(b) if the cheque:
 - (i) is returned to Abano or the Registrar; or
 - (ii) has not been presented for payment within twelve months after the Implementation Date.
- (b) During the period of twelve months after the Implementation Date, on request in writing from a Scheme Shareholder to Abano, the Registrar or Bidco, Bidco must reissue, or procure the reissue of, a cheque that was previously cancelled under clause 7.3(a).

7.4 **Orders of a court or Government Authority:** Notwithstanding any other provision of this Scheme Plan, if written notice is given to Abano on or prior to the Scheme Record Date of an order or direction made by a court of competent jurisdiction or a Government Authority that:

- (a) requires consideration to be provided to a third party in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder in accordance with clause 4.1(b) or clause 4.2, Abano will be entitled to procure, and Bidco will be deemed to have instructed the Registrar to ensure, that provision of that consideration is made in accordance with that order or direction; or
- (b) prevents the consideration from being provided to any particular Scheme Shareholder in accordance with clause 4.1(b) or clause 4.2, or the payment of such consideration is otherwise prohibited by applicable law, the payment (equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the relevant Scheme Consideration) will be retained in the Trust Account or, if applicable, the Escrow Account, until such time as provision of the consideration to the Scheme Shareholder in accordance with clause 4.1(b) or clause 4.2 (as the

case may be) is permitted by that order or direction or otherwise by law. Any amount so retained under this clause 7.4(b) may, at Bidco's absolute discretion, be transferred from the Trust Account or, if applicable, the Escrow Account and held by Abano or any of Abano's related companies, provided that Bidco procures that such company complies with the obligations under this clause to pay such consideration to any applicable Scheme Shareholders,

and such provision or retention (as the case may be) will constitute the full discharge of Bidco's and Abano's obligations under clause 4.1(b) or, if applicable, clause 4.2 with respect to the amount so provided or retained.

8. DEALING IN SHARES

8.1 Recognition of dealings: To establish the identity of the Scheme Shareholders for the purposes of the Scheme:

- (a) dealings in Shares will only be recognised if:
 - (i) in the case of dealings of the type to be effected through NZX's clearing and settlement system, the transferee is registered in the Register as the holder of the relevant Shares as at 5.00 pm on the Scheme Record Date; and
 - (ii) in all other cases, registrable transmission applications or transfers in respect of those dealings, or valid requests in respect of other alterations, are received on or before 5.00pm on the Scheme Record Date at the place where the Register is kept; and
- (b) Abano must not accept for registration, nor recognise for any purpose (except a transfer to Bidco pursuant to this Scheme Plan and any subsequent transfer by BidCo or its successors in title), any Share transfer or Share transmission application or other similar request received after 5.00 pm on the Scheme Record Date or received prior to such time but not in registrable or actionable forms.

8.2 Register:

- (a) Abano must register registrable transmission applications or transfers of the Scheme Shares in accordance with clause 8.1(a)(ii) on or before the Scheme Record Date provided that, for the avoidance of doubt, nothing in this clause 8.2(a) requires Abano to register a transfer that:
 - (i) relates to a transfer of Shares on which Abano has a lien; or
 - (ii) would result in a Shareholder holding a parcel of Shares that is less than a 'minimum holding' (for the purposes of this clause 8.2(a) 'minimum holding' has the meaning given in the Listing Rules).
- (b) A holder of Scheme Shares (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them, on or after the Scheme Record Date otherwise than pursuant to this Scheme Plan, and any attempt to do so will have no effect and Abano and Bidco are entitled to disregard any such disposal.
- (c) For the purpose of determining entitlements to the Scheme Consideration, Abano must maintain the Register in accordance with the provisions of this clause 8.2 until the Scheme Consideration has been paid in full to the Scheme Shareholders. The Register in this form will solely determine entitlements to the Scheme Consideration.

- (d) All statements of holding for Shares (other than statements of holding in favour of Bidco) will cease to have effect after 5.00pm on the Scheme Record Date as documents of title in respect of those shares and, as from that date, each entry current at that date on the Register (other than entries on the Register in respect of Bidco) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of Shares relating to that entry.
- (e) As soon as possible on the first Business Day after the Scheme Record Date and in any event by 5.00pm on that day, Abano must make available to Bidco in the form Bidco reasonably requires, details of the names, Registered Addresses and holdings of Abano Shares for each Scheme Shareholder as shown in the Register on the Scheme Record Date.

9. GENERAL PROVISIONS

9.1 **Amendments to Scheme Consideration:** Bidco may increase the Scheme Consideration by written notice at any time to Abano prior to the Scheme Meeting, provided that the Scheme Implementation Agreement has not been terminated in accordance with its terms prior to the receipt of such notice by Abano.

9.2 Title to and rights in Scheme Shares:

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme Plan to Bidco will, at the time of transfer of them to Bidco, vest in Bidco free from all Encumbrances and free from any restrictions on transfer of any kind.
- (b) Each Scheme Shareholder is taken to have warranted to Bidco on the Implementation Date that all their Scheme Shares (including any rights and entitlements attaching to those Shares) which are transferred under this Scheme Plan will, at the time of transfer, be fully paid and free from all Encumbrances and restrictions on transfer of any kind, and that the Scheme Shareholder has full power and capacity to transfer the Scheme Shareholder's Shares to Bidco together with any rights and entitlements attaching to those Shares.

9.3 **Authority given to Abano:** Each Scheme Shareholder, without the need for any further act:

- (a) on the Final Orders Date, irrevocably appoints Abano and each of its directors (jointly and each of them severally) as the Scheme Shareholder's attorney and agent for the purpose of enforcing the Deed Poll against Bidco (but without limiting each Scheme Shareholder's right to itself enforce the Deed Poll); and
- (b) on the Implementation Date, irrevocably appoints Abano and each Dispute Resolution Representative (jointly and each of them severally) as the Scheme Shareholder's attorney and agent for the purpose of executing any document or doing or taking any other act necessary, desirable or expedient to give effect to the Scheme and the transactions contemplated by it,

and Abano, for itself and on behalf of each of its directors, accepts each such appointment. Each such attorney and agent, may sub-delegate its functions, authorities or powers under this clause 9.3 to one or more of Abano's officers.

9.4 Binding effect of Scheme:

- (a) The Scheme binds:

- (i) Abano;
- (ii) Bidco; and
- (iii) all of the Scheme Shareholders (including those who did not attend the Scheme Meeting to vote on this Scheme, did not vote at the Scheme Meeting, or voted against this Scheme at the Scheme Meeting).

(b) In the event of any inconsistency, this Scheme Plan overrides the constitution of Abano.

9.5 **End Date:** If:

- (a) the Scheme has not become Unconditional on or before 5.00 pm on the End Date , or
- (b) the Scheme Implementation Agreement is terminated in accordance with its terms at any time, this Scheme Plan is immediately void and of no further force or effect (other than any provision of the Scheme or this Scheme Plan relating to the repayment to Bidco of any funds deposited in accordance with clause 3 or transferred to the Escrow Account under clause 5.1).

9.6 **No liability when acting in good faith:** Each Scheme Shareholder agrees that none of the directors, officers, employees or advisers of Abano, Bidco, or any Dispute Resolution Representative will be liable for anything done or omitted to be done in the performance of the Scheme in good faith.

9.7 **Governing law:** This Scheme Plan is governed by and must be construed in accordance with the laws of New Zealand.

Schedule

Consideration Adjustment

1. CONSIDERATION AMOUNT

1.1 **Unadjusted consideration:** Unless a Consideration Adjustment Event occurs or clause 6.18(b) of the Scheme Implementation Agreement applies, the Scheme Consideration will be NZ\$5.20 in respect of each Scheme Share held by a Scheme Shareholder.

1.2 **Consideration adjustment:** Subject to clause 1.3 of this Schedule and clause 6.18(b) of the Scheme Implementation Agreement, if a Consideration Adjustment Event occurs, the Scheme Consideration in respect of each Scheme Share held by a Scheme Shareholder will be calculated as follows:

- (a) NZ\$5.20; less
- (b) NZ\$0.30, if a NZ Pandemic Adjustment Event occurs; less
- (c) NZ\$0.20, if a Queensland Pandemic Adjustment Event occurs; less
- (d) NZ\$0.15, if a NSW Pandemic Adjustment Event occurs; less
- (e) NZ\$0.30, if a One-Off EBITDA MAC Adjustment Event occurs; less
- (f) NZ\$0.55, if a Recurring EBITDA MAC Adjustment Event occurs; less
- (g) NZ\$0.30, if an Asset MAC Adjustment Event occurs; less
- (h) NZ\$0.15, if a Regulatory Adjustment Event occurs.

For clarity, each Consideration Adjustment Event will apply independently of any other Consideration Adjustment Events, such that any one or more (or all) of the Consideration Adjustment Events may apply to adjust the Scheme Consideration (but subject to clause 1.3 of this Schedule and, in the case of a Material Adverse Change Adjustment Event only, the qualifications in the definition of “Material Adverse Change Adjustment Event” in clause 4 of this Schedule).

1.3 **Maximum adjustment:** Notwithstanding any other provision of this Agreement:

- (a) subject to clause 6.18(b) of the Scheme Implementation Agreement, the Scheme Consideration will not be reduced to less than NZ\$4.45 in respect of each Scheme Share held by a Scheme Shareholder; and
- (b) for the avoidance of doubt, the Scheme Consideration will not in any circumstances be increased to above NZ\$5.20 in respect of each Scheme Share held by a Scheme Shareholder.

2. PAYMENT OF CONSIDERATION

2.1 **Payment:** Bidco will pay, or procure the payment of, the Scheme Consideration as follows in accordance with the Scheme:

- (a) on the Implementation Date, Bidco will pay in respect of each Scheme Share held by a Scheme Shareholder the greater of:
 - (i) the amount calculated as follows:

- (A) NZ\$5.20; less
 - (B) the aggregate of any Finalised Consideration Adjustment Event Amounts as at 1.00pm on the Business Day immediately prior to the Implementation Date; less
 - (C) the aggregate of any Disputed Consideration Adjustment Event Amounts; less
 - (D) the aggregate of any Late Breaking Potential Adjustment Event Amounts; and
- (ii) NZ\$4.45; and
- (b) if one or more Disputed Consideration Adjustment Events or one or more Late Breaking Potential Adjustment Events occur, then, within two Business Days after the position in respect of the last of the Disputed Consideration Adjustment Events and the Late Breaking Potential Adjustment Events has been agreed between the parties in writing or determined by the Expert or the Arbitrator (as applicable) under the Dispute Resolution Process, Bidco will procure that the Registrar will pay (in accordance with the joint instructions from the parties, or instructions from the Arbitrator or Expert, under clause 3.4 of this Schedule) in respect of each Scheme Share held by a Scheme Shareholder:
- (i) if clause 2.1(a)(i) of this Schedule applies, the aggregate of any Disputed Consideration Adjustment Event Amounts and any Late Breaking Potential Adjustment Event Amounts relating to any Disputed Consideration Adjustment Event or any Late Breaking Potential Adjustment Event which the parties have agreed in writing, or it is determined under the Dispute Resolution Process, is not a Consideration Adjustment Event; or
 - (ii) if clause 2.1(a)(ii) of this Schedule applies, the amount calculated as follows:
 - (A) NZ\$0.75; less
 - (B) the aggregate of all of the Finalised Consideration Adjustment Event Amounts, provided that if this calculation results in a negative number, the amount under this clause 2.1(b)(ii) will be deemed to be zero and, for the avoidance of doubt, no payment will be required under this clause 2.1(b).

3. ESCROW FOR CONSIDERATION AMOUNTS

3.1 Payment into escrow: If there is a Disputed Consideration Adjustment Event or a Late Breaking Potential Adjustment Event, then Bidco will instruct the Registrar as follows (subject to clause 3.2 of this Schedule):

- (a) if there is one or more Disputed Consideration Adjustment Events, to transfer the amount calculated as follows:
 - (i) the aggregate of any Disputed Consideration Adjustment Event Amounts; multiplied by
 - (ii) the number of Scheme Shares,

from the Trust Account into the Consideration Adjustment Escrow Account as soon as practicable after 4.00pm on the Business Day immediately prior to the Implementation Date; and

- (b) if there is one or more Late Breaking Potential Adjustment Events, to transfer the amount calculated as follows:
 - (i) the aggregate of any Late Breaking Potential Adjustment Event Amounts; multiplied by
 - (ii) the number of Scheme Shares,from the Trust Account into the Consideration Adjustment Escrow Account as soon as practicable after:
 - (iii) Bidco has sent the Consideration Adjustment Notice to Abano in respect of the relevant Late Breaking Potential Adjustment Event; or,
 - (iv) in the case of a Potential Consideration Adjustment Notice in respect of the relevant Late Breaking Potential Adjustment Event, as soon as practicable after the later of:
 - (A) 4.00pm on the Business Day immediately prior to the Implementation Date; and
 - (B) Bidco has sent the Potential Consideration Adjustment Notice to Abano under clause 5.4(b) of the Scheme Implementation Agreement in respect of the relevant Late Breaking Potential Adjustment Event.

3.2 **Maximum escrow amount:** The maximum aggregate amount that may be transferred from the Trust Account into the Consideration Adjustment Escrow Account under clause 3.1 of this Schedule will be calculated as follows:

- (a) the number of Scheme Shares; multiplied by
- (b) the following amount:
 - (i) NZ\$0.75; less
 - (ii) the aggregate of any Finalised Consideration Adjustment Event Amounts as at 1.00pm on the Business Day immediately prior to the Implementation Date.

For the avoidance of doubt, if the calculation under the previous sentence in this clause 3.2 of this Schedule results in a negative number, then no amount will be transferred from the Trust Account into the Consideration Adjustment Escrow Account under clause 3.1 of this Schedule.

3.3 **Registrar to hold as escrow agent:** All amounts transferred by the Registrar from the Trust Account into the Consideration Adjustment Escrow Account under clause 3.1 of this Schedule will be held by the Registrar as escrow agent in accordance with the Escrow Agreement until paid out of the Consideration Adjustment Escrow Account in accordance with clause 3.4 of this Schedule or under clause 6.4(b) of the Escrow Agreement.

3.4 **Payments out of Escrow Account:** Within two Business Days after the position in respect of the last of the Disputed Consideration Adjustment Events and the Late Breaking Potential Adjustment Events has been agreed between the parties in writing or determined by the Expert or the Arbitrator (as applicable) under the Dispute Resolution Process, the parties will deliver joint instructions to the Registrar, or procure that the Arbitrator or Expert (as applicable) delivers instructions to the Registrar, to:

- (a) repay to Bidco the lesser of:

- (i) the amount calculated as follows:
 - (A) the aggregate of any Disputed Consideration Adjustment Event Amounts and any Late Breaking Potential Adjustment Event Amounts relating to any Disputed Consideration Adjustment Event or any Late Breaking Potential Adjustment Event which the parties have agreed in writing, or it is determined by the Expert or the Arbitrator (as applicable) under the Dispute Resolution Process, is a Consideration Adjustment Event; multiplied by
 - (B) the number of Scheme Shares; and
 - (ii) the amount calculated under clause 3.2 of this Schedule; and
- (b) pay to each Scheme Shareholder for each of its Scheme Shares the lesser of:
- (i) the aggregate of any Disputed Consideration Adjustment Event Amounts and any Late Breaking Potential Adjustment Event Amounts relating to any Disputed Consideration Adjustment Event or any Late Breaking Potential Adjustment Event which the parties have agreed in writing, or it is determined under the Dispute Resolution Process, is not a Consideration Adjustment Event; and
 - (ii) the amount calculated as follows:
 - (A) NZ\$0.75; less
 - (A) the aggregate of any Finalised Consideration Adjustment Event Amounts.

4. DEFINITIONS

In this Schedule:

“Asset MAC Adjustment Event” means a Material Adverse Change Adjustment Event that arises due to an Asset MAC;

“Consideration Adjustment Escrow Account” means the New Zealand dollar bank account established by the Registrar for the sole purpose of receiving and holding any Disputed Consideration Adjustment Event Amounts and any Late Breaking Potential Adjustment Event Amounts;

“Consideration Adjustment Event” means a NZ Pandemic Adjustment Event, a Queensland Pandemic Adjustment Event, a NSW Pandemic Adjustment Event, a One-Off EBITDA MAC Adjustment Event, a Recurring EBITDA MAC Adjustment Event, an Asset MAC Adjustment Event, or a Regulatory Adjustment Event;

“Disputed Consideration Adjustment Event” means a potential Consideration Adjustment Event in respect of which:

- (a) Bidco has given Abano a Consideration Adjustment Notice in accordance with clause 5.4(a) of the Scheme Implementation Agreement;
- (b) Abano has responded to Bidco in relation to that Consideration Adjustment Notice with a Consideration Adjustment Disagreement Notice in accordance with clause 5.5 of the Scheme Implementation Agreement; and

- (c) as at 1.00 pm on the Business Day before the Implementation Date, the disagreement the subject of that Consideration Adjustment Disagreement Notice has not been agreed between the parties in writing or determined by the Expert or the Arbitrator (as applicable) under the Dispute Resolution Process;

“Disputed Consideration Adjustment Event Amount” means, in respect of any Disputed Consideration Adjustment Event, the amount of the adjustment set out in clause 1.2(b) to 1.2(h) of this Schedule for the potential Consideration Adjustment Event that is the subject of that dispute;

“Excluded Dental Services” means urgent care dental services or emergency dental services (or any similar term). For the purposes of this definition, the terms “urgent care dental services” and “emergency dental services” (or any similar term) will have the meanings given to them (or any similar terms) under any guidance issued, or referred to in connection with a Relevant Restriction, by the Relevant Agency at the relevant time. If there is no such applicable guidance at the relevant time, then the relevant term will be given its normal and natural meaning;

“Finalised Consideration Adjustment Event Amount” means, in respect of any Consideration Adjustment Event which has been agreed by the parties in writing to have occurred or determined by the Expert or the Arbitrator (as applicable) under the Dispute Resolution Process to have occurred, the amount of the adjustment for that Consideration Adjustment Event set out in clauses 1.2(b) to 1.2(h) of this Schedule;

“Late Breaking Potential Adjustment Event” means a potential Consideration Adjustment Event in respect of which Bidco has given Abano either:

- (a) a Consideration Adjustment Notice in accordance with clause 5.4(a) of the Scheme Implementation Agreement:
- (i) within the five Business Day period immediately prior to 1.00pm on the Business Day before the Implementation Date and, as at 1.00pm on the Business Day before the Implementation Date:
- (A) Abano has not responded to Bidco in relation to that Consideration Adjustment Notice with a Consideration Adjustment Disagreement Notice in accordance with clause 5.5 of the Scheme Implementation Agreement; or
- (B) the parties have not agreed in writing that the potential Consideration Adjustment Event the subject of the Consideration Adjustment Notice is, or is not, a Consideration Adjustment Event; or
- (ii) after 1.00pm on the Business Day before the Implementation Date but before 9.00am on the Implementation Date; or
- (b) a Potential Consideration Adjustment Notice in accordance with clause 5.4(b) of the Scheme Implementation Agreement, provided that the potential Consideration Adjustment Event set out in that notice has not subsequently become a Disputed Consideration Adjustment Event or a potential Consideration Adjustment Event to which limb (a) of this definition applies;

“Late Breaking Potential Adjustment Event Amount” means, in respect of any Late Breaking Potential Adjustment Event, the amount of the adjustment set out in clauses 1.2(b) to 1.2(h) of this Schedule that would apply if that Late Breaking Potential Adjustment Event was agreed by the parties

in writing, or determined by the Expert or the Arbitrator (as applicable) under the Dispute Resolution Process, to be a Consideration Adjustment Event;

“**Material Adverse Change Adjustment Event**” means a matter, event or circumstance that occurs, is discovered by Bidco, or is announced, after the date of this Agreement (each a “**Specified Event**”) which has, has had, or is reasonably likely to have, either individually or when aggregated with other matters, events or circumstances of a similar kind or category, the effect of:

- (a) diminishing the consolidated net assets of the Abano Group taken as a whole by at least \$22.2 million (“**Asset MAC**”); or
- (b) diminishing the consolidated EBITDA of the Abano Group for:
 - (i) the financial year ending 31 May 2021; or
 - (ii) the 12-month period commencing on the date of the Specified Event,
by at least:
 - (iii) in the case of matters, events and circumstances which have a one-off or non-recurring impact, \$10 million (“**One-Off EBITDA MAC**”); or
 - (iv) in all other cases, \$5.4 million (“**Recurring EBITDA MAC**”),

against what EBITDA would reasonably have been expected to have been but for such Specified Event or Specified Events (with such expected EBITDA in the case of the financial year ending 31 May 2021 only being as set out in the Disclosure Letter),

determined after excluding the impact of any matter, event or circumstance to the extent recovered, or reasonably expected to be recoverable, under the Abano Group’s insurance policies and in each case disregarding (A) out-of-pocket costs incurred by the Abano Group in connection with the Transaction, to the extent disclosed in the Disclosure Letter; and (B) matters, events or circumstances:

- (c) required or specifically permitted by this Agreement or the Scheme (including any out-of-pocket costs incurred in respect of complying with clauses 6.10, 6.11 and 6.12 of the Scheme Implementation Agreement or any reasonable out-of-pocket costs (i) incurred in enforcing this Agreement and the Equity Commitment Letter, (ii) incurred in respect of any dispute arising in connection with this Agreement, (iii) incurred in implementing a Permitted Capital Raising or (iv) permitted as an exception to the Prescribed Occurrences contemplated by clause 2.12 of Schedule One to the Scheme Implementation Agreement);
- (d) resulting from changes in general economic or political conditions (including changes in foreign exchange rates, interest rates or commodity prices), any security market, securities market in general or law;
- (e) resulting from, or giving rise to, a Pandemic Adjustment Event or a Regulatory Event;
- (f) impairments to goodwill calculated under, and required by, IFRS 3 in connection with the preparation and finalisation of the audited consolidated financial statements for the Abano Group for the financial year ended 31 May 2020;

- (g) fairly disclosed to NZX prior to the date of this Agreement or fairly disclosed in the Due Diligence Materials (other than relating to the actual or anticipated change of control of Abano contemplated by this Agreement);
- (h) done or not done at the written request or with the written acknowledgement and written approval of Bidco, including any consequences reasonably foreseeable as a result of such matters;
- (i) resulting from changes in generally accepted accounting principles or the interpretation of them by a relevant Government Agency; or
- (j) resulting from the implementation for the first time of any general accepted accounting principles.

For clarity, (A) in the case of matters, events or circumstances of a similar kind or category, the 12-month period under paragraph (b)(ii) above will commence on the date of the last Specified Event of that similar kind or category and (B) for the purposes of this Schedule, any particular Specified Event (or aggregated Specified Events of a similar kind or category) may only constitute one of an Asset MAC, a One-Off EBITDA MAC, or a Recurring EBITDA MAC, without duplication;

“NSW Pandemic Adjustment Event” means a Pandemic Adjustment Event where the Relevant Area is, or is in, New South Wales;

“NZ Pandemic Adjustment Event” means a Pandemic Adjustment Event where the Relevant Area is, or is in, New Zealand;

“One-Off EBITDA MAC Adjustment Event” means a Material Adverse Change Adjustment Event that arises due to a One-Off EBITDA MAC;

“Pandemic Adjustment Event” means, during the Relevant Period, a Relevant Agency makes or imposes one or more Relevant Restrictions and the period for which the relevant services are to be suspended or otherwise not conducted (whether during or after the Relevant Period) referred to in the relevant announcement or announcements (as the case may be) is, in aggregate, at least 10 Business Days, calculated as the aggregate of:

- (a) the number of Business Days in respect of which Relevant Restrictions apply during the Relevant Period (counted on a cumulative rather than continuous basis); plus
- (b) in respect of any Relevant Restrictions in force at the end of the Relevant Period, the number of continuous Business Days in respect of which those Relevant Restrictions actually apply on and from the end of the Relevant Period (including, for the avoidance of doubt, extensions which extend the continuous period of the Relevant Restrictions which are in force at the end of the Relevant Period); plus
- (c) in respect of any Relevant Restrictions which are announced prior to, but which take effect after, the end of the Relevant Period, the number of continuous Business Days in respect of which those Relevant Restrictions actually apply as counted from the first Business Day on which they take effect (**“Start Date”**) (including, for the avoidance of doubt, extensions which extend the continuous period of the Relevant Restrictions which commenced on the Start Date).

For the avoidance of doubt, the period of Relevant Restrictions in one Relevant Area will not be aggregated with the period of Relevant Restrictions in another Relevant Area;

“Queensland Pandemic Adjustment Event” means a Pandemic Adjustment Event where the Relevant Area is, or is in, Queensland;

“Recurring EBITDA MAC Adjustment Event” means a Material Adverse Change Adjustment Event that arises due to a Recurring EBITDA MAC;

“Regulatory Adjustment Event” means any:

- (a) enforcement action, investigation, inquiry or audit is announced or commenced, or there is a development in relation to any action, investigation, inquiry or audit; or
- (b) any decision, determination or ruling,

during the Relevant Period by a Government Agency or court of competent jurisdiction against, involving or in respect of, an Abano Group entity which relates to a contravention, alleged contravention or, in the case of an investigation, inquiry or audit only, possible contravention of applicable laws or regulations by a Abano Group entity and which has or is reasonably likely to result in:

- (c) a reduction in the consolidated net tangible assets of the Abano Group taken as a whole by at least \$5 million;
- (d) a one-off or non-recurring adverse impact of at least \$5 million against what EBITDA would reasonably have been expected to have been but for such specified event; or
- (e) an adverse recurring annual impact of at least \$700,000 on EBITDA against what EBITDA would reasonably have been expected to have been but for such specified event,

with the financial impact to be reduced by the amount of any tax that is deductible to the Abano Group from any payment forming part of the adverse financial impact and with such expected EBITDA in the case of the financial year ending 31 May 2021 only being as set out in the Disclosure Letter;

“Relevant Agency” means:

- (a) in relation to Australia:
 - (i) the Australian Federal Government or, as applicable, the New South Wales State Government or Queensland State Government (including acting through any Minister);
or
 - (ii) any Australian governmental or semi-governmental department, commission, committee, authority or agency (including the Australian Health Protection Principal Committee), provided that it objectively seems reasonably likely to have the legal or regulatory power to make or impose a Relevant Restriction on the Abano Group in, as applicable, Queensland or New South Wales; or

- (b) in relation to New Zealand:
 - (iii) the New Zealand Government (including acting through the Prime Minister, the Minister of Health, any other Minister or the Director General of Health (or any person occupying the role of Director General of Health, whatever his or her title);
 - (iv) any New Zealand governmental or semi-governmental department, commission, committee, authority or agency (including the Ministry of Health), provided that it objectively seems reasonably likely to have the legal or regulatory power to make or impose a Relevant Restriction on the Abano Group in New Zealand; or
 - (v) the Dental Council of New Zealand;

“Relevant Area” means in respect of each of New Zealand, New South Wales or Queensland (each, a **“Jurisdiction”**), either the whole of the Jurisdiction or areas within the Jurisdiction which contributed in aggregate at least 50% of the revenue generated by the Abano Group in the Jurisdiction during the financial year ended 31 May 2020;

“Relevant Period” means the period commencing on the date of this Agreement and ending at 8.00am on the Implementation Date; and

“Relevant Restriction” means a recommendation or requirement in each case made or issued by a Relevant Agency that, due to Covid-19, all services of the Abano Group, other than Excluded Dental Services, are suspended or otherwise not conducted in a Relevant Area at any time during or after the Relevant Period (provided, for the avoidance of doubt, that the Relevant Restriction is announced by the Relevant Agency during the Relevant Period).