

Scheme Implementation Agreement

Metlifecare Limited

Target

and

Asia Pacific Village Group Limited

Bidder

Date **10 July 2020**

BELL GULLY

AUCKLAND VERO CENTRE, 48 SHORTLAND STREET
PO BOX 4199, AUCKLAND 1140, DX CP20509, NEW ZEALAND
TEL 64 9 916 8800 FAX 64 9 916 8801

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This **Agreement** is made on 10 July 2020

- between** (1) **Metlifecare Limited**, a company incorporated in New Zealand whose registered office is Level 4, 20 Kent Street, Newmarket, New Zealand (**Target**)
- and** (2) **Asia Pacific Village Group Limited (Bidder)**, a company incorporated in New Zealand whose registered office is Level 22 Vero Centre, 48 Shortland Street, Auckland 1010, New Zealand (**Bidder**)

Introduction

- A. The Target and the Bidder have agreed that the Bidder will acquire all of the Scheme Shares by means of the Scheme.
- B. This agreement is entered into to record and give effect to the terms and conditions on which Bidder and Target propose to implement the Scheme.

It is agreed

1. Definitions and interpretation

1.1 Defined terms

Capitalised terms have the meanings set out in clause 1 of Schedule 6, unless the context otherwise requires.

1.2 Interpretation

This Agreement will be interpreted in accordance with the interpretation provisions set out in clauses 2 to 6 of Schedule 6.

2. Proposal and implementation of Scheme

2.1 Target to propose Scheme

Target must, as soon as reasonably practicable, propose and, subject to the Scheme becoming Effective, implement the Scheme on and subject to the terms of this Agreement.

2.2 Consideration

Each Scheme Shareholder is entitled to receive the Consideration in respect of each Scheme Share held by that Scheme Shareholder subject to and in accordance with the terms of this Agreement and the Scheme.

2.3 Bidder to pay Consideration

Bidder undertakes in favour of Target (in its own right and on behalf of the Scheme Shareholders) to, in consideration for, and simultaneously with the transfer to Bidder of each Scheme Share held by each Scheme Shareholder under the terms of the Scheme, pay (or procure the payment of) the Consideration to each Scheme Shareholder in accordance with the Scheme and the Deed Poll.

2.4 General implementation obligations

Each party must do everything reasonably necessary, including by procuring that its Representatives work in good faith and in a timely and co-operative manner with, in the case of Bidder, Target and its Representatives and, in the case of Target, Bidder and its Representatives, to implement the Scheme in accordance with this Agreement and all laws applicable to the Scheme.

2.5 Timetable

- (a) Each party must use reasonable endeavours to ensure that the Scheme is implemented in accordance with the Timetable or otherwise as soon as reasonably practicable. Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of this clause 2.5 to the extent that such failure is due to circumstances and matters outside the party's control and only if such party has used reasonable endeavours to meet the Timetable.
- (b) Each party will keep the other informed about their progress against the Timetable and notify each other if it believes that any of the dates in the Timetable are not achievable. If any date in the Timetable is not able to be achieved due to matters outside of a party's control, the parties must consult in good faith with a view to amending the Timetable to the extent required to permit the Scheme to be implemented before the End Date.

2.6 No amendment to Scheme without Bidder's consent

Target must not consent to any modification of, or amendment to, the Scheme or the Final Orders, or the making or imposition by the Court or any Government Agency of any condition to the Scheme, without:

- (a) Bidder's counsel's consent, where a modification or amendment is made, imposed or requested at a Court hearing (and Bidder must procure that its counsel acts reasonably); or
- (b) Bidder's prior written consent (acting reasonably), in the case of any other modification or amendment.

3. Conditions precedent

3.1 Conditions

The Scheme will not become Effective and the obligations of Bidder under clause 2.3 do not become binding unless and until each of the conditions set out in the first column of the following table has been satisfied or waived in accordance with this clause 3.1:

Condition	Responsibility	Waiver
(a) (OIO approval) before 5:00pm on the Business Day before the End Date, Bidder has obtained all consents required under the Overseas Investment Act 2005 to the implementation of the Scheme on terms or conditions acceptable to Bidder acting reasonably, provided that Bidder may not withhold its approval to terms or conditions of any such consent if the terms or conditions imposed:	Bidder	None

Condition	Responsibility	Waiver
<p>(i) are the standard terms or conditions set out in Schedule 5; or</p> <p>(ii) are consistent with the Bidder's positive undertakings, plans or intentions specified in its application;</p>		
(b) (Bank Facility Consent) before 5.00pm on the Business Day before the First Court Date, the Agent and Lenders under the Facility Agreement, have agreed to waive any Event of Review, Event of Default or Potential Event of Default which may arise under the Facility Agreement or any associated security in connection with the entry into and/or completion of the Transaction, in a form and on terms acceptable to Bidder;	Bidder	Bidder
(c) (Statutory Supervisor Consent) before 5.00pm on the Business Day before the First Court Date, each Statutory Supervisor provides consent to the change in control of the Target Group under the relevant Deed of Supervision, in a form and on terms acceptable to the Bidder;	Target	None
(d) (Regulatory clearances) before 8.00am on the End Date, Bidder and Target have received all approvals or consents from the Takeovers Panel and NZX as are required to implement the Transaction, including in respect of the Target's retail bonds remaining on issue and quoted on NZX;	Target and Bidder	None
(e) (Shareholder approval) Shareholders approve the Scheme at the Scheme Meeting by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act;	Target	None
(f) (Court approval) subject to clause 3.2, the Court approves the Scheme in accordance with section 236 of the Companies Act;	Bidder and Target	None
(g) (No restraint) no judgment, order, restraint or prohibition enforced or issued by any Government Agency is in effect at 8.00am on the Implementation Date, that prohibits, prevents or materially restricts the implementation of the Scheme;	Bidder and Target	Bidder and Target
(h) (No Prescribed Occurrence) no Prescribed Occurrence occurs between the date of this Agreement and 8.00am on the Implementation Date.	Target	Bidder

3.2 Court approval

If the Court's approval of the Scheme in accordance with section 236(1) of the Companies Act would impose any terms or conditions other than those set out in the Scheme in the form attached as Annexure A, then each such term or condition must be approved in writing by Target and Bidder (both acting reasonably) prior to the Court granting the Final Orders.

3.3 Satisfaction of Conditions

In respect of each Condition:

- (a) each party specified in the second column of the table in clause 3.1 opposite that Condition (the **Responsible Party**) must use all reasonable endeavours to procure that the Condition is satisfied:
 - (i) in the case of the Conditions in clauses 3.1(a), 3.1(d) to 3.1(f), as soon as practicable and in any event before the End Date;
 - (ii) in the case of the Conditions in clause 3.1(b) and 3.1(c), as soon as practicable and in any event before 5.00pm on the Business Day before the First Court Date; and
 - (iii) in the case of the Conditions in clauses 3.1(g) to 3.1(h), at all times before 8.00am on the Implementation Date;
- (b) the other party must:
 - (i) co-operate with the Responsible Party towards satisfying each Condition; and
 - (ii) promptly provide all information and other reasonable assistance required by the Responsible Party for the purposes of procuring the satisfaction of the Condition; and
- (c) each party must not take any action that will or is likely to hinder or prevent the satisfaction of the Condition.

3.4 Regulatory applications

Without limiting clause 3.3:

- (a) subject to clause 3.4(b), each party must promptly make all applications necessary to satisfy the Regulatory Conditions, and provide the other party with a copy of those applications (provided that any commercially sensitive information may be redacted from the copy provided);
- (b) in the case of the satisfaction of:
 - (i) the OIO Condition, Bidder must submit the OIO Application to the OIO as soon as reasonably practicable and in any event by no later than 20 July 2020 and Target must submit the vendor information form to the OIO by no later than 20 July 2020; and
 - (ii) the Statutory Supervisor Condition, Target must submit the required applications for consent as soon as reasonably practicable and in any event by no later than 20 July 2020; and

- (c) each party must consult with the other party in advance in relation to all material communications (whether written or oral, and whether direct or via a Representative) with any Government Agency relating to any approval or consent required to satisfy a Regulatory Condition, or any action taken or proposed by, or any enquiries made by, a Government Agency in relation to the Scheme and:
 - (i) provide the other party with drafts of any material written communications to be sent to a Government Agency (including any applications necessary to satisfy the Regulatory Conditions) in relation to the Scheme and take any reasonable comments made by the other party into account in good faith when making any amendments (provided that any commercially sensitive information may be redacted from the copy provided); and
 - (ii) provide copies of any material written communications sent to or received from a Government Agency in relation to the Scheme to the other party promptly upon despatch or receipt (as the case may be) (provided that any commercially sensitive information may be redacted from the copy provided),

in each case to the extent it is reasonably practicable to do so.

3.5 Waiver of Conditions

Where the third column of the table in clause 3.1 opposite a Condition states “none”, that Condition may not be waived. Each other Condition is only for the benefit of, and may only be waived in writing by:

- (a) if one party is specified in the third column of the table in clause 3.1 opposite that Condition, that party; or
- (b) if both Target and Bidder are specified in the third column of the table in clause 3.1 opposite that Condition, those parties jointly.

A party entitled to waive, or to join in the waiver of, a Condition may do so in its absolute discretion.

3.6 Method of waiver

Where a Condition may be waived by one party, that party may only waive the Condition by giving notice in writing to the other party. Where a Condition may only be waived by both Target and Bidder jointly, those parties may only waive the Condition by agreeing in writing to do so.

3.7 Effect of waiver

If a party waives or joins in the waiver of a Condition in accordance with this clause 3, that waiver does not:

- (a) preclude that party from bringing a claim against the other party for any breach of this Agreement; or
- (b) constitute a waiver of any other Condition.

3.8 Delay in satisfaction of Regulatory Conditions

Without limiting the generality of clause 2.5, if any event or change in circumstances occurs that prevents or is reasonably likely to prevent any of the Regulatory Conditions being satisfied as at 8.00am on the End Date (as extended in accordance with paragraph (a) of the

definition of End Date), and the failure to satisfy the Regulatory Condition which would otherwise occur has not been (or cannot be) waived, then the parties must consult in good faith to:

- (a) if a deferral of the Timetable would, in the reasonable opinion of the parties, assist with the satisfaction of the relevant Condition, endeavour to agree to change the End Date to a later date; or
- (b) if a deferral of the Timetable would not, in the reasonable opinion of the parties, assist with the satisfaction of the relevant Condition, endeavour to agree whether the Transaction may proceed by way of alternative means or methods.

3.9 Termination

Notwithstanding anything in this clause 3 or any rights of termination implied by law, this Agreement may only be terminated in accordance with clause 14.

4. Scheme Booklet

4.1 Target's obligations

Without limiting clause 2, Target must:

- (a) subject to clauses 4.1(c) and 4.2(a), prepare the Scheme Booklet so that it contains:
 - (i) all information required by the Companies Act, the NZX Listing Rules and any other applicable laws, including any requirements of the Takeovers Panel;
 - (ii) the responsibility statements referred to in clause 4.4; and
 - (iii) a statement by the Majority Target Directors reflecting the recommendation and undertaking referred to in clause 8.1;
- (b) if not already appointed, appoint the Independent Adviser (including obtaining approval from the Takeovers Panel for that appointment), and provide all assistance and information reasonably requested by the Independent Adviser to enable it to prepare the Independent Adviser's Report;
- (c) as soon as practicable after preparation of an advanced draft of the Scheme Booklet suitable for review by the Takeovers Panel, give that draft to Bidder;
- (d) give Bidder subsequent drafts of the Scheme Booklet in a timely manner, give Bidder a reasonable opportunity to review those drafts and consider and take into account in good faith the reasonable comments of Bidder and its Representatives when preparing revised drafts of the Scheme Booklet. Bidder must limit any comments on the Independent Advisor report to factual error correction about Bidder and/or its affiliates;
- (e) as soon as practicable after receipt of the confirmation from Bidder referred to in clause 4.2(e), give the Takeovers Panel the draft Scheme Booklet together with an application for a statement of intention from the Takeovers Panel that it intends to issue a "no objection" statement before the Second Court Date;
- (f) keep Bidder reasonably informed of any matters raised by any of the Takeovers Panel in relation to the Scheme Booklet and consult with Bidder to resolve any such issues;

- (g) as soon as practicable after the Takeovers Panel has completed its review of the Scheme Booklet and the Takeovers Panel has indicated in writing that it intends to issue a “no objection” statement before the Second Court Date, procure that a meeting of the Board is convened to approve the Scheme Booklet for lodgement with the Court and, subject to the Initial Orders being granted and the terms of those orders, for dispatch to Shareholders; and
- (h) advise Bidder if Target becomes so aware either:
 - (i) of new information which, had it been known at the time the Scheme Booklet was prepared, should have been included in the Scheme Booklet under applicable law; or
 - (ii) that any part of the Target Information in the Scheme Booklet is misleading or deceptive in any material respect, including by omission,

and in either case, if Target becomes aware at any time, or receives advice from Bidder under clause 4.2(f):

- (iii) between the approval of the Scheme Booklet in accordance with clause 4.1(g) and the date of the Scheme Meeting, then, if considered by Target that supplementary disclosure is required, provide supplementary disclosure to Shareholders in accordance with applicable law and after consulting with Bidder as to the content and presentation of that supplementary disclosure and will, if it considers it necessary or appropriate, (A) seek the Court’s guidance in respect of such supplementary disclosure; and (B) adjourn the Scheme Meeting to the earliest date possible; and
- (iv) between the date of the Scheme Meeting and the Second Court Date, then, if considered by Target that supplementary disclosure is required, apply to the Court for orders as to the procedure to be followed for the provision of supplementary disclosure to Shareholders and the effect on the approval of the Scheme, after consulting with Bidder.

4.2 Bidder’s obligations

Without limiting clause 2, Bidder must:

- (a) prepare and give to Target for inclusion in the Scheme Booklet:
 - (i) information about the Bidder Group;
 - (ii) information about the funding arrangements Bidder has available to it in order to fund the Consideration (without disclosing any commercially sensitive terms); and
 - (iii) information equivalent to the information that would meet the requirements of Schedule 1 to the Takeovers Code,

as required to be included in Scheme Booklet by the Companies Act, the Takeovers Panel, the NZX Listing Rules and any other applicable laws;
- (b) give Target drafts of the information referred to in clause 4.2(a) in a timely manner, to give Target a reasonable opportunity to review those drafts and consider in good faith the reasonable comments of Target and its Representatives when preparing revised drafts of that information;

- (c) provide all assistance and information reasonably requested by the Independent Adviser to enable it to prepare the Independent Adviser's Report;
- (d) as soon as practicable after receipt of any draft of the Scheme Booklet from Target, review and provide comments on that draft;
- (e) subject to clause 4.3, before Target provides the Scheme Booklet to the Takeovers Panel in accordance with clause 4.1(e), deliver to Target written consent from Bidder to the inclusion of the Bidder Information in the Scheme Booklet in the form and context it appears;
- (f) advise Target if Bidder becomes aware at any time either:
 - (i) of new information which, had it been known at the time the Scheme Booklet was prepared, should have been included in the Bidder Information under any applicable law; or
 - (ii) that any part of the Bidder Information is misleading or deceptive in a material respect, including by omission,
 and if Bidder provides such advice, the Target will comply with clause 4.1(h);
- (g) procure that it is represented by counsel at the Court hearings convened for the purposes of considering the Initial Orders and the Final Orders. For the avoidance of doubt, Target will prepare the Court documentation for the Initial Orders and Final Orders and Bidder's Counsel will only prepare submissions to the Court, if required, in support of Target's application; and
- (h) before a draft of the Scheme Booklet is lodged with the Takeovers Panel, and again before the Scheme Booklet is despatched to Shareholders, confirm to Target the accuracy and completeness of the Bidder Information in the Scheme Booklet, including that it does not contain any material statement that is false or misleading in a material respect including because of any omission.

4.3 Bidder confirmations and approvals

If Bidder requires any change to be made to the form or content of the Bidder Information as a condition of giving its consent as referred to in clause 4.2(e) then:

- (a) if Target disagrees with the change the parties must consult in good faith about the change and the reasons for it with a view to agreeing an alternative change that satisfies both parties; and
- (b) if the parties are unable to reach agreement, Target must make such changes to the Bidder Information as Bidder reasonably requires.

4.4 Responsibility statements

The Scheme Booklet must contain responsibility statements, in a form to be agreed between the parties, to the effect that:

- (a) Target has provided, and is responsible for, the Target Information in the Scheme Booklet, and that none of Bidder, its Related Entities or their respective Representatives assumes any responsibility for the accuracy or completeness of the Target Information; and

- (b) Bidder has provided, and is responsible for, the Bidder Information, and that none of Target, its Related Entities or their respective Representatives assumes any responsibility for the accuracy or completeness of the Bidder Information; and
- (c) the Independent Adviser has provided and is responsible for the Independent Adviser's Report and none of Bidder, Target, their respective Representatives any responsibility for the accuracy or completeness of the Independent Adviser's Report.

5. Scheme implementation steps

5.1 Target's obligations

Without limiting clause 2, Target must:

- (a) before the First Court Date, apply to the Takeovers Panel for a letter of intention indicating that the Takeovers Panel:
 - (i) intends to provide a statement under section 236A(2)(b)(ii) of the Companies Act stating that the Takeovers Panel has no objection to the Court granting the Final Orders; and
 - (ii) does not intend to appear at the Court in respect of the Initial Orders;
- (b) apply to the Court for Initial Orders convening the Scheme Meeting, and if the Court makes and seals those orders, dispatch the Scheme Booklet to Shareholders and hold the Scheme Meeting in accordance with, and otherwise complying in all respects with, the Initial Orders;
- (c) upon sending the Scheme Booklet to Scheme Shareholders, lodge a copy of that Scheme Booklet with NZX in accordance with the NZX Listing Rules;
- (d) if the Scheme Resolution is passed by the requisite majorities of Shareholders as set out under section 236A(4) of the Companies Act and subject to satisfaction of Condition 3.1(a), promptly apply to:
 - (i) the Takeovers Panel for the production of a statement under section 236A(2)(b)(ii) of the Companies Act stating that the Takeovers Panel has no objection to the Court granting Final Orders; and
 - (ii) the Court for its approval of Final Orders; and
- (e) if the Court approves the Scheme in accordance with section 236(1) of the Companies Act, promptly deliver to the Registrar for registration a copy of the Final Orders for registration in accordance with section 236(4) of the Companies Act, by no later than 10 Business Days after the date the Final Orders are granted;
- (f) if the Scheme becomes Effective:
 - (i) use its best endeavours to procure that NZX and ASX suspend trading in the Shares two Business Days after the date on which the Scheme becomes Effective or such other date as is agreed between the parties in writing;
 - (ii) close the Register as at the Record Date to determine the identity of the Scheme Shareholders and their entitlements to the Consideration;

- (iii) subject to Bidder satisfying its obligations under clause 5.2(b), effect the transfer of the Scheme Shares to Bidder in accordance with the Scheme on the Implementation Date; and
- (iv) do all other things contemplated of it under the Scheme and all other things (if any) within its power as may be reasonably necessary for the implementation of the Transaction on a basis consistent with this Agreement or necessary for Target to lawfully give effect to the Scheme and the orders of the Court.

5.2 Bidder's obligations

Without limiting clause 2, Bidder must:

- (a) no later than 10 Business Days before the First Court Date, deliver to Target a copy of the Deed Poll executed by Bidder;
- (b) procure that, if the Scheme becomes Effective, Bidder accepts a transfer of the Scheme Shares and provides the Consideration in accordance with clause 2.3 and the Deed Poll on or before the Implementation Date.

5.3 Conditions certificate

- (a) Subject to clause 5.3(b), on the day before the Implementation Date, Target must give Bidder a certificate signed by any of its directors stating that so far as the Target is aware:
 - (i) except to the extent previously waived, the Conditions in clauses 3.1(g) (No restraint), and 3.1(h) (No Prescribed Occurrence) would have been satisfied if 8.00am on the Implementation Date was read as the time the certificate is given to Bidder and Target is not aware of anything that would prevent those Conditions being satisfied;
 - (ii) it is not in breach of clauses 9.2 (Conduct of business) or 10.1 (Target representations, warranties and undertakings); or
 - (iii) there has not been any breach of any other provision of this Agreement which might entitle the Bidder to terminate under clause 14.1,

(Target Certificate).
- (b) If the statements referred to in clause 5.3(a) would be inaccurate, the Target must provide a qualified Target Certificate setting out full details of the matters which cause or are likely to cause that certificate not to be accurate.
- (c) For the avoidance of doubt, a Target Certificate is signed by a Target Director in his or her capacity as an officer of the Target, and in no other capacity.

6. Target's other implementation obligations

6.1 Information about Shareholders

Target must:

- (a) comply with any reasonable request by Bidder to require disclosure of information in accordance with sections 290 and 291 of the FMCA, subject to its statutory and

contractual obligations, and give Bidder the information obtained as a result of requiring such disclosure; and

- (b) procure that its share registry provides to Bidder, in the form reasonably requested by Bidder, details of the Register and all other information about the Shareholders which Bidder reasonably requires in order to:
 - (i) canvas approval of the Scheme by Shareholders; and/or
 - (ii) facilitate the provision by Bidder of the Consideration in accordance with this Agreement, the Scheme and the Deed Poll.

6.2 Promotion of Transaction

During the Exclusivity Period, Target will provide all reasonable cooperation to Bidder in promoting the merits of the Transaction to Shareholders, including:

- (a) providing (subject to Target's statutory or contractual obligations) such information regarding Shareholders and their holdings as Bidder reasonably requests; and
- (b) procuring that senior executives of the Target Group are available on reasonable notice to:
 - (i) meet with key Shareholders if reasonably requested to do so by Bidder; and
 - (ii) communicate with the employees, residents and suppliers of the Target Group,

subject to there being no Superior Proposal and provided that no such action will be required that might unreasonably disrupt the Target Group's business or breach any relevant individual's duties as an employee.

6.3 Board changes

Subject to the Consideration having been paid to the Scheme Shareholders, Target must procure that:

- (a) such persons as Bidder nominates (by notice to Target no later than five Business Days before the Implementation Date) and who have provided to Target a signed consent to act by that time are appointed as additional directors of Target on the Implementation Date (by no later than 5.00pm); and
- (b) unless otherwise agreed by Bidder in writing, each director of each member of the Target Group (excluding PAN) and each director of PAN appointed by Target, other than those appointed in accordance with clause 6.3(a), resigns as a director of Target with effect from the Implementation Date (by no later than 5.00pm on the Implementation Date) and acknowledges in writing that he or she has no claim against any member of the Target Group other than for accrued but unpaid directors fees and expenses.

6.4 Release of Encumbrances

After the signing of this Agreement and in addition to its obligations under clause 9.2(d)(iv), Target will assist Bidder to identify any Encumbrances over the assets of the Target Group which are not Permitted Encumbrances and procure their release and removal from the PPSR with effect on the Implementation Date.

6.5 Long Term Incentive Plans

- (a) Target acknowledges that as at the date of this Agreement:
 - (i) 522,928 Restricted Shares are held by LTIP Trustee for participants in the SLRS Plan; and
 - (ii) 314,528 Performance Share Rights have been issued by Target in respect of 314,528 Shares for participants in the Target Employee Share Scheme.
- (b) Prior to the Record Date:
 - (i) in accordance with the SLRS Plan Rules certain of the Restricted Shares will vest (whether under entitlements or existing rights at the discretion of the Board, whether accelerated or not) under the SLRS Plan Rules resulting in a maximum of 303,898 Shares (**Maximum SLRS Shares**) being transferred by LTIP Trustee to participants in the SLRS Plan; and
 - (ii) in accordance with the terms of the Target Employee Share Scheme Rules certain of the Performance Share Rights will vest resulting in a maximum of 314,528 Shares (**Maximum PSR Shares**) being issued by Target to participants in the Target Employee Share Scheme,

with such Shares to be included as Scheme Shares.
- (c) Target must ensure that:
 - (i) any Restricted Shares which are not transferred by LTIP Trustee to participants in accordance with clause 6.5(b)(i), expected to be 219,030 Restricted Shares, are acquired and cancelled by Target for no net monetary consideration in accordance with the SLRS Plan Rules prior to the Record Date such that, on the Implementation Date, there are no Restricted Shares or Shares held by the LTIP Trustee;
 - (ii) any Performance Share Rights which are not vested to participants in accordance with clause 6.5(b)(ii) lapse or are cancelled or forfeited prior to the Record Date such that, on the Implementation Date, there are no Performance Share Rights on issue;
 - (iii) no more than the Maximum SLRS Shares are vested and transferred to the beneficial holders of the relevant Restricted Shares under the SLRS Plan Rules prior to the Record Date, such that those Shares are Scheme Shares;
 - (iv) no more than the Maximum PSR Shares are vested and issued to participants in the Target Employee Share Scheme prior to the Record Date, such that those Shares are Scheme Shares; and
 - (v) LTIP Trustee does not exercise at the Scheme Meeting the votes attached to any Restricted Shares that it holds.

7. Court proceedings

7.1 Court documents

- (a) In relation to each Court application made in relation to the Scheme, including any appeal, Target must give Bidder drafts of all documents required to be given by Target to the Court (including the originating applications, affidavits, memoranda,

submissions and draft Court orders) a reasonable time before they are due to be submitted to the Court (and in any event not less than 48 hours before submission unless it is impractical in the circumstances) and must consider in good faith the reasonable comments of Bidder and its Representatives on those documents.

- (b) Target must not provide the Court with any Court orders (whether in draft or not) or applications for Court orders, or consent to any changes to any Court orders, without Bidder having approved such documents being submitted to the Court or such changes being consented to.

7.2 Representation

In relation to each Court application made in relation to the Scheme, including any appeal:

- (a) Target consents to the separate representation of Bidder by counsel; and
- (b) Bidder may appear and be represented in relation to the Court applications.

7.3 Court proceedings and conditionality

- (a) If the Court declines to make the orders sought by Target under clause 5.1(b) or 5.1(d)(ii), due in whole or in part to the lack of satisfaction of, or the potential timing for satisfaction of (or where capable of waiver, waiver of) the Conditions, Target must promptly make a further application for Initial Orders or Final Orders (as applicable), as soon as practicable after the earlier of:
 - (i) the parties satisfying the steps or matters specified by the Court or apparent from its directions or reasons as required, or desirable, in order to grant the Initial Orders or Final Orders (as the case may be) (**Court Guidance**); or
 - (ii) the conditions in clauses 3.1(a), 3.1(b), 3.1(c) and 3.1(d) having been satisfied, or where capable of waiver, waived.
- (b) Target will use its best endeavours to follow the Court Guidance and any guidance or requirements of the Takeovers Panel including, if indicated, providing supplementary information to Shareholders and/or convening a second Scheme Meeting.

7.4 Appeal if orders not made

If the Court does not make any order sought by Target under clause 5.1(b) or 5.1(d)(ii) (the **Decision**), to the extent clause 7.3 does not apply:

- (a) Target and Bidder must consult in good faith as to the effect of the refusal and whether to appeal the Decision; and
- (b) if, within 10 Business Days after the Decision, Target and Bidder agree to appeal the Decision or either of those parties obtains an opinion from an independent Queens Counsel, practising in the field of corporate and securities law litigation, to the effect that there are reasonable prospects of successfully appealing the Decision, then:
 - (i) Target must appeal the Court's decision within the timeframe set out in rule 29 of the Court of Appeal (Civil) Rules 2005;
 - (ii) the cost of any such appeal is to be borne:
 - (A) if Target and Bidder agreed to appeal the Decision, equally between the parties; or

- (B) if Target and Bidder did not agree to appeal the Decision, by the party who obtained the opinion from the independent Queens Counsel;
- (iii) if the End Date would otherwise occur before the appeal is finally determined, the End Date is deferred to the date that is 10 Business Days after the appeal from the Decision is finally determined; and
- (iv) if the appeal is successful and the relevant order is made, the End Date is further deferred to the date which is X days after the original End Date (disregarding the effect of clause 7.4(b)(iii)) where X is equal to the number of days between the date of the Decision and the date on which the appeal from the Court's decision is finally determined, or to such other date as the parties agree in writing.

8. Recommendation and voting intentions

8.1 Recommendation and voting intentions of Target Directors

Target must ensure that at least a majority of the Target Directors (the **Majority Target Directors**) recommend that Shareholders vote in favour of the Scheme and that each Majority Target Director undertakes to vote, or procure the voting of, all Shares held or controlled by him or her or his or her Associates in favour of the Scheme subject to there being no Superior Proposal.

8.2 Change to recommendation or voting intentions or inconsistent statement

- (a) Target must ensure that:
 - (i) no Majority Target Director changes, qualifies or withdraws the recommendation or the undertaking referred to in clause 8.1 or makes any public statement inconsistent with that recommendation or that undertaking; and
 - (ii) no Minority Target Director makes any public statement in relation to the recommendation in clause 8.1 except in accordance with clause 8.2(b);

unless Target receives a Superior Proposal, provided that reliance by Target on the exclusions to this clause 8.2, will not prevent the Bidder from relying on and having the benefit of clauses 13.2(b) and 14.1(b).

- (b) Notwithstanding clause 8.2(a)(ii), a Minority Director may make a statement in the Scheme Booklet or at the Scheme Meeting explaining the relevant Minority Director's reasons for not recommending that shareholders vote in favour of the Scheme .

8.3 Notification of new circumstances

Without limiting the operation of clauses 8.1, 8.2 or 12, if circumstances arise which may lead to:

- (a) any one or more of the Majority Target Directors changing, qualifying or withdrawing his or her recommendation or undertaking as described in clause 8.1, or the Board or Target becomes aware that a Majority Target Director is likely to change, qualify or withdraw his or her recommendation or undertaking as described in clause 8.1; or
- (b) any Minority Target Director making any public statement in relation to the recommendation in clause 8.1 except in accordance with clause 8.2(b)

the Target must:

- (c) immediately notify Bidder of this fact and any public statement that the Board intends to make if such event occurs; and
- (d) consult with Bidder in good faith for two Business Days after the date on which the notice under clause 8.3(c) is given to consider and determine whether there are any steps that can be taken to avoid such a change, qualification or withdrawal.

9. Access, information and conduct of business

9.1 Access and information

From the date of this Agreement until and including the Implementation Date, Target must:

- (a) procure that Bidder and its Representatives are given reasonable access to:
 - (i) the properties, books and records and senior management of the Target Group, during normal business hours at mutually convenient times and on reasonable notice to Target; and
 - (ii) information about the Business reasonably requested by Bidder or its Representatives,

for the purposes of:

- (iii) enabling Bidder to understand and monitor the Target Group's business and operations and its financial position, financial performance and prospects;
- (iv) implementing the Scheme and enabling Bidder to prepare for the transition of ownership of the Target Group to Bidder; and
- (v) any other purpose agreed between Target and Bidder in writing,

except to the extent that the provision of such access is prohibited by law or any confidentiality obligations owed by the Target Group to third parties and provided that:

- (vi) Bidder will focus on issues that it considers to be material, having regard to management commitments;
- (vii) providing access or information pursuant to this clause 9.1(a) does not:
 - (A) in the opinion of the Target (acting reasonably) result in unreasonable disruptions to the Business;
 - (B) require Target to make further disclosure to any other entity or Government Agency or require the disclosure of any document that would compromise the Target Group's legal professional privilege; and
- (viii) nothing in this clause 9.1(a) will require Target to provide information concerning its director's and management's consideration of the Scheme or any Competing Proposal (but this proviso does not limit Target's obligations under clause 12);
- (b) give Bidder copies of all papers provided to the Board (including monthly management accounts for the Target Group) within three Business Days after they are provided to

Board members, however, Target may redact information from such papers to the extent it relates to the Transaction or Competing Proposal; and

- (c) establish a committee (the **Transition Committee**) comprising individuals nominated by each of the Target and the Bidder.
- (d) The role of the Transition Committee will be to act as a forum for consultation, discussion and planning, but not decision making, to keep Bidder informed of material developments in relation to the Target Group, assist with the eventual transition of control of Target to Bidder upon the Scheme becoming Effective and discussing and resolving matters arising in relation to this Agreement or the Transaction. In particular, the Transition Committee will discuss and consult on, the proposed entry by the Target Group into any contract, commitment or arrangement in respect of the development or construction of any building or infrastructure at any of the Greenwich Gardens, Gulf Rise, Orion Point, Oakridge, Somervale, Pohutukawa Landing, Botany and Palmerston North villages operated by the Target Group.

Target will provide the necessary information about the Business to discuss the matters considered by the Transition Committee. The Transition Committee will meet (either in person or by teleconference) at least weekly or on such shorter timeframes as Target and Bidder may agree. The members of the Transition Committee may agree to invite other persons to attend meetings of the Transition Committee from time to time. Nothing in this clause 9.1(c):

- (i) in any way limits Target's conduct of the Business, including in accordance with clause 9.2 and clause 9.3;
- (ii) in any way increases or expands Target's obligation to provide information under clause 9.1(a) or (b); or
- (iii) requires Target to act at the direction of Bidder or imposes any obligation on Target to conduct its Business in accordance with any direction or representation made by Bidder.

9.2 Conduct of business

From the date of this Agreement until and including the Implementation Date, Target must ensure that it and each other member of the Target Group:

- (a) carries on its business as a going concern in the ordinary course and does not make any significant change to the nature or scale of its business or enter any business or undertake any activities in which it was not engaged as at the date of this Agreement;
- (b) maintains insurance in respect of the Target Group's business and assets covering such risks and for such amounts as would be maintained in accordance with the Target Group's ordinary practice and in any event to a level no less than that in place immediately prior to the date of this Agreement;
- (c) uses all reasonable endeavours to:
 - (i) keep available the services of its directors and the leadership team of Target; and
 - (ii) preserve its relationships with all Government Agencies and all residents, suppliers, licensors, licensees, joint venturers and others with whom it has business dealings;

- (d) does not:
- (i) enter into, vary or terminate any contract in respect of the development or construction of any building or infrastructure or otherwise incur, or commit to incur, any other development or construction capital expenditure, where the total value of that contract, capital expenditure or variation(s) in relation to an individual contract (in aggregate), in each case, is greater than \$2.5m (except with Bidder's consent in accordance with clause 9.3(a)). The parties record that no consent is required for:
 - (A) Target Group to enter the Fairway Gardens consultant contracts, to the extent they have been fairly disclosed in the Due Diligence Material;
 - (B) Target Group to incur the capital expenditure in accordance with the Fairway Gardens development budget, to the extent it has been fairly disclosed in the Due Diligence Material;
 - (C) Target Group to enter the Gulf Rise Precinct 2 consultant contracts, to the extent they have been fairly disclosed in the Due Diligence Material;
 - (D) Target Group to incur the capital expenditure in accordance with Gulf Rise Precinct 2 development budget, to the extent it has been fairly disclosed in the Due Diligence Material;
 - (ii) Incur, commit to incur, vary or terminate any capital expenditure for Remediation and Refurbishment and Maintenance which would result in the aggregate capital expenditure incurred by the Target Group:
 - (A) during FY21 to vary from the FY21 Capex Budget (whether by way of an increase or decrease in capital expenditure) where such variance (whether an increase or decrease) is:
 - I. in respect of Remediation capital expenditure, more than \$5 million; and
 - II. in respect of Refurbishment and Maintenance capital expenditure, more than \$5 million; and
 - (B) for any financial year of the Target Group other than FY21, to vary from that financial year's capex budget as approved by Target's Board and by Bidder (with such approval not to be unreasonably withheld) where such variance (whether an increase or decrease) is:
 - I. in respect of Remediation capital expenditure, more than \$5 million; and
 - II. in respect of Refurbishment and Maintenance capital expenditure, more than \$5 million;
 - (iii) create or incur any liability or indebtedness (whether contingent or otherwise, and including by way of drawing down on any facility), except normal liabilities or indebtedness incurred in the ordinary course of the Business and not exceeding \$20 million;
 - (iv) create any Encumbrance except a Permitted Encumbrance;
 - (v) acquire or dispose of any shares or other securities in any body corporate or any units in any trust, or substantially all of the assets of any business;

- (vi) acquire or dispose of any assets (excluding shares or other securities which are addressed in clause 9.2(d)(v)), other than current assets acquired or disposed of in the ordinary course of business;
- (vii) enter into, or terminate any participation in, any partnership, joint venture or similar commitment;
- (viii) exceed borrowing or cash reserve limitations as established by any financier of the Target Group;
- (ix) enter into, waive any material rights under, vary or terminate any contract, commitment or arrangement (other than a procurement contract) which:
 - (A) if the minimum term is 12 months or less, may require annual expenditure by, or result in a change in annual revenues to, the relevant member of the Target Group in excess of \$2.5 million;
 - (B) if the minimum term is more than 12 months, may require aggregate expenditure by the relevant member of the Target Group over the term of the contract, commitment or arrangement in excess of \$5 million; or
 - (C) is otherwise of material importance to the business of the Target Group; or
 - (D) restrains any member of the Target Group or any person that controls Target from engaging in or competing with any business in any place;

or vary any other existing contract, commitment or arrangement in a way that may increase or decrease the expenditure by or annual revenues to the relevant member of the Target Group by more than \$2.5 million or has the effect referred to in clause 9.2(d)(ix)(D);
- (x) not enter into any contract, commitment or arrangement, or make any payment to any Related Entity or a Representative of the Target Group or a Related Entity other than in the ordinary course of business;
- (xi) make any material amendments to the Occupation Right Agreement;
- (xii) acquire or sell any interest in land or enter into new leasehold interest or renew, terminate or change any material terms of any leasehold interest of any member of the Target Group, other than entry into occupation right agreements in the ordinary course of business or internal transfers within the Target Group;
- (xiii) give any guarantee of, or security for, or indemnity in connection with the obligations of any person other than a member of the Target Group, other than in the ordinary course of business pursuant to the terms of the Occupation Right Agreement;
- (xiv) increase the remuneration of, make any bonus payment, retention payment or termination payment to, or otherwise change the terms and conditions of employment of any Target Director or any employee of any member of the Target Group whose salary exceeds \$200,000 except:
 - (A) in accordance with any contractual entitlement existing as at the date of the Agreement and fairly disclosed in the Due Diligence Material;
 - (B) for salary increases in the normal course not exceeding 5% of such person's gross annual salary; and

- (C) for any payments of sales incentives commission made to Target Group employees in accordance with any contractual entitlement which exists as at the date of this Agreement and which has been fairly disclosed in the Due Diligence Material;
- (xv) accelerate the rights of any Target Director or any employee of any member of the Target Group to receive any benefit under any Target Group incentive or bonus plan. For the avoidance of doubt, this provision does not apply to the SLRS Plan and/or the Target Employee Share Scheme to the extent that such actions or steps are taken in order for Target to comply with clause 6.5;
- (xvi) change its constitution or pass any resolution of shareholders or any class of shareholders (other than the Scheme Resolution, any resolution to appoint (or reappoint) a director of Target and any resolution to authorise the Board to fix the fees and expenses of Target's auditor);
- (xvii) fail to comply in all material respects with all laws and regulations applicable to the Business or do or omit to do anything which results in a material risk of termination, revocation, suspension, modification or non-renewal of any material Authorisation held by it;
- (xviii) commence, compromise or settle any litigation or similar proceedings, except debt recovery litigation or proceedings in the ordinary course;
- (xix) make any change in accounting methods, principles or practices used by it (except if required by a change in International Financial Reporting Standards); or
- (xx) agree to do any of the things referred to in the preceding paragraphs of this clause 9.2(d), or announce or represent to any person that any of those things will be done (other than on a basis conditional on Bidder's consent in accordance with clause 9.3(a)); and
- (e) keep Bidder reasonably informed and consult with Bidder regarding proposed material increases to remuneration for Target Group personnel.

9.3 Exception

Any member of the Target Group may do anything referred to in clause 9.2(d), or not do anything required to be done under clauses 9.2(a) or 9.2(c):

- (a) with the prior written consent of Bidder (such consent not to be unreasonably withheld, conditioned or delayed);
- (b) necessary to perform or comply with its contractual obligations (as fairly disclosed to Bidder in the Due Diligence Material) or otherwise entered into in accordance with this clause 9.3;
- (c) necessary to comply with any law or any regulatory requirement or direction of a Government Agency;
- (d) necessary to respond to any emergency, act of god or other disaster; or
- (e) to the extent required to permit Target to comply with its obligations under any other provision of this Agreement,

and in the case of the situations described in clauses 9.3(b), 9.3(c), 9.3(d) or 9.3(e), only provided that Target informs Bidder as soon as possible of the actions taken or proposed to

be taken, and, to the extent practicable, considers in good faith any feedback or suggestions made by Bidder as to the proposed course of action. The parties note that the objective of this clause is that no action is taken or not taken, which may affect the future prospects of the Target Group, including its relationships with residents, shareholders, Government Authorities, or other stakeholders, without reasonable involvement of Bidder.

9.4 Consents to change of control

- (a) The parties acknowledge that the Target Group's material contracts may contain provisions requiring:
 - (i) the consent of the counterparty to that contract to a change of control, "deemed assignment" or similar that arises under the terms of that contract as a result of the Transaction;
 - (ii) notification of a change of control to a Government Agency; or
 - (iii) a waiver from the counterparty to that contract of any termination or cancellation right which will arise or otherwise be enforceable under the terms of that contract as a result of the Transaction,
 (each a **Change of Control Consent or Notification**).
- (b) Subject to clause 9.4(c):
 - (i) Target will, and will procure that each member of the Target Group will, use reasonable endeavours to obtain or make each Change of Control Consent or Notification that Bidder (with Target's reasonable assistance) identifies and requests that it obtain or make;
 - (ii) Bidder must cooperate with and use its reasonable endeavours to assist Target to obtain or make each required Change of Control Consent or Notification (but without contacting any contractual counterparties directly without Target's consent); and
 - (iii) after the Scheme Meeting and if the Scheme has been approved by Shareholders, to the extent reasonably requested by Bidder, Target will collaborate with Bidder to introduce it to relevant Target Group counterparties to jointly discuss the implications of the Transaction, including Change of Control Consents or Notifications.
- (c) Nothing in this clause 9.4 will require either party to pay any money or provide any other valuable consideration to or for the benefit of any person or otherwise be contrary to the interests of either party, as the case may be.
- (d) Subject to clause 14, the implementation of the Scheme will not be delayed if all or any required Change of Control Consents or Notifications have not been obtained or issued on or before the Implementation Date.

9.5 Financing

- (a) Target agrees to provide timely cooperation in connection with the debt financing arrangements of the Target Group after the Implementation Date, including:
 - (i) facilitating liaison between Bidder and Target's existing financiers, as may be reasonably requested by Bidder from time to time;

- (ii) providing Bidder with financial and other pertinent information regarding the Target Group or any Target Group member as may be reasonably requested by Bidder; and
- (iii) making available such senior executives of Target as reasonably requested at mutually convenient times for conference calls, meetings or presentations to existing or potential financiers of the Target Group,

provided that:

- (iv) no Target Group member shall be required to execute prior to the Implementation Date any agreements in respect of any such financing; and
 - (v) Bidder must promptly reimburse Target for all reasonable costs incurred by Target in connection with any co-operation provided pursuant to this clause 9.5.
- (b) Notwithstanding clause 9.5(a)(iv), if Target determines in its sole discretion that it wants to enter into the new debt financing arrangements of the Target Group that Bidder has procured pursuant to this clause 9.5(a) or Target has otherwise developed prior to the Implementation Date, Bidder will assist Target in respect of such arrangements however, the Target Group's entry into such arrangements will be subject to Target's obligations pursuant to clauses 9.2(d)(iii) and 9.2(d)(viii) and Bidder's approval pursuant to clause 9.3(a).
- (c) If Target becomes aware of any event or circumstance which gives rise to an Event of Review under the Facility Agreement, or a financier under the Facility Agreement gives notice to Target that an Event of Review has occurred under the Facility Agreement, Target will notify Bidder promptly and consult in good faith with Bidder in respect of the remediation of such Event of Review in order to avoid an Event of Default.

10. Representations, warranties and undertakings

10.1 Target representations, warranties and undertakings

- (a) Target represents and warrants to Bidder, that, subject to the limitations in this Agreement, each of the Target Warranties is true, accurate and not misleading as at:
 - (i) the date of this Agreement;
 - (ii) immediately prior to the last affidavits being filed in respect of the Final Orders; and
 - (iii) 8.00am on the Implementation Date.
- (b) Target undertakes to Bidder to comply with each of the Target Undertakings.
- (c) The Target Warranties (except for the Fundamental Warranties) are given subject to and are qualified by any matter:
 - (i) fairly disclosed to Bidder in the Due Diligence Material;
 - (ii) fairly disclosed through the NZX market announcements platform before the date of this Agreement; and
 - (iii) within the actual knowledge of Bidder at the date of this Agreement, which for these purposes will be taken to include (and be limited to) the facts, matters and

circumstances of which the following individuals are actually aware of as at the date of this Agreement:

- (A) Fabian Gröne;
- (B) Ken Wong;
- (C) Sam Franklin.

10.2 Bidder representations, warranties and undertakings

- (a) Bidder represents and warrants to Target that, subject to the limitations in this Agreement each of the Bidder Warranties is true, accurate and not misleading as at:
 - (i) the date of this Agreement;
 - (ii) immediately prior to the last affidavits being filed in respect of the Final Orders; and
 - (iii) 8.00am on the Implementation Date.
- (b) Bidder undertakes to Target to comply with each of the Bidder Undertakings.

10.3 Indemnity by Target

Subject to clause 13.6, Target indemnifies Bidder against, and must pay to Bidder on demand an amount equal to, all Losses directly incurred or suffered by the Bidder Indemnified Persons arising out of or in connection with:

- (a) any matter or circumstance that results in any of the Target Warranties being untrue, inaccurate or misleading when given; or
- (b) any breach of the Target Undertakings.

10.4 Indemnity by Bidder

Subject to clause 13.6, Bidder indemnifies Target against, and must pay to Target on demand an amount equal to, all Losses directly incurred or suffered by the Target Indemnified Persons arising out of or in connection with:

- (a) any matter or circumstance that results in any of the Bidder Warranties being untrue, inaccurate or misleading when given; or
- (b) any breach of the Bidder Undertakings.

10.5 Status of representations, warranties, undertakings and indemnities

Each representation and warranty, undertaking and indemnity made or given under this clause 10 is severable and survives termination of this Agreement and each undertaking and indemnity given in this clause 10 is a continuing obligation.

10.6 Scheme becoming Effective

After the Scheme becomes Effective, any breach of the representations and warranties or the undertakings made or given under this clause 10 may only give rise to a claim for

damages or under the indemnities in this clause 10 and does not entitle a party to terminate this Agreement.

11. Releases

11.1 Release of Target Indemnified Persons

Bidder waives and releases, and must procure that each member of the Bidder Group waives and releases, all rights and claims which it may have against any Target Indemnified Person (other than Target) in respect of any misrepresentation, inaccuracy or omission in or from any information or advice given by that Target Indemnified Person in connection with any representation, warranty or undertaking given by Target in this Agreement or the preparation of the Target Information except where the Target Indemnified Person has engaged in wilful misconduct or fraud. The parties acknowledge and agree that:

- (a) Target has sought and obtained the waiver and release in this clause 11.1 as agent for and on behalf of each Target Indemnified Person and may enforce the provisions of this clause 11.1 on behalf of any Target Indemnified Person;
- (b) any Target Indemnified Person may plead this clause 11.1 in response to any claim made by any member of the Bidder Group against them; and
- (c) the undertakings contained in this clause 11.1 are given for the benefit of each Target Indemnified Person and are intended to be enforceable against Bidder by each Target Indemnified Person in accordance with the provisions of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017.

11.2 Release of Bidder Indemnified Persons

Target waives and releases, and must procure that each member of the Target Group waives and releases, all rights and claims which it may have against any Bidder Indemnified Person (other than Bidder) in respect of any misrepresentation, inaccuracy or omission in or from any information or advice given by that Bidder Indemnified Person in connection with any representation, warranty or undertaking given by Bidder in this Agreement or the preparation of the Bidder Information except where the Bidder Indemnified Party has engaged in wilful misconduct or fraud. The parties acknowledge and agree that:

- (a) Bidder has sought and obtained the waiver and release in this clause 11.2 as agent for and on behalf of each Bidder Indemnified Person and may enforce the provisions of this clause 11.2 on behalf of any Bidder Indemnified Person;
- (b) any Bidder Indemnified Person may plead this clause 11.2 in response to any claim made by any member of the Target Group against them; and
- (c) the undertakings contained in this clause 11.2 are given for the benefit of each Bidder Indemnified Person and are intended to be enforceable against Target by each Bidder Indemnified Person in accordance with the provisions of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017.

12. Exclusivity

12.1 No shop restriction

Subject to clause 12.11, during the Exclusivity Period, Target must not, and must procure that each of its Representatives does not, directly or indirectly:

- (a) solicit, invite, encourage or initiate (including by the provision of non-public information to any Third Party) any Competing Proposal or any offer, proposal, expression of interest, enquiry, negotiation or discussion with any Third Party in relation to, or for the purpose of, or that may reasonably be expected to encourage or lead to, a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 12.1(a) on its behalf.

12.2 No talk restriction

Subject to clause 12.3 and clause 12.11, during the Exclusivity Period, Target must not, and must procure that none of its Representatives, directly or indirectly:

- (a) enter into, permit, continue or participate in, negotiations or discussions with any Third Party in relation to a Competing Proposal, or for the purpose of or that may reasonably be expected to encourage or lead to a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 12.2(a) on its behalf,

even if the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Target or any of its Representatives, was received before the date of this Agreement and/or or has been publicly announced.

12.3 No talk exception

The restriction in clause 12.2 does not apply to the extent that it restricts Target or its Representatives from taking or refusing to take any action with respect to a bona fide Competing Proposal (in either case, which was not encouraged, solicited, invited, facilitated or initiated in contravention of clause 12.1 or 12.2) if:

- (a) the Board has determined, after taking advice from its external financial adviser, that the Competing Proposal is, or is reasonably likely to constitute, a Superior Proposal or would be reasonably likely to constitute a Superior Proposal if it were to be proposed; and
- (b) acting in good faith and after having taken written advice from its external legal advisers, the Board has determined that it is necessary to respond to such Competing Proposal in order to fulfil their fiduciary duties or statutory obligations, as a director of Target, of any member of the Board.

12.4 No due diligence restriction

Subject to clause 12.5 and clause 12.11 but without limiting clause 12.2, during the Exclusivity Period, Target must not, and must procure that each of its Representatives does not, directly or indirectly:

- (a) make available to any Third Party, or cause or permit any Third Party to receive, any non-public information relating to Target or any of its Related Entities that may reasonably be expected to assist such Third Party in formulating, developing or finalising a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 12.4(a) on its behalf.

12.5 No due diligence exception

The restriction in clause 12.4 does not apply in respect of a bona fide Competing Proposal which was not encouraged, solicited, invited, facilitated or initiated in contravention of clause 12.1 or 12.2) if all of the following requirements are satisfied:

- (a) the Board has determined, after taking advice from its external financial adviser, that the Competing Proposal is, or is reasonably likely to constitute, a Superior Proposal or would be reasonably likely to constitute a Superior Proposal if it were to be proposed;
- (b) acting in good faith and after having obtained written advice from its external legal advisers, the Board has determined that it is necessary to respond to such Competing Proposal in order to fulfil their fiduciary duties or statutory obligations, as a director of Target, of any member of the Board;
- (c) the Third Party has first entered into a written agreement in favour of Target restricting the use and disclosure by the Third Party and its affiliates and advisers of the information made available to the Third Party, on terms not substantially more favourable to the Third Party than those in the Confidentiality Agreement; and
- (d) to the extent that any information made available to the Third Party has not previously been provided to Bidder, Target provides that information to Bidder at the same time as it is provided to the Third Party.

12.6 General notification obligations

During the Exclusivity Period, Target must immediately notify Bidder if:

- (a) Target or any of its Representatives receives any Competing Proposal or any offer or request to do any of the things referred to in clause 12.2(a) or clause 12.4(a); or
- (b) Target proposes to take any action in reliance on the exceptions in clause 12.3 or clause 12.5.

12.7 Matching rights

If Target or any of its Representatives receives a Competing Proposal then:

- (a) Target must as soon as reasonably practicable give Bidder a notice setting out all material terms of the Competing Proposal including the person who has made the Competing Proposal, the amount and form of consideration to be offered, the material conditions to which it is subject, the proposed timetable and any Break Fee Arrangements; and
- (b) from the time that Target receives the Competing Proposal until the day that is 10 Business Days after Target gives notice to Bidder under clause 12.7(a) in respect of it (**Matching Period**):

- (i) Target must not enter into, or agree to enter into, any binding documentation to give effect or implement the Competing Proposal;
- (ii) Target must use best endeavours to ensure that no Target Director makes any public statement recommending the Competing Proposal to Shareholders; and
- (iii) Bidder may offer to amend the terms of the Scheme and this Agreement or make an alternative proposal to Target or Shareholders with a view to providing an equivalent or a superior outcome for Shareholders than those offered under the relevant Competing Proposal (a **Counter Proposal**).

12.8 Target's response to Counter Proposal

If, during the Matching Period, Bidder makes a Counter Proposal:

- (a) Target must use its best endeavours to procure that Target's Board considers the Counter Proposal in good faith; and
- (b) if Target's Board acting in good faith determines that the terms and conditions of the Counter Proposal taken as a whole are no less favourable to Shareholders than those in the relevant Competing Proposal, then:
 - (i) the parties must use their reasonable endeavours to agree and enter into such documentation as is necessary to give effect to and implement the Counter Proposal as soon as reasonably practicable; and
 - (ii) Target must use its best endeavours to procure that each Target Director makes a public statement recommending the Counter Proposal to Shareholders.

12.9 Changes to Proposals

Any material change to a Competing Proposal including:

- (a) any material change to the terms referred to in clause 12.7(a); or
- (b) any incomplete or non-binding proposal or expression of interest (for the avoidance of doubt, whether existing the date of this agreement or new) becoming complete, capable of acceptance or, subject to clause 12.7(b), binding on the Third Party bidder,

will be taken to constitute a new Competing Proposal in respect of which Target must separately comply with its obligations under clause 12.6 to clause 12.8.

12.10 Return of confidential information

If Target has at any time in the 12 months before the date of this Agreement provided any confidential information to a person other than a member of the Bidder Group in connection with a Competing Proposal, Target must promptly request in writing the immediate return or destruction by that person of such confidential information, and must promptly exercise all rights available to it to ensure compliance with that request. Target must immediately advise Bidder if it becomes aware that any such rights have not been enforced or corresponding obligations of Third Parties have not been complied with.

12.11 Normal provision of information

Nothing in this clause 12 prevents a party from:

- (a) providing information required to be provided by law, any court of competent jurisdiction, any Government Agency or the NZX Listing Rules or ASX Listing Rules; or
- (b) making presentations to, and responding to bona fide enquiries from, stockbrokers, portfolio investors and equity market analysts in accordance with its usual practices.

13. Break Fee and Reverse Break Fee

13.1 Acknowledgement and agreement

Target (on the one hand) and Bidder (on the other hand) each acknowledges and agrees that:

- (a) the other and its Related Entities have incurred and will continue to incur significant costs and expenses in pursuing the Transaction including:
 - (i) advisory costs;
 - (ii) costs of management and directors' time;
 - (iii) in respect of Bidder, funding costs;
 - (iv) out of pocket expenses; and
 - (v) opportunity costs of pursuing the Transaction or in not pursuing alternative transactions or business opportunities;
- (b) the costs and expenses actually incurred by each party and its Related Entities are of such nature that they cannot accurately be ascertained;
- (c) the Break Fee and Reverse Break Fee are each liquidated damages based on a genuine and reasonable estimate of the costs and expenses that have been or will be actually incurred by the relevant party and its Related Entities in pursuing the Transaction;
- (d) the parties have negotiated the inclusion of this clause 13 in this Agreement and would not have entered into this Agreement without it; and
- (e) each party has received external legal and financial advice in relation to this clause 13 and has concluded that it is reasonable and appropriate for it to agree to payment of the Break Fee or Reverse Break Fee (as applicable) in the circumstances described in clause 13.2 or 13.3 (as applicable) in order to secure the other party's entry into this Agreement.

13.2 Circumstances where Break Fee payable

Subject to clause 13.5 and clause 13.7, Target must pay the Break Fee to Bidder if:

- (a) at any time before this Agreement is terminated a Competing Proposal is announced and the person making the Competing Proposal or one or more persons that Control, or are under the Control of, that person completes, within 18 months of the date of

termination, in all material respects a transaction of the kind referred to in the definition of Competing Proposal;

- (b) a majority of the Target Directors fail to make the recommendation or any Majority Target Director fails to give the undertaking referred to in clause 8.1 or clause 15.1 or changes, qualifies or withdraws that recommendation or undertaking or makes any public statement inconsistent with that recommendation or that undertaking or any other Target Director makes any public statement inconsistent with the recommendation referred to in clause 8.1 (except in accordance with clause 8.2(b)); or
- (c) Bidder terminates this Agreement as permitted under clause 14.1(a), 14.1(b) and 14.1(c).

13.3 **Circumstances where Reverse Break Fee payable**

Subject to clause 13.5 and clause 13.7, Bidder must pay the Reverse Break Fee to Target if Target terminates this Agreement as permitted under clause 14.2(a) or clause 14.2(b).

13.4 **Payment of Break Fee or Reverse Break Fee**

If the Break Fee or Reverse Break Fee become payable under this Agreement, Target or Bidder (as the case requires) must pay it to or as directed by the other party without withholding or set-off (except as required by law) within 10 Business Days after receipt of a written demand for payment from the other party.

13.5 **Break Fee or Reverse Break Fee not payable**

Notwithstanding anything else in this Agreement:

- (a) neither the Break Fee nor Reverse Break Fee is payable if the Scheme becomes Effective;
- (b) each of the Break Fee and Reverse Break Fee are payable only once.

13.6 **Sole and exclusive remedy**

- (a) Bidder acknowledges and agrees that payment of the Break Fee is the sole and exclusive remedy available to Bidder in connection with any event or occurrence referred to in clause 13.2 and Target is not liable for any loss or damage arising in connection with any such event or occurrence other than for any liability that it may have to pay Bidder the Break Fee under this clause 13.
- (b) Target acknowledges and agrees that payment of the Reverse Break Fee is the sole and exclusive remedy available to Target in connection with any event or occurrence referred to in clause 13.3 and Bidder is not liable for any loss or damage arising in connection with any such event or occurrence other than for any liability that it may have to pay Target the Reverse Break Fee under this clause 13.

13.7 **Amendments to Break Fee Arrangements**

If any of the following occurs:

- (a) the Takeovers Panel indicates to either party in writing that it requires any modification to the amount of the Break Fee or Reverse Break Fee or the circumstances in which either is to be paid (the **Break Fee Arrangements**) as a condition of not opposing the Scheme; or

- (b) the Court requires any modification to the Break Fee Arrangements as a condition of making orders convening the Scheme Meeting,

then the parties must amend this clause 13 to the extent required to give effect to the requirements of the Court or the Takeovers Panel, as the case may be, and in the circumstances referred to in clause 13.7(b) must give the required undertakings.

14. Termination

14.1 Events affecting the Target Group

Subject to clause 14.3, Bidder may terminate this Agreement by giving notice in writing to Target before 8.00am on the Implementation Date if:

- (a) there is a breach of any Target Warranty or any event occurs or circumstance arises that would cause any Target Warranty to be untrue as at 8.00am on the Implementation Date, where the consequences of that breach is material in context of the Scheme and the Target Group (taken as a whole) (except that this materiality qualifier does not apply in respect of a Fundamental Warranty);
- (b) Target is in breach of any Target Undertaking or any other provision of this Agreement, and that breach is material in the context of the Scheme and the Target Group taken as a whole. For the avoidance of doubt, it will be a material breach of this Agreement if:
 - (i) any Majority Target Director fails to make the recommendation, or any Majority Target Director fails to give the undertaking, referred to in clause 8.1, or changes, qualifies or withdraws that recommendation or undertaking once made or makes any public statement inconsistent with that recommendation or that undertaking (including any public statement recommending, supporting or endorsing another transaction (including any Competing Proposal)); or
 - (ii) any other Target Director makes any public statement inconsistent with the recommendation referred to in clause 8.1 (other than in accordance with clause 8.2(b));
- (c) a Prescribed Occurrence occurs on or after the date of this Agreement; or
- (d) an Insolvency Event occurs in respect of any member of the Target Group.

14.2 Events affecting Bidder

Subject to clause 14.3, Target may terminate this Agreement by giving notice in writing to Bidder before 8.00am on the Implementation Date if:

- (a) a material breach of any Bidder Warranty or any event occurs or circumstance arises that would cause any Bidder Warranty to be untrue as at 8.00am on the Implementation Date; or
- (b) Bidder is in breach of any Bidder Undertaking or any other provision of this Agreement, and that breach is material in the context of the Scheme and the Bidder Group taken as a whole; or
- (c) an Insolvency Event occurs in respect of Bidder.

14.3 Notice of termination

A party may only exercise a right of termination under clause 14.1 or clause 14.2 if:

- (a) the party wishing to terminate has given notice to the other party or parties (as applicable) setting out the circumstances that it considers permit it to do so and stating its intention to do so;
- (b) the relevant circumstances have not been remedied within 10 Business Days after the time that the notice is given or any shorter period ending at 5.00pm on the day before the Implementation Date; and
- (c) the party wishing to terminate does so before the earlier to occur of 15 Business Days after the time that the notice is given and 8.00am on the Implementation Date.

14.4 Recommendation, Counter Proposal

- (a) Bidder may terminate this Agreement by giving notice in writing to the Target at any time before 8.00am on the Implementation Date if a majority of the Target Directors fail to make the recommendation, or any Majority Target Director fails to give the undertaking, referred to in clause 8.1 or changes, qualifies or withdraws that recommendation or undertaking once made or makes any public statement inconsistent with that recommendation or that undertaking, or any other Target Director makes any public statement inconsistent with the recommendation referred to in clause 8.1 (other than in accordance with clause 8.2(b)).
- (b) Bidder or Target may terminate this Agreement by giving notice in writing to the other if at any time before the Final Orders Date:
 - (i) Bidder fails to provide a Counter Proposal within the Matching Period; or
 - (ii) the Board otherwise determines that the terms and conditions of the Counter Proposal taken as a whole are less favourable to Shareholders than those in the relevant Competing Proposal, and Target has entered into a binding implementation agreement or similar binding arrangement in respect of the Competing Proposal which is a Superior Proposal without Target having breached this Agreement.

14.5 Regulatory Conditions not satisfied

Either Target or Bidder may terminate this Agreement by giving notice in writing to the other if:

- (a) any of the Regulatory Conditions that are for the benefit of that party (or both parties) becomes incapable of satisfaction before the End Date;
- (b) the relevant Regulatory Conditions, if capable of waiver under clause 3.5, has not been waived by the End Date; and
- (c) the terminating party has complied with its obligations under clause 3.3, and in all material respects with its obligations under clauses 3.4 and 3.8 in relation to the satisfaction of the relevant Regulatory Condition.

14.6 Scheme Resolution not passed

Either Target or Bidder may terminate this Agreement by giving notice in writing to the other if:

- (a) the Scheme Meeting is held but the Scheme Resolution is not passed by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act; and
- (b) the terminating party has complied in all material respects with its obligations under this Agreement.

14.7 Court determines not to grant the Final Orders

Subject first to complying with clauses 7.3 and 7.4, either party may terminate this Agreement by giving notice in writing to the other party if the Court determines not to grant the Final Orders and the terminating party has complied in all material respects with its obligations under this Agreement.

14.8 End Date

Either Target or Bidder may terminate this Agreement by giving notice in writing to the other if the Scheme has not become Effective by the End Date, provided that the terminating party's failure to comply with its obligations under this Agreement has not directly and materially contributed to the Scheme not becoming Effective by the End Date.

14.9 Effect of termination

If this Agreement is terminated under this clause 14, then:

- (a) except as provided in clause 14.9(c), all the provisions of this Agreement cease to have effect and each party is released from its obligations to further perform this Agreement;
- (b) each party retains all rights that it has against the other party in respect of any breach of this Agreement occurring before termination; and
- (c) the provisions of, and the rights and obligations of each party under, this clause 14 and each of the Surviving Clauses survive termination of this Agreement.

15. Announcements

15.1 Initial announcements

As soon as reasonably practicable after this Agreement is signed Target must issue an announcement in a form agreed with Bidder and including a statement that:

- (a) a majority of the Target Directors recommend that Shareholders vote in favour of the Scheme; and
- (b) each Majority Target Director undertakes to vote, or procure the voting of, all Shares held or controlled by him or her or his or her Associates in favour of the Scheme,

in each case in the absence of a Superior Proposal.

15.2 Other announcements

Each party must not make, and must procure that its Representatives do not make, any public announcement concerning the Scheme or the subject matter of this Agreement other than:

- (a) the announcement referred to in clause 15.1;
- (b) with the written consent of the other party, which must not be unreasonably withheld or delayed; or
- (c) if required by law, any court of competent jurisdiction, any Government Agency, the NZX Listing Rules or rules of any other stock exchange, but if either party is so required to make any announcement, it must promptly notify the other party, where practicable and lawful to do so, before the announcement is made and must, if practicable, co-operate with the other party regarding the timing and content of such announcement or any action which the other party may reasonably elect to take to challenge the validity of such requirement.

16. Payments

16.1 Manner of payments

Unless otherwise expressly stated (or as otherwise agreed in the case of a given payment), each payment to be made under this Agreement must be made in NZ\$ by transfer of the relevant amount into the relevant account on or before the date on which the payment is due and in immediately available funds. The relevant account for a given payment is the account that the party due to receive the payment specifies, not less than 10 Business Days before the date on which payment is due, by giving notice to the party due to make the payment.

16.2 Default interest

If a party defaults in making any payment when due of any sum payable under this Agreement, it must pay interest on that sum from (and including) the date on which payment is due until (but excluding) the date of actual payment (after as well as before judgment) at an annual rate of 6% above the Reference Rate on that sum, which interest accrues from day to day and must be compounded monthly.

17. GST

17.1 Interpretation

Words and expressions that are defined in the GST Act have the same meaning when used in this clause 17. For the purposes of this clause 17, references to GST chargeable and input tax credit entitlements of any entity include GST chargeable against, and the input tax credit entitlements of, the representative member of the GST group of which the entity is a member.

17.2 Consideration exclusive of GST

For avoidance of doubt, the parties agree that the supply of Scheme Shares pursuant to this Agreement is an exempt supply of a financial service and therefore not subject to GST. All other stated amounts payable or consideration to be provided under or in connection with this Agreement do not include GST (**GST Exclusive Consideration**).

17.3 Payment of GST

If GST is chargeable on any supply made under or in connection with this Agreement the recipient must pay to the party that has made or will make the supply (the **Supplier**), in addition to the GST Exclusive Consideration, an additional amount equal to the GST chargeable on that supply (the **Additional Amount**). The recipient must pay the Additional Amount without set-off, demand or deduction, at the same time and in the same manner as any GST Exclusive Consideration for that supply is required to be paid, except that the recipient is not required:

- (a) to pay the Additional Amount unless and until the Supplier has issued a tax invoice under clause 17.4; or
- (b) to pay any GST Default Amounts included in the Additional Amount if those GST Default Amounts result from the Supplier failing to comply with its obligations under the GST Act.

17.4 Tax invoice

For any supply to which clause 17.3 applies, the Supplier must issue a tax invoice which complies with the GST Act.

17.5 Adjustments

If an event referred to in section 25(1) of the GST Act occurs in relation to a taxable supply made under or in connection with this Agreement, the GST payable on that supply will be recalculated to reflect that adjustment, a debit note or credit note will be issued as required by the GST Act and an appropriate payment will be made between the parties.

17.6 Input tax credits

Notwithstanding any other provision of this Agreement, if an amount payable under or in connection with this Agreement is calculated by reference to any loss, damage, cost, expense, charges or other liability incurred or suffered by a party, then the amount payable must be reduced by the amount of any input tax credit or other deduction from output tax to which that entity is entitled in respect of the acquisition of any supply to which the loss, damage, cost, expense, charge or other liability relates. For the avoidance of doubt, this clause 17.6 does not apply to adjust the Break Fee or Reverse Break Fee.

18. Notices

18.1 Manner of giving notice

Any notice or other communication to be given under this Agreement must be in writing (which includes email) and may be delivered or sent by email to the party to be served as follows:

- (a) to Target at:

Address: Level 4, 20 Kent Street, Newmarket, Auckland 1023, New Zealand

Email: andrewp@metlifecare.co.nz

For the attention of: The Company Secretary

with a copy to (which will not constitute notice):

Address: Chapman Tripp, Level 38, 23 Albert Street, Auckland Central, Auckland 1010, New Zealand

Email: roger.wallis@chapmantripp.com

For the attention of: Roger Wallis

(b) to Bidder at:

Address: Bell Gully, Level 22, Vero Centre, 48 Shortland Street, PO Box 4199, Auckland

Email: anna.buchly@bellgully.com / james.gibson@bellgully.com

For the attention of: Anna Buchly / James Gibson

with a copy to:

Address: EQT Partners Singapore Pte Ltd, 1 Raffles Place, #29-62 One Raffles Place Tower 2, Singapore 048616

Email: benjamin.lim@eqtpartners.com

For the attention of: Benjamin Lim

or at any such other address or email address notified for this purpose to the other parties under this clause.

18.2 When notice given

Any notice or other communication is deemed to have been given:

- (a) if delivered, on the date of delivery; or
- (b) if sent by email, four business hours (being the hours between 9am and 5pm on a Business Day in the jurisdiction of the recipient) after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered (excluding an "out of office" automated message),

but if the notice or other communication would otherwise be taken to be received after 5.00 pm or on a Saturday, Sunday or public holiday in the place of receipt then the notice or communication is taken to be received at 9.00 am on the next day that is not a Saturday, Sunday or public holiday in the place of receipt.

18.3 Proof of service

In proving service of a notice or other communication, it is sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted either by prepaid post or by prepaid airmail or that the e-mail was properly addressed and transmitted by the sender's server into the network and there was no apparent error in the operation of the sender's e-mail system, as the case may be.

18.4 Documents relating to legal proceedings

This clause 18 does not apply in relation to the service of any claim form, notice, order, judgment or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this Agreement.

19. General

19.1 Amendments

- (a) This Agreement may only be amended prior the Scheme becoming Effective.
- (b) Any amendment to this Agreement will only be effective if it is in writing and signed by all the parties.
- (c) Notwithstanding clauses 11.1(c) and 11.2(c) this Agreement may be varied by the parties to it without the approval of any Target Indemnified Person, any Bidder Indemnified Person or any director, officer or employee of Target or of any other member of the Target Group.

19.2 Assignments

None of the rights or obligations of a party under this Agreement may be assigned, transferred or novated without the prior written consent of the other party (such consent not to be unreasonably withheld).

19.3 Costs

Except as otherwise expressly provided in this Agreement, each party must pay the costs and expenses incurred by it in connection with entering into and performing its obligations under this Agreement, the Scheme and the Deed Poll.

19.4 Entire agreement

This Agreement contains the entire agreement between the parties relating to the Transaction and supersedes all previous agreements, whether oral or in writing, between the parties relating to the Transaction except for the Confidentiality Agreement.

19.5 Execution in counterparts

This Agreement may be executed in counterparts, which taken together must constitute one and the same agreement, and any party (including any duly authorised representative of a party) may enter into this Agreement by executing a counterpart. Scanned signatures are taken to be valid and binding to the same extent as original signatures.

19.6 Exercise and waiver of rights

The rights of each party under this Agreement:

- (a) may be exercised as often as necessary;
- (b) except as otherwise expressly provided by this Agreement, are cumulative and not exclusive of rights and remedies provided by law; and
- (c) may be waived only in writing and specifically,

and delay in exercising or non exercise of any such right is not a waiver of that right.

19.7 Further assurance

Each party undertakes, at the request, cost and expense of the other party, to sign all documents and to do all other acts, which may be necessary to give full effect to this Agreement.

19.8 Severability

The provisions contained in each clause of this Agreement are enforceable independently of each other clause of this Agreement and the validity and enforceability of any clause of this Agreement will not be affected by the invalidity or unenforceability of any other clause.

19.9 Service of process

Bidder appoints Anna Buchly or James Gibson of Bell Gully as agent in New Zealand for service of process and other documents in any legal action or proceedings arising out of or in connection with this Agreement and will ensure that at all times prior to the Implementation Date or termination of this Agreement, Bell Gully or a replacement appointed by Bidder and notified to Target, is authorised and able to accept service of process and other documents on its behalf in New Zealand.

20. Governing law and jurisdiction

20.1 Governing law

This Agreement and any non-contractual obligations arising out of or in connection with it is governed by the law applying in New Zealand.

20.2 Jurisdiction

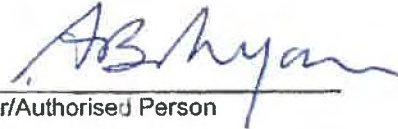
The courts having jurisdiction in New Zealand have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to any non-contractual obligations arising out of or in connection with this Agreement) and each party irrevocably submits to the exclusive jurisdiction of the courts having jurisdiction in New Zealand.

Execution

Executed as an agreement.

Metlifecare Limited by
in the presence of :

)
)



Director/Authorised Person

Alistair Ryan

Print Name



Witness Signature

Andrew Peskett

Print Name

Solicitor

Witness Occupation

Auckland

Place of residence

EXECUTED and signed on behalf of
Asia Pacific Village Group Limited
by its attorney in the presence of:

)
)
)



Attorney

Anna Elizabeth Bockly

Print Name



Witness Signature

Print Name

Jack Adam Gorge

Solicitor

Auckland

Occupation

Address

CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

I, **Anna Elizabeth Buchly**, of Auckland, New Zealand, Solicitor, certify:

1. That by deed dated 10 July 2020, Asia Pacific Village Group Limited appointed me its attorney.
2. That I have not received notice of any event revoking the power of attorney.

Signed at Auckland this 10th day of July 2020

SIGNED by



Anna Elizabeth Buchly

Schedule 1: Prescribed Occurrences

1. Target or any other Target Group member authorises, declares, pays, or makes any dividends, bonuses or other payments or distributions (within the meaning of the Companies Act) of any nature (including, without limitation, any share buybacks, redemptions or other form of capital reduction), or any distribution from Target Group member to another Target Group member (except for dividends from PAN to the Target and its joint venture partner).
2. Any Target Group member issuing, agreeing to issue, or granting an option or right to subscribe for, shares, convertible securities, other securities or financial products of any nature (including warrants, options, phantom or cash settled rights over Shares, convertible notes, entitlements, rights or interests in any ordinary shares) other than the issuing of shares by a wholly owned subsidiary of Target to Target or another wholly owned subsidiary of Target or the transfer of Shares due to the vesting of Performance Share Rights as permitted under clause 6.5.
3. Target or a Target Group member:
 - (a) altering the rights, privileges, benefits, entitlements or restrictions attaching to any securities (including the Shares) or other securities or financial products (if any) of any member of the Target Group;
 - (b) converting all or any of the Shares into a larger or smaller number;
 - (c) buying back (or agreeing to buy back) any shares (including pursuant to the share buyback programme announced by Target on 24 October 2019);
4. Any alteration to the constitutional documents of any Target Group member (except any amendments to the PAN constitutional documents as fairly disclosed in the Due Diligence Material), or the terms of the SLRS Plan or the Target Employee Share Scheme (except as specifically provided for in this Agreement).
5. An Insolvency Event occurs:
 - (a) in respect of any member of the Target Group; or
 - (b) in respect of any member of the Target Group where such Insolvency Event where such Insolvency Event gives rise to an Event of Default or Potential Event of Default under the Facility Agreement;
6. A resolution is passed for any amalgamation of any member of the Target Group, or any of them is involved in any merger or scheme of arrangement (other than a solvent scheme of arrangement or an amalgamation, merger or scheme of arrangement involving solely Target and/or one or more wholly owned subsidiaries of Target).
7. The Shares cease to be quoted, or are suspended from trading for a period of longer than five trading days, on the NZX and ASX (other than in connection with implementation of the Scheme).
8. An action, claim, litigation, prosecution or other form of proceeding is notified or commenced, or reasonably likely to be notified or commenced, against, or by, any member of the Target Group that is material to the Target Group, taken as a whole or in respect of the Scheme or that has a material adverse effect of the Transaction.
9. An action, claim, litigation, prosecution, investigation by a Government Agency or other form of proceeding is notified or commenced, or reasonably likely to be notified or commenced, against any member of the Target Group that is material to the Target Group, taken as a whole or in respect of the Transaction or that has a material adverse effect on the Transaction.

10. Any member of the Target Group:
 - (a) makes or incurs (or agrees to make or incur) any payments, commitments or liabilities (including contingent liabilities) outside of the ordinary course of business which are material or could be material to the Target Group taken as a whole; or
 - (b) disposes of, purchases, transfers, leases, grants or permits any security interest, mortgage, option, lien, charge, encumbrance or other adverse interest of any nature in respect of, or otherwise deals with a legal or equitable interest in, an asset, business, operation, property of the Target Group (or agrees, including agreeing to vary any agreement, to do any of these things), that is material to the Target Group taken as a whole.
11. Target breaches any of the provisions in clauses 9.2 and 9.3, the effect of which is material to the Target Group taken as a whole.
12. A member of the Target Group is, or will be, under any obligation to make any payment or provide any consideration to any of its employees or directors in the event of any member of the Target Group becoming a subsidiary of the Bidder or under the Bidder's control, which is material in the context of the Target Group taken as a whole (unless approved in writing by the Bidder).
13. A member of the Target Group entering into a transaction with a related party (other than a related party that is also a member of the Target Group) that is material to the Target Group taken as a whole.
14. Target or another Target Group member amending (or agreeing to amend) in a material respect any agreement or arrangement with any financial advisor in relation to the Transaction or a Competing Proposal, or entering into an agreement or arrangement with a new financial advisor, in respect of the Transaction or a Competing Proposal.
15. The board or shareholders of a Target Group member pass a resolution or to do or authorise the doing of any act or matter referred to in any of paragraphs 1 to 14.

Schedule 2: Target Warranties and Undertakings

PART 1

TARGET WARRANTIES

1. Target is a company validly existing under the laws of New Zealand.
2. Target has the power to execute this Agreement and to perform its obligations under this Agreement and the Scheme, and has taken all necessary corporate action to authorise such execution and the performance of such obligations.
3. Target's obligations under this Agreement are legal, valid and binding obligations enforceable subject to and in accordance with their terms.
4. The execution by Target of this Agreement and the performance of its obligations under this Agreement and the Scheme do not and will not conflict with or constitute a default under any provision of:
 - (a) its constitution; or
 - (b) any law, order, judgment, award, injunction, decree, rule or regulation by which Target is bound.
5. As at the date of this Agreement, Target's capital structure is as set out in Schedule 4 Part A, and the Target Group's capital structure as set out in Part B and there are no other shares, options or other securities (including equity securities, debt securities or convertible securities) or other instruments which are convertible into securities in a member of the Target Group on issue, nor has any member of the Target Group offered or agreed to issue or grant, and no person has any right to call for the issue or grant of, any such shares, options or other securities or other instruments to any third party. As at 8.00am on the Implementation Date, there will be on issue no more than 213,304,722 Shares, and no securities, options, performance rights or instruments will be outstanding or become outstanding which give (or may give) any right to or which may become convertible into Shares.
6. Target has filed or lodged with the Registrar, NZX and ASX all documents required to be filed with the Registrar, NZX or ASX, including pursuant to NZX Listing Rule 3.1 (**Target Reporting Documents**) and is not in breach of its continuous and periodic disclosure obligations under the Companies Act, the FMCA, the NZX Listing Rules and, as at the date of this Agreement, is not relying on the carve-out in NZX Listing Rule 3.1 to withhold any information from public disclosure. The Target Reporting Documents do not contain any untrue statement of a material fact or omit to state a material fact required to be stated in it, except to the extent that such statements have been modified or superseded by a later Target Reporting Document.
7. The Due Diligence Material has been prepared and provided in good faith and, as far as Target is aware, no information that has been included in the Due Diligence Material was, when given, materially false or misleading, including by omission.
8. No Target Group Member has a legal or equitable interest in land that has not been disclosed in the Due Diligence Material.
9. No Prescribed Occurrence has occurred on or after the date of this Agreement.
10. Each member of the Target Group has complied in all material respects with all New Zealand and foreign laws and regulations applicable to them (save for instances of non-compliance which do not have a material adverse impact on the Target Group), has all material Authorisations for them to conduct the business of the Target Group as presently being

conducted and, so far as Target is aware, no member of the Target Group is under investigation with respect to the violation of any laws or applicable Authorisations.

11. Target is not as at the date of this Agreement in negotiations or discussions (other than with Bidder and its Representatives) with any party relating to any Competing Proposal.
12. The execution of this Agreement by Target will not affect any waiver or amendment of any standstill agreement or arrangement between Target and any person other than a member of the Bidder Group.
13. Target Group does not have any outstanding financing that is not reflected in either its financial statements and notes thereto for the year ended 30 June 2019, and since 30 June 2019 no member of Target Group has engaged in any financing of a type which is not required to be shown or reflected in its financial statements or notes thereto.
14. There is no current or, so far as the Target is aware on the date of this Agreement, pending or threatened claim, dispute, demand, action, litigation, prosecution, arbitration, investigation, mediation or other proceeding which could reasonably be expected to result in an award, settlement, fine, penalty, order, loss or other liability to the Target Group of more than \$2 million.

PART 2

TARGET UNDERTAKINGS

1. Target will ensure that the Target Information:
 - (a) is prepared in good faith and on the understanding that each of the Bidder Indemnified Parties will rely on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet;
 - (b) complies with the Companies Act, FMCA and all other applicable laws, the NZX Listing Rules and the ASX Listing Rules; and
 - (c) in the form and context in which it appears in the Scheme Booklet is true and correct in all material respects and is not misleading or deceptive, including by omission as at the date the Scheme Booklet is sent to Shareholders.
2. Target will provide to Shareholders and Bidder all new material information of which it becomes aware after the Scheme Booklet has been sent to Shareholders and before the date of the Scheme Meeting which is necessary to ensure that the Target Information, in the form and context in which it appears in the version of the Scheme Booklet sent to Shareholders, is not misleading or deceptive, including by omission.
3. All information provided by or on behalf of Target to the Independent Adviser will be provided in good faith and on the understanding that the Independent Adviser will rely upon that information for the purpose of preparing the Independent Adviser's report for inclusion in the Scheme Booklet, will be true and correct in all material respects and will not be misleading or deceptive including by omission.

Schedule 3: Bidder Warranties and Undertakings

PART 1

BIDDER WARRANTIES

1. Bidder is a company validly existing under the laws of its place of incorporation.
2. Bidder has the power to execute and deliver and to perform its obligations under this Agreement and the Deed Poll, and has taken all necessary corporate action to authorise such execution and delivery and the performance of such obligations.
3. The obligations of Bidder under this Agreement are, and the obligations of Bidder under the Deed Poll will, on execution of the Deed Poll be, legal, valid and binding obligations enforceable subject to and in accordance with their terms.
4. The execution and delivery by Bidder of this Agreement and the execution and, in due course, delivery by Bidder of the Deed Poll do not and will not conflict with or constitute a default under any provision of:
 - (a) any agreement or instrument to which Bidder is a party;
 - (b) the constitution or equivalent documents of Bidder; or
 - (c) any law, order, judgment, award, injunction, decree, rule or regulation by which Bidder is bound.
5. The Equity Commitment Letter has been duly executed by the parties to it and constitutes legally binding obligations on those parties that are enforceable in accordance with its terms, and the Equity Commitment Letter has not been terminated.

PART 2

BIDDER UNDERTAKINGS

1. Bidder will ensure that the Bidder Information:
 - (a) is prepared in good faith and on the understanding that each of the Target Indemnified Parties will rely on that information to prepare the Scheme Booklet and to propose and implement the Scheme in accordance with the Companies Act;
 - (b) complies with the Companies Act and the FMCA and all other applicable laws; and
 - (c) in the form and context in which it appears in the Scheme Booklet is true and correct in all material respects and is not misleading or deceptive, including by omission as at the date the Scheme Booklet is sent to Shareholders.
2. Bidder will provide to Target all new material information of which it becomes aware after the Scheme Booklet has been sent to Shareholders and before the date of the Scheme Meeting which is necessary to ensure that the Bidder Information, in the form and context in which that information appears in the version of the Scheme Booklet sent to Shareholders, is not misleading or deceptive in any material respect, including by omission.
3. All information provided by or on behalf of Bidder to the Independent Adviser will be provided in good faith and on the understanding that the Independent Adviser will rely upon that information for the purpose of preparing the Independent Adviser's Report for inclusion in the Scheme Booklet, will be true and correct in all material respects and will not be misleading or deceptive, including by omission.

4. Subject to the Companies Act and the Scheme becoming Effective, Bidder undertakes in favour of Target and each Target Indemnified Party that it will:
 - (a) subject to clause 5 below, for a period of 7 years from the Implementation Date, ensure that the constitutions of Target and each Target Group member continue to have equivalent obligations to those currently contained in their constitutions at the date of this Agreement that provide for each company to indemnify each of its current and former directors and officers against any liability (excluding for fraud or wilful misconduct) incurred by that person in his or her capacity as a director or officer of the company to any person other than a member of the Target Group member; and
 - (b) procure that Target and each Target Group member complies with any provisions in deeds of indemnity, access and insurance (including run off insurance) made by them in favour of their respective directors and officers from time to time and fairly disclosed in the Due Diligence Material and without limiting the foregoing, Bidder will ensure that the directors' and officers' run-off insurance cover already in place and fully paid before the date of this Agreement, for those directors and officers is maintained on no less favourable terms than Target's current directors and officers policy, subject to clause 5 below, for a period of 7 years from the retirement date of each director and officer. For the avoidance of doubt, this clause does not intend to impose any obligation on Bidder to pay for run-off insurance or any further insurance to achieve these purposes.
5. The undertakings contained in clause 4 above are given until the earlier of the end of the relevant period specified in that clause or the relevant Target Group member ceasing to be part of the Bidder Group.

Schedule 4: Capital Structure

PART A

Type of security	Total number on issue
Ordinary shares	213,304,722, which includes 522,928 Restricted Shares
Performance Share Rights	314,528

PART B

Entity name	Total number of shares on issue	Class	Name of shareholder(s)
Metlifecare Limited	213,304,722	Ordinary	Publicly listed on NZX.
Metlifecare LTIP Trustee	100	Ordinary	Metlifecare Limited
Metlifecare Holdings Limited	49,961,169	Ordinary	Metlifecare Limited
Forest Lake Gardens Limited	1,000,000	Ordinary	Metlifecare Holdings Limited
Hibiscus Coast Village Holdings Limited	20,376,029	Ordinary	Metlifecare Holdings Limited
Hillsborough Heights Village Holdings Limited	23,330,796	Ordinary	Metlifecare Holdings Limited
Metlifecare Dannemora Gardens Limited	27,200,100	Ordinary	Metlifecare Holdings Limited
Metlifecare Oakridge Limited	8,249,900	Ordinary	Metlifecare Holdings Limited
Metlifecare Papamoa Beach Limited	28,800,100	Ordinary	Metlifecare Holdings Limited
Waitakere Group Limited	12,037,940	Ordinary	Metlifecare Holdings Limited
Longford Park Village Holdings Limited	16,157,375	Ordinary	Metlifecare Holdings Limited
Longford Park Village Limited	2	Ordinary	Longford Park Village Holdings Limited
Metlifecare Palmerston North Limited	1,000	A Class Shares and B Class Shares	Palmerston North Maori Reserved Corporate Trustee Limited (50%) and Metlifecare Limited (50%)
Metlifecare 7 Saint Vincent Limited	1,000,000	Ordinary	Metlifecare Limited
Metlifecare Bayswater Limited	1,000,000	Ordinary	Metlifecare Limited
Metlifecare Botany Limited	100	Ordinary	Metlifecare Limited

Entity name	Total number of shares on issue	Class	Name of shareholder(s)
Metlifecare Coastal Villas Limited	2,000,000	Ordinary	Metlifecare Limited
Metlifecare Crestwood Limited	1,000,000	Ordinary	Metlifecare Limited
Metlifecare Edgewater Limited	2,500,000	Ordinary	Metlifecare Limited
Metlifecare Greenwich Gardens Limited	7,000,900	Ordinary	Metlifecare Limited
Metlifecare Greenwood Park Limited	7,003,648	Ordinary	Metlifecare Limited
Metlifecare Gulf Rise Limited	4,000,100	Ordinary	Metlifecare Limited
Metlifecare Highlands Limited	1,000,000	Ordinary	Metlifecare Limited
Metlifecare Kapiti Limited	5,000,000	Ordinary	Metlifecare Limited
Metlifecare Orion Point Limited	100	Ordinary	Metlifecare Limited
Metlifecare Pinesong Limited	1,000,000	Ordinary	Metlifecare Limited
Metlifecare Pohutukawa Landing Limited	100,100	Ordinary	Metlifecare Limited
Metlifecare Powley Limited	1,000,000	Ordinary	Metlifecare Limited
Metlifecare Somervale Limited	1,500,000	Ordinary	Metlifecare Limited
Metlifecare The Avenues Limited	7,000,000	Ordinary	Metlifecare Limited
Metlifecare The Orchards Limited	5,985,972	Ordinary	Metlifecare Limited
Metlifecare The Poynton Limited	29,500,000	Ordinary	Metlifecare Limited

Schedule 5: Standard OIO Conditions

For the purposes of clause 3.1(a)(i) of the Agreement, the terms and conditions are:

- (a) the time period after which the consent will lapse if the Shares have not been acquired by and transferred to Bidder, provided such date is not less than 12 months from the date of the consent;
- (b) the requirement for Bidder to notify the Overseas Investment Office (**OIO**) in writing confirming that settlement of the acquisition of the Shares took place, such notice to include:
 - (i) the date of settlement;
 - (ii) the final consideration paid;
 - (iii) the structure by which the acquisition was made;
 - (iv) where applicable, copies of transfer documents and settlement statements; and
 - (v) any other information that would aid the OIO in its function to monitor conditions of consent;
- (c) the requirement that Bidder, or the individuals with control of Bidder, must:
 - (i) continue to be of good character; and
 - (ii) not become an individual of the kind referred to in sections 15 or 16 of the Immigration Act 2009 (New Zealand);
- (d) the requirement that Bidder must notify the OIO within 20 business days if Bidder:
 - (i) or any person in which Bidder has, or had at the time of the offence or contravention, a 25% or more ownership or control interest, commits an offence or contravenes the Law (whether convicted or not);
 - (ii) ceases to be an overseas person; or
 - (iii) disposes of the Shares;
- (e) the requirement that Bidder report in writing annually to the OIO detailing progress of its business plan during the financial year;
- (f) the requirement that Bidder must provide a written report within 20 business days on any matter relating to its compliance with:
 - (i) the representations and plans made or submitted in support of the application and notified by the OIO as having been taken into account when the consent was granted; or
 - (ii) the conditions of consent;
- (g) the requirement that the information provided by Bidder to the OIO or the relevant Minister or Ministers in connection with the application for the consent was correct at the time it was provided;

- (h) the requirement that Bidder must comply with the representations and plans made or submitted in support of the application and notified by the OIO as having been taken into account when the consent was granted, unless compliance should reasonably be excused;
- (i) the requirement that Bidder must allow a person appointed by the OIO to conduct an inspection any land which is the subject of the application for the consent (**Inspector**) for the purpose of monitoring compliance with the OIO consent conditions (**Inspection**), provided that Bidder has been given at least two business days' notice of the Inspection.
- (j) the requirement that, for the purpose of conducting an Inspection, Bidder must allow an Inspector to:
 - (i) gather information and provide that information to the OIO;
 - (ii) enter any land which is the subject of the application for the consent;
 - (iii) remain for as long as is reasonably required to conduct the Inspection;
 - (iv) conduct surveys, inquiries, tests, and measurements;
 - (v) take photographs and video recordings; and
 - (vi) do all other things that are reasonably necessary to enable an Inspector to carry out an Inspection, including providing transport across any land which is the subject of the application for the consent if reasonably required;
- (k) the requirement that Bidder must take all reasonable steps to facilitate an Inspection, including:
 - (i) directing its employees or agents to permit an Inspector to conduct an Inspection; and
 - (ii) being available, or requiring its agents or employees to be available at all reasonable times during an Inspection to facilitate access by an Inspector onto and across the any land which is the subject of the application for the consent, including providing transport across any such land if reasonably required.

Schedule 6: Defined Terms and Interpretation

1. Defined terms

In this Agreement, unless the context requires otherwise:

Additional Amount has the meaning given in clause 17.3;

Agent means the Agent under the Facility Agreement;

Associate has the meaning given in the Takeovers Code;

ASX means ASX Limited or Australian Securities Exchange, as the context requires;

ASX Listing Rules means the official listing rules of the ASX;

Authorisation means any permit, licence, consent, approval, registration, accreditation, certification or other authorisation given or issued by any Government Agency;

Bidder Group means Bidder and its Related Entities (but excluding members of the Target Group);

Bidder Indemnified Persons means each member of the Bidder Group and each of their respective directors, officers and employees;

Bidder Information means all information given by Bidder to Target for inclusion in the Scheme Booklet concerning Bidder, its Related Entities, business and interests and dealings in the Shares;

Bidder Undertakings means the undertakings set out in Part 2 of Schedule 3;

Bidder Warranties means the statements set out in Part 1 of Schedule 3;

Board means the board of directors of Target;

Break Fee means NZ\$12.80 million including GST, if any;

Break Fee Arrangements has the meaning given in clause 13.7(a);

Business means the business carried on by the Target Group as at the date of this Agreement;

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Auckland, New Zealand and excluding any day between 24 December and 3 January (both dates inclusive);

Change of Control Consent or Notification has the meaning given to that term in clause 9.4(a);

Companies Act means the Companies Act 1993;

Competing Proposal means any proposed:

- (a) takeover (whether full or partial takeover under the Takeovers Code) in respect of the Target;
- (b) any scheme of arrangement in respect of the Target;
- (c) any transfer or issuance of financial products of Target, where Shareholders' approval is required under the Takeovers Code;
- (d) sale of assets (including any interests in land) or financial products of any Target Group member, where such sale constitutes a material part of the Target Group Business; or
- (e) any strategic alliance, joint venture, partnership, dual listed companies structure, economic or synthetic merger or combination or other transaction or arrangement which, if completed, would result in a Third Party directly or indirectly acquiring or being entitled to acquire a Relevant Interest or any other direct or indirect interest in more than 10% of the shares of Target or more than 10% of the shares in any other member or members of the Target Group that individually or collectively contribute 10% or more of the consolidated EBITDA of the Target Group or whose assets represent 10% or more of the total consolidated assets of the Target Group,

and for the purposes of the definition of Competing Proposal:

- (f) any such proposal may be an expression of interest, indicative, conditional or otherwise non-binding;
- (g) paragraphs (c), (d) and (e) above include any agreement (within the meaning of section 6 of the FMCA) whereby such a transaction is effected through a series of linked or related transactions which if conducted as a single transaction would constitute a Competing Proposal within the meaning of either of paragraphs (c), (d) or (e); and
- (h) Third Party shall mean a Third Party together with its Associates;

Conditions mean the conditions precedent set out in the first column of the table in clause 3.1;

Confidentiality Agreement means the confidentiality agreement between Bidder and Target dated 24 November 2019;

Consideration means NZ\$6.00 in respect of each Scheme Share;

Control means, in relation to a person (the "relevant person") and one or more other persons, where those one or more persons, directly or indirectly, whether by the legal or beneficial ownership of shares, securities or other equity, the possession of voting power, by contract, trust, or otherwise:

- (a) has the power to appoint or remove the majority of the members of the governing body of the relevant person;
- (b) controls, or has the power to control, the affairs or policies of the relevant person; or
- (c) is in a position to derive more than 50% of the economic benefit of the existence or activities of the relevant person;

Counter Proposal has the meaning given in clause 12.7(b)(iii);

Court means the High Court of New Zealand, Auckland Registry;

Data Room Index means the index of materials and information disclosed in writing in the data room established by Target in relation to the Transaction (including written answers given by or on behalf of Target through the data room), in a form agreed between the parties in writing on or prior to the date of this Agreement;

Deed of Supervision means the deed of supervision between the relevant Statutory Supervisor and the Target Group Member in relation to the operation of the Business;

Deed Poll means the deed poll to be entered into by Bidder in favour of the Scheme Shareholders in the form attached as Annexure B or in such other form as the parties agree in writing;

Designated Persons means Glen Sowry, Richard Thomson, Andrew Peskett, Richard Callander, Matt Wickham and Tanya Bish;

Due Diligence Material means the due diligence materials and information, including written answers given by or on behalf of Target to questions and requests for information made by or on behalf of Bidder listed in the Data Room Index;

Duty means any stamp, transaction or registration duty or similar charge imposed by any Government Agency and any penalty, fine, interest or additional charge payable in relation to any such duty or charge;

EBITDA means earnings before interest tax depreciation and amortisation;

Effective means, when used in relation to the Scheme, the coming into effect under section 236(3) of the Companies Act of the order of the Court made under section 236(1) of the Companies Act in relation to the Scheme and all of the Conditions having been satisfied or waived (where capable of being waived) in accordance with this Agreement and the Scheme;

Encumbrance means any security interest (within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999) and any option, right to acquire, right of pre-emption, assignment by way of security, trust arrangement for the purpose of providing security, retention arrangement or other security interest of any kind (other than any reservation of title by suppliers in the ordinary course of business), and any agreement to create any of the foregoing;

End Date means:

- (a) 25 January 2021, subject to extension under clause 7.4;
- (b) any other date agreed in writing by the parties;

Equity Commitment Letters means the binding equity commitment letters provided in favour of Bidder in connection with the funding of Bidder's obligations in respect of the Transaction, copies of which were provided to Target at least 24 hours prior to the date of this Agreement;

Exclusivity Period means the period starting on the date of this Agreement and ending on the first to occur of:

- (a) termination of this Agreement;
- (b) the Implementation Date; and
- (c) the End Date;

Facility Agreement means the Core Revolving Credit Facility and Development Facility Agreement between Target and the Agent and the Lenders (as those terms are defined in the agreement), originally dated 8 March 2012 as amended and amended and restated from time to time;

Final Orders means orders on application of Target, that the Scheme shall be binding on Target, Bidder, Shareholders and such other persons or class of persons as the Court may specify, in accordance with section 236(1) (and section 237, if applicable) of the Companies Act;

Final Orders Date means the day on which the Final Orders are granted by the Court;

First Court Date means the first date on which the application is made to the Court for the Initial Orders in accordance with section 236(2) of the Companies Act;

FMCA means the Financial Markets Conduct Act 2013;

Fundamental Warranties means the Target Warranties set out in paragraphs 1, 2, 3, 4, 5, 6, 10, 11 and 12 of Part 1 of Schedule 2;

FY21 means the financial year ending 30 June 2021;

FY21 Capex Budget means the FY21 capital expenditure budget set out on page 9 of the "FY21 Target Budget Presentation" provided by Target to Bidder by email on 25 June 2020 (a copy of which is fairly disclosed in the Due Diligence Material);

Government Agency means any government, any department, officer or minister of any government, and any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, supervisor, tribunal or entity, including the Statutory Supervisors, and any court;

GST means goods and services tax charged or levied under the GST Act, and includes any GST Default Amounts;

GST Act means the Goods and Services Tax Act 1985;

GST Default Amounts means any penalties, additional tax or interest payable in respect of goods and services tax;

GST Exclusive Consideration has the meaning given in clause 17.2;

Implementation Date means the day on which the Scheme is to be implemented, being 2 Business Days after the Record Date, or such other date agreed between the parties in writing;

Independent Adviser means the person appointed by Target as independent adviser to prepare the Independent Adviser's Report and approved by the Takeovers Panel;

Independent Adviser's Report means the independent adviser's report prepared by the Independent Adviser in relation to the Scheme as amended or updated from time to time and including any supplementary or replacement report, stating its opinion on the merits of the Transaction;

Initial Orders means, on application by Target, orders by the Court for the purposes of section 236(2) of the Companies Act;

Insolvency Event means, in relation to a person, the occurrence of any of the following:

- (a) the person ceases or threatens to cease to carry on all or substantially all of its business or operations;
- (b) an application or an order is made, or a resolution is passed or proposed, for the person's dissolution;
- (c) the person is or becomes unable to pay its debts when due (as defined in the Companies Act), or enters into dealings with any of its creditors with a view to avoiding or in expectation of insolvency, or makes a general assignment or an arrangement or composition with or for the benefit of any of its creditors, or stops or threatens to stop payments generally;
- (d) the person goes into receivership or has a receiver, receiver and manager, official manager, trustee or other similar officer appointed in respect of all or any of its property;
- (e) a distress, attachment or other execution is levied or enforced upon or commenced against any of its assets;
- (f) any resolution is passed, or any proceeding is commenced, for the dissolution of that person;
- (g) any application is made or notice is filed for the deregistration of a person;
- (h) the person takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in this definition; and
- (i) anything analogous to anything referred to in the above paragraphs, or which has substantially similar effect, occurs with respect to it, including under any applicable foreign law;

Lenders means the lenders under the Facility Agreement;

Loss means all losses, damages, costs, expenses, charges and other liabilities provided however that the parties shall not be liable for any indirect loss, economic loss, loss of opportunity or loss of profit whatsoever and however arising, including:

- (a) consequential loss or damage; or
- (b) loss of use, production, revenue, income, profits, business and savings or business interruption (whether or not the indirect loss or damage was foreseeable);

LTIP Trustee means Metlifecare LTIP Limited;

Majority Target Director has the meaning given in clause 8.1;

Matching Period has the meaning given in clause 12.7(b);

Maximum PSR Shares has the meaning given in clause 6.5(b)(ii);

Maximum SLRS Shares has the meaning given in clause 6.5(b)(i);

Minority Target Director means a Target Director who is not a Majority Target Director;

NZX means NZX Limited and, where the context requires, the main board financial market that it operates;

NZX Listing Rules means the NZX Main Board/Debt Market Listing Rules;

Occupation Right Agreement means an occupation right agreement between a resident and a member of the Target Group on terms materially similar to the standard form of the occupation right agreements as at the date of this Agreement as fairly disclosed in the Due Diligence Material;

OIO means the New Zealand Overseas Investment Office;

OIO Application means Bidder's application under the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005 in connection with the Scheme;

OIO Condition means the Condition in clause 3.1(a);

PAN means Metlifecare Palmerston North Limited;

Performance Share Rights means entitlements to be issued Shares upon satisfaction of certain requirements set out in SLRS Plan Rules;

Permitted Encumbrances means in respect of the Target Group's assets, but not the Scheme Shares:

- (a) a reservation of ownership or other purchase money security interest entered into in respect of supplies to a member of the Target Group in the ordinary course of business;
- (b) a right or set-off or combination of arising by operation of law or practice over money deposited with a bank or financial institution in the ordinary course of business;
- (c) a security interest arising by operation of law and in the ordinary course of business provided that the debt it secures is paid when due or contested in good faith by appropriate proceedings;
- (d) a security interest arising under section 17(1)(b) of the Personal Property Securities Act 1999 that does not secure payment or performance of an obligation;
- (e) a security interest granted in favour of a Statutory Supervisor; and
- (f) a security interest granted to a resident in the ordinary course and in accordance with the terms of an Occupation Right Agreement;

PPSR means the Personal Property Securities Register established under section 139 of the Personal Property Securities Act 1999;

Prescribed Occurrence means the occurrence of any of the events listed in Schedule 1 other than an event agreed to by Bidder in writing;

Record Date means 5.00 pm on the date which is 5 Business Days after the Final Orders Date or such other date agreed between the parties in writing;

Reference Rate means in relation to interest payable on any payment due under this Agreement, the mid or “FRA” rate for 90 day bank accepted bills (expressed as a percentage) as quoted on Reuters page BKBM (or any successor page) at or about 10.45 am on the first Business Day of the period in respect of which such rate of interest is to be calculated, and thereafter on each succeeding Business Day of the period;

Refurbishment and Maintenance means the Occupied refurbishments, LTM (excluding remediation), Planned maintenance, Repairs and maintenance and Refurbishments line items on page 9 of the “FY21 Target Budget Presentation” provided by Target to Bidder by email on 25 June 2020 (a copy of which is fairly disclosed in the Due Diligence Material);

Register means the register of Shares maintained by Computershare Investor Services Limited on behalf of Target;

Registrar has the meaning given in the Companies Act;

Regulatory Conditions means the Conditions set out in clauses 3.1(a) (OIO approval), 3.1(c) (Statutory Supervisor consent), 3.1(d) (Regulatory clearances) and 3.1(g) (No restraints);

Related Entity means:

- (a) in respect of Bidder, an entity that:
 - (i) Controls Bidder; or
 - (ii) is under the Control of Bidder;
- (b) in respect of Target, each entity that is under the Control of Target, including PAN;

Relevant Interest has the meaning given in section 235(1) of the FMCA;

Remediation means the Remediation line item on page 9 of the “FY21 Target Budget Presentation” provided by Target to Bidder by email on 25 June 2020 (a copy of which is fairly disclosed in the Due Diligence Material);

Representative means in relation to a person:

- (a) any director, officer or employee or agent of, and any accountant, auditor, financier, financial adviser, legal adviser, technical adviser or other expert adviser or consultant to, that person; and
- (b) when used in clauses 2.4, 12.1, 12.2, 12.4, 12.6, 12.7 and 15.2 only, also includes any Related Entity and any director, officer or employee or agent of, and any accountant, auditor, financier, financial adviser, legal adviser, technical adviser or other expert adviser or consultant to, any Related Entity;

Responsible Party has the meaning given in clause 3.3(a);

Restricted Shares means Shares that are currently held by the LTIP Trustee for participants under the SLRS Plan;

Reverse Break Fee means NZ\$12.80 million including GST, if any;

Scheme means a scheme of arrangement under Part 15 of the Companies Act under which all of the Shares held by Scheme Shareholders will be transferred to Bidder and the Scheme Shareholders will be entitled to receive the Consideration, in the form attached as Annexure A or in such other form as Target and Bidder agree in writing and the Court approves under section 236(1) of the Companies Act;

Scheme Booklet means the explanatory memorandum (including the notice of meeting and proxy form), the despatch of which is to be approved by the Court and which is to be sent to Shareholders in advance of the Scheme Meeting;

Scheme Meeting means the meeting of Shareholders ordered by the Court to be convened pursuant to the Initial Orders in respect of the Scheme and includes any adjournment of that meeting;

Scheme Resolution means the resolution to be put to Shareholders at the Scheme Meeting to approve the Scheme;

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

Scheme Shares means all of the Shares on issue at 5.00pm on the Record Date;

Second Court Date means the later of:

- (a) if no hearing is held in respect of the Final Orders, the last date Target files affidavit(s) verifying the results of the Scheme Meeting and such other information as prescribed in the Initial Orders so as to obtain the Final Orders; and
- (b) if there is a hearing in respect of the Final Orders, the first date of such hearing, provided that if such hearing is adjourned, it means the first date on which the adjourned application is heard;

Share means a fully paid ordinary share in the capital of Target;

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

Statutory Supervisor means the statutory supervisor of each retirement village operated by the Target Group appointed in accordance with the Retirement Villages Act 2003;

Statutory Supervisor Condition means the Condition in clause 3.1(c);

SLRS Plan means the Target's senior leadership restricted share plan established as an incentive scheme for senior employees of the Business and which entitles participants to received restricted Shares and receive cash on the achievement of certain performance conditions;

SLRS Plan Rules means the rules of the SLRS Plan as fairly disclosed in the Due Diligence Material;

Superior Proposal means a written bona fide Competing Proposal received after the date of this Agreement that:

- (a) does not result from a breach by Target of any of its obligations under clause 12, or from any act by a member of the Target Group or its Representatives which, if done by Target, would constitute a breach of clause 12 by Target; and
- (b) the Board determines, acting in good faith and after having received written advice from its external financial and legal advisers:
 - (i) is reasonably capable of being valued and implemented, taking into account all aspects of the Competing Proposal, including its conditions precedent, timing considerations, the identity of the proponent and any other matters affecting the probability of the Competing Proposal being completed;
 - (ii) is more favourable to Shareholders than the Scheme, taking into account all the terms and conditions of the Competing Proposal and the Scheme; and
 - (iii) failing to attempt to advance such Competing Proposal would constitute a breach of the fiduciary duties or statutory obligations, as a director of Target, of any member of the Board;

Supplier has the meaning given in clause 17.3;

Surviving Clauses means clause 1 (interpretation), clause 11 (releases) clause 13 (break fee), clause 14.9 (effect of termination), clause 15 (announcements), clause 17 (GST), clause 18 (notices), clause 19 (general) (other than clause 19.7 (further assurance)) and clause 20 (governing law and jurisdiction);

Takeovers Code means the takeovers code set out in the schedule to the Takeovers Regulations 2000 (SR2000/210), including by any applicable exemption granted by the Takeovers Panel under the Takeovers Act 1993;

Takeovers Panel means the Takeovers Panel established by section 5(1) of the Takeovers Act 1993;

Target Director means each director of Target from time to time;

Target Employee Share Scheme means the Target's employee share scheme established as an incentive scheme for senior employees of the Business and which entitles participants to receive performance share rights which entitle the participant to receive Shares upon the satisfaction of certain hurdles;

Target Employee Share Scheme Rules means the rules of the SLRS Plan as fairly disclosed in the Due Diligence Material;

Target Group means Target and its Related Entities;

Target Indemnified Persons means each member of the Target Group and each of their respective directors, officers and employees;

Target Information means all information included in the Scheme Booklet other than the Bidder Information and the Independent Adviser's Report;

Target Undertakings means the undertakings set out in Part 2 of Schedule 2;

Target Warranties means the statements set out in Part 1 of Schedule 2;

Tax means a tax, levy, charge, impost, fee, deduction, withholding or Duty of any nature, including stamp and transaction Duty or any goods and services tax, value added tax or consumption tax, which is imposed or collected by a Government Agency and includes any interest, fine, penalty, charge, fee or other amount imposed in addition to those amounts;

Third Party means a person other than a member of the Bidder Group;

Timetable means the timetable as agreed by Target and Bidder in writing; and

Transaction means the acquisition by a member of the Bidder Group of all the Scheme Shares through implementation of the Scheme in accordance with the terms of this Agreement.

2. Target awareness

Where any Target Warranty is qualified by the expression so far as Target is aware or any similar expression, Target will be deemed to know or be aware of all matters or circumstances of which any Designated Person (or any person who replaces a Designated Person) is actually aware as at the date the statement is made or given or would have been aware as at that date had they made reasonable enquiries in the circumstances. For avoidance of doubt, and without limiting clause 11.1, none of the individuals referred to in this clause 2 has any personal liability in respect of the Target Warranties (except in the case of fraud).

3. Things required to be done other than on a Business Day

Unless otherwise indicated, if the day on which any act, matter or thing is to be done is a day other than a Business Day, that act, matter or thing must be done on or by the next Business Day.

4. Other rules of interpretation

In this Agreement:

- (a) any reference, express or implied, to any legislation in any jurisdiction includes:
 - (i) that legislation as amended, extended or applied by or under any other legislation made before or after execution of this Agreement;
 - (ii) any legislation which that legislation re-enacts with or without modification; and
 - (iii) any subordinate legislation made before or after execution of this Agreement under that legislation, including (where applicable) that legislation as amended, extended or applied as described in clause 4(a)(i), or under any legislation which it re-enacts as described in clause 4(a)(ii);
 - (iv) a reference to the NZX Listing Rules or the ASX Listing Rules includes any variation, consolidation or replacement of those rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party;

- (v) references to persons or entities include natural persons, bodies corporate, partnerships, trusts and unincorporated associations of persons;
- (vi) references to an individual or a natural person include his estate and personal representatives;
- (vii) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure of or to this Agreement (and the schedules and annexes form part of this Agreement);
- (viii) subject to clause 19.2, references to a party to this Agreement include the successors or assigns (immediate or otherwise) of that party;
- (ix) a reference to any instrument or document includes any variation or replacement of it;
- (x) unless otherwise indicated, a reference to any time is, a reference to that time in New Zealand;
- (xi) a reference to \$, NZ\$ or dollars is to New Zealand currency;
- (xii) singular words include the plural and vice versa;
- (xiii) a word of any gender includes the corresponding words of any other gender;
- (xiv) if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;
- (xv) general words must not be given a restrictive meaning just because they are followed by particular examples intended to be embraced by the general words;
- (xvi) nothing is to be construed adversely to a party just because that party put forward this Agreement or the relevant part of this Agreement;
- (xvii) the headings do not affect interpretation;
- (xviii) a reference to 'fairly disclosed' (or similar expression) means disclosed in writing in a manner such that the matter, information or circumstance would reasonable be expected to come to the knowledge of a diligent and reasonable purchaser or any of its Representatives in the ordinary course of carrying out a due diligence exercise in respect of the Target Group and the Business, in sufficient detail such that the nature, scope and commercial and financial impact and relevance of the relevant matter.

5. Consents and approvals

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

6. No contra proferentem

No term or condition of this Agreement will be construed adversely to a party solely because the party was responsible for the preparation of this Agreement or a provision of it.

Annexure A: Scheme

SCHEME PLAN

for a **scheme of arrangement** under Part 15 of the Companies Act 1993

between

Metlifecare Limited a company incorporated in New Zealand whose registered office is Level 4, 20 Kent Street, Newmarket, Auckland 1023, New Zealand (**Target**)

and

Scheme Shareholders (as defined in clause 7.1)

and

Asia Pacific Village Group Limited a company incorporated in New Zealand whose registered office is Level 22, Vero Centre, 48 Shortland Street, Auckland 1010, New Zealand (**Bidder**)

1. Conditions

The implementation of the Scheme is conditional on:

- (a) each 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 its 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 Target and Bidder having been satisfied or waived (to the extent capable of waiver) before 8.00am on the Implementation Date.

2. Consideration into Trust Account

2.1 Obligation to pay Consideration into Trust Account

Subject to the Scheme Implementation Agreement not having been terminated and the Scheme having become Unconditional (except for the Conditions set out in clauses 3.1(g) and 3.1(h) of the Scheme Implementation Agreement), Bidder must, by no later than 5.00pm on the Business Day before the Implementation Date, deposit (or procure the deposit of) in immediately available cleared funds an amount equal to the aggregate amount of the Consideration payable to Scheme Shareholders in a New Zealand dollar denominated trust account operated by Computershare (the **Funds** and that account the **Trust Account**).

2.2 Details of Trust Account

- (a) Subject to clause 2.2(b), the Trust Account will be held and operated by Computershare on the basis that the Funds are held on trust for Bidder and to its order, such that only Bidder may direct how the Funds will be paid from the Trust Account.

- (b) Clause 2.2(a) is subject to a standing written direction from Bidder to Target and Computershare to make payment of the Consideration to the Scheme Shareholders upon transfer of the Scheme Shares to Bidder under clause 3(a).
- (c) The details of the Trust Account will be provided to Bidder by Computershare not less than five Business Days before the Implementation Date.

2.3 Interest

Any interest earned on the amount deposited in the Trust Account will be payable to Bidder by Computershare as directed by Bidder.

2.4 Scheme not implemented

Should the implementation of the Scheme not occur by 5.00 pm on the Implementation Date for any reason, Computershare will immediately repay the Funds to Bidder to such New Zealand dollar dominated account(s) instructed to Computershare by Bidder.

3. Implementation

Subject to the conditions set out in clause 1 being satisfied and the Consideration having been deposited into the Trust Account in accordance with clause 2.1 and Bidder having provided the written direction required by clause 2.2(b), commencing at 9.00am 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 Bidder and Target must procure Computershare to enter the name of Bidder in the Register as holder of all of the Scheme Shares; and then
- (b) in accordance with the instructions in clause 2.2(b) and subject to compliance in full with clauses 2.1 and 3(a), Target must instruct Computershare to pay or procure the payment from the Trust Account of the Consideration to each Scheme Shareholder based on the number of Scheme Shares held by such Scheme Shareholder as set out in the Register as at 5.00 pm on the Scheme Record Date.

4. Payment of the Consideration

4.1 Method of payment

The payment obligations of Target under clause 3(b) will be satisfied by:

- (a) where a Scheme Shareholder has, not less than five Business Days before the Scheme Record Date, provided bank account details to enable Computershare and Target to make payments by electronic funds transfer, Computershare must pay the Consideration to the Scheme Shareholder by electronic funds transfer of the relevant amount to the bank account nominated by that Scheme Shareholder (unless Target in its absolute discretion elects to make the payment in accordance with clause 4.1(b)); or
- (b) otherwise by Computershare dispatching, or procuring the dispatch of, a cheque for the relevant amount to the Scheme Shareholder by prepaid post to their Registered Address (as at 5.00 pm on the Scheme Record Date), such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 4.2).

4.2 Joint holders

In the case of Scheme Shares held in joint names:

- (a) subject to clause 4.1, the 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 Bidder, the holder whose name appears first in the Register as at 5.00 pm on 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 Target, the holder whose name appears first in the Register as at the Scheme Record Date or to the joint holders.

4.3 Surplus in Trust Account

To the extent that, following satisfaction of the obligations under clause 3(b), there is a surplus in the Trust Account, that surplus (less the aggregate amount of any cheques dispatched under clause 4.1(b) which remain unpaid, any amount retained under clause 4.5(b) and bank fees and other third party charges directly in connection with the account) shall be promptly paid to Bidder.

4.4 Unclaimed monies

- (a) Target may cancel, and may instruct Computershare to cancel, a cheque issued under clause 4.1(b) if the cheque is returned to Target or has not been presented for payment within 12 months after the Implementation Date, but such cancellation will not extinguish a Scheme Shareholder's claim.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Target, Target must either:
 - (i) make an electronic funds transfer to a bank account nominated in writing by the Scheme Shareholder; or
 - (ii) reissue, or procure the reissue of, a cheque that was previously cancelled under clause 4.4(a) or in respect of an electronic funds transfer that was rejected by the recipient bank.

4.5 Orders of a court or Government Agency

Notwithstanding any other provision of this Scheme Plan, if written notice is given to Target prior to the Scheme Record Date of an order or direction made by a court of competent jurisdiction or a Government Agency 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 by Target in accordance with clause 3(b), Target will be entitled to procure, and Bidder will be deemed to have instructed Computershare 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 3(b), 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 Consideration) will be retained in the Trust Account until such time as provision of the Consideration to the Scheme Shareholder in accordance with clause 3(b) is permitted by that order or direction or otherwise by law, and any amount so retained under this clause 4.5(b) may be held by Target or any of Target's related companies, provided that Bidder 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 Bidder's and Target's obligations under clause 3(b) with respect to the amount so provided or retained.

5. Dealing in Shares

5.1 Recognition of dealings

To establish the identity of the Scheme Shareholders:

- (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 5.00 pm on the Scheme Record Date at the place where the Register is kept; and
- (b) Target must not accept for registration, nor recognise for any purpose (except a transfer to Bidder pursuant to this Scheme Plan and any subsequent transfer by Bidder or its successors in title), any transfer or transmission application or other request received after 5.00 pm on the Scheme Record Date or received prior to such time, but not in registrable or actionable forms.

5.2 Register

- (a) Target must register registrable transmission applications or registrable transfers of Shares in accordance with clause 5.1(a)(ii) on or before 5.00pm on the Scheme Record Date provided that, for the avoidance of doubt, nothing in this clause 5.2(a) requires Target to register a transfer that relates to a transfer of Shares on which Target has a lien.
- (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 5.00 pm on the Scheme Record Date otherwise than pursuant to this Scheme Plan, and any attempt to do so will have no effect and Target and Bidder shall be entitled to disregard any such disposal.
- (c) For the purpose of determining entitlements to the Consideration, but subject to the requirements of the NZX Listing Rules, Target must maintain the Register in accordance with the provisions of this clause 5.2 until the Consideration has been paid to the Scheme Shareholders. The Register in this form will solely determine entitlements to and the Consideration.
- (d) From 5.00pm on the Scheme Record Date, each entry that is current on the Register (other than entries on the Register in respect of Bidder), will cease to have effect except as evidence of entitlement to the 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, Target must make available to Bidder in the form

Bidder reasonably requires, details of the names, Registered Addresses and holdings of Shares for each Scheme Shareholder as shown in the Register on the Scheme Record Date.

6. General provisions

6.1 Amendments to Consideration

Bidder may increase the Consideration by written notice at any time to Target 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 Target.

6.2 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 Bidder will, at the time of transfer of them to the Bidder, vest in the Bidder free from all Encumbrances and free from any restrictions on transfer of any kind.
- (b) Each Scheme Shareholder is taken to have warranted to Bidder on the Implementation Date that all of 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 they have full power and capacity to transfer their Scheme Shares to Bidder together with any rights and entitlements attaching to those shares.

6.3 Authority given to Target

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

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

and Target accepts each such appointment. Each such attorney and agent, may sub-delegate its functions, authorities or powers under this clause 6.3 to one or more of Target's directors or senior managers.

6.4 Binding effect of Scheme

- (a) The Scheme binds:
 - (i) Target;
 - (ii) Bidder; and
 - (iii) all of the Scheme Shareholders (including those who did not attend the Scheme Meeting to vote on the Scheme, did not vote at the Scheme Meeting, or voted against the Scheme at the Scheme Meeting).
- (b) In the event of any inconsistency, this Scheme Plan overrides the constitution of Target.

6.5 End Date

If the Scheme has not become Unconditional on or before the date that is 10 Business Days after the End Date, or if 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 Bidder of any Funds deposited in accordance with clause 2 and the interest thereon (less bank fees and other third party charges directly in connection with the account)).

6.6 Successor obligations

To the extent that any provision of the Scheme or this Scheme Plan imposes any obligation on Bidder or Target that continues or arises after the implementation of the Scheme, such obligation may instead be performed by any successor or related company of Bidder or Target (as applicable) in which case the obligation will be satisfied as if performed by Bidder or Target (as applicable).

6.7 Governing law

- (a) This Scheme Plan and any non-contractual obligations arising out of or in connection with it is governed by the law applying in New Zealand.
- (b) The courts having jurisdiction in New Zealand have exclusive jurisdiction to settle any dispute arising out of or in connection with this Scheme Plan (including a dispute relating to any non-contractual obligations arising out of or in connection with this Scheme Plan) and the parties irrevocably submit to the exclusive jurisdiction of the courts having jurisdiction in New Zealand.

7. Definitions and interpretation

7.1 Definitions

In this Scheme Plan:

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Auckland, New Zealand and excluding any day between 24 December and 3 January;

Companies Act means the Companies Act 1993;

Computershare means Computershare Investor Services Limited;

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 Target and Bidder in accordance with clause 3.2 of the Scheme Implementation Agreement;

Consideration means NZ\$6.00 in cash in respect of each Scheme Share held by a Scheme Shareholder as at 5.00 pm on the Scheme Record Date, as reduced by the per MET Share value of any other dividend, the record date for which falls between the date of the Scheme Implementation Agreement and the Implementation Date;

Court means the High Court of New Zealand, Auckland Registry;

Deed Poll means the deed poll to be entered into by Bidder in favour of the Scheme Shareholders;

Encumbrance means any security interest within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999 and any option, right to acquire, right of pre-emption, assignment by way of security, trust arrangement for the purpose of providing security, retention arrangement or other security interest of any kind (other than any reservation of title by suppliers in the ordinary course of business), and any agreement to create any of the foregoing;

End Date means:

- (a) 25 January 2021, subject to extension under clause 7.4 of the Scheme Implementation Agreement; or
- (a) any other date agreed in writing by Bidder and Target;

Final Orders Date means the day on which final orders of the Court made under section 236(1) (and section 237, if applicable) of the Companies Act are granted;

Funds has the meaning given in clause 2.1;

Government Agency means any government, any department, officer or minister of any government, and any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, supervisor, tribunal or entity, including the Statutory Supervisors, and any court;

Implementation Date means the day on which the Scheme is to be implemented, being two Business Days after the Scheme Record Date, or such other date as Bidder and Target agree in writing;

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 Computershare on behalf of Target;

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

Scheme means this scheme of arrangement, subject to any alterations or conditions made or required by the Court under Part 15 of the Companies Act and approved by Bidder and Target in writing;

Scheme Implementation Agreement means the scheme implementation agreement dated 10 July 2020 between Bidder and Target;

Scheme Meeting means the special meeting of Shareholders ordered by the Court to be convened pursuant to section 236(2)(b) of the Companies Act in respect of the Scheme and including any meeting convened following any adjournment or postponement of that meeting;

Scheme Record Date means 5.00 pm on the date which is 5 Business Days after the Final Orders Date or such other date agreed between Bidder and Target 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 as at the Scheme Record Date;

Share means a fully paid ordinary share in the capital of Target;

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

Statutory Supervisor means the statutory supervisor of each retirement village operated by the Target and appointed in accordance with the Retirement Villages Act 2003;

Trust Account has the meaning given in clause 2.1; and

Unconditional means the satisfaction of each of the Conditions.

7.2 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 Agency, 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 Agency 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.

7.3 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.

Annexure B: Deed Poll

Deed Poll

relating to

a scheme of arrangement under to Part 15 of the Companies Act 1993
involving Metlifecare Limited

Asia Pacific Village Group Limited

Bidder

and

**Each registered holder of Scheme Shares as at 5.00pm on the
Record Date for the Scheme**

Scheme Shareholders

Date

This **Deed Poll** is made on

2020

between (1) **Asia Pacific Village Group Limited (Bidder)**

and (2) **Each registered holder of Scheme Shares as at 5.00pm on the Scheme Record Date (Scheme Shareholders)**

Introduction

- A. Metlifecare Limited (**Target**) and Bidder are parties to the Scheme Implementation Agreement.
- B. Target has agreed in the Scheme Implementation Agreement to propose a scheme of arrangement between Target, Bidder, and the Scheme Shareholders, the effect of which will be that all Scheme Shares will be transferred to Bidder and Bidder will provide or procure the provision of the Consideration to the Scheme Shareholders.
- C. Bidder is entering into this Deed Poll for the purpose of undertaking in favour of Scheme Shareholders to pay the Consideration to Scheme Shareholders in accordance with the terms of the Scheme Plan.

It is agreed

1. Defined terms and interpretation

1.1 Defined terms

In this Deed, unless the context requires otherwise:

Final Orders means orders on application of Target, that the Scheme shall be binding on Target, Bidder, Shareholders and such other persons or class of persons as the Court may specify, in accordance with section 236(1) (and section 237, if applicable) of the Companies Act;

Scheme Implementation Agreement means the scheme implementation agreement between Target and Bidder dated 10 July 2020 whereby Target has agreed to propose a scheme of arrangement;

Scheme Plan means the scheme plan attached as Annexure A to the Scheme Implementation Agreement, subject to any alterations or conditions approved by Bidder and Target in writing and which are disclosed to the Court prior to the Court making the Final Orders; and

words defined in the Scheme Plan which are not separately defined in this Deed Poll have the same meaning when used in this Deed Poll.

1.2 Interpretation

Clauses 7.2 and 7.3 of the Scheme Plan apply to the interpretation of this Deed Poll, except that references to “this Scheme Plan” are to be read as reference to “this Deed Poll”.

2. Nature of this Deed Poll

2.1 Third party rights and appointment of attorney

- (a) This Deed Poll is intended to, and does, confer a benefit on, and therefore may be relied on and enforced by, any Scheme Shareholder in accordance with its terms under Part 2, Subpart 1 of the Contract and Commercial Law Act 2017 (but not otherwise), even though the Scheme Shareholders are not party to it.
- (b) Under the Scheme Plan each Scheme Shareholder appoints Target as the Scheme Shareholder's attorney and agent to enforce this Deed Poll against Bidder with effect on and from the date prescribed for such appointment in the Scheme Plan (but without limiting each Scheme Shareholder's right to itself enforce this Deed Poll).

Notwithstanding clauses 2.1(a) and 2.1(b), this Deed Poll may be varied by Bidder and Target in accordance with clause 7.2 without the approval of any Scheme Shareholder.

2.2 Continuing obligations

This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until either:

- (a) Bidder has fully performed its obligations under it; or
- (b) it is terminated under clause 3.2.

3. Conditions

3.1 Conditions

This Deed Poll, and the obligations of Bidder under it, are conditional in all respects on the Scheme becoming Unconditional.

3.2 Termination

The obligations of Bidder under this Deed Poll will automatically terminate, and the terms of this Deed Poll will be of no force or effect, if the Scheme Implementation Agreement is validly terminated in accordance with its terms before the Scheme becomes Unconditional, unless Bidder and Target otherwise agree in writing.

3.3 Consequences of termination

If this Deed Poll is terminated under clause 3.2, then Bidder is released from its obligations to further perform this Deed Poll.

4. Scheme Consideration

- 4.1 Subject to the Scheme Implementation Agreement not being terminated and the Scheme having become Unconditional (save for the Conditions set out in clauses 3.1(g) and 3.1(h) of the Scheme Implementation Agreement), Bidder undertakes in favour of each Scheme Shareholder to deposit, or procure the deposit of, in immediately available cleared funds, by no later than 5.00pm on the Business Day before the Implementation

Date, an amount equal to the aggregate amount of the Consideration payable to all Scheme Shareholders as set out in the Scheme Plan, such deposit to be made into the Trust Account to be held and dealt with by Computershare in accordance with the Scheme Plan.

- 4.2 Subject to clause 3, Bidder irrevocably acknowledges and agrees that, subject to compliance in full by Target with its obligations under clause 3(a) of the Scheme Plan, the Consideration deposited into the Trust Account must be, and will be, paid in accordance with clause 4 of the Scheme Plan in satisfaction of the Scheme Shareholders' respective entitlements to receive the Consideration under the Scheme in accordance with the Scheme Plan.

5. Warranties

Bidder warrants in favour of each Scheme Shareholder that:

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

6. Notices

6.1 Manner of giving notice

Any notice or other communication to be given under this Deed Poll must be in writing and may be physically delivered or sent by email to Bidder at:

Address: Bell Gully, Level 22, Vero Centre, 48 Shortland Street,
PO Box 4199, Auckland

Email: anna.buchly@bellgully.com / james.gibson@bellgully.com

For the attention of: Anna Buchly / James Gibson

or at any such other address or email address notified for this purpose to the other parties under this clause. Any notice or other communication sent by post must be sent by prepaid ordinary post (if the country of destination is the same as the country of origin) or by airmail (if the country of destination is not the same as the country of origin).

6.2 When notice given

In the absence of earlier receipt, any notice or other communication is deemed to have been given:

- (a) if delivered, on the date of delivery; or
- (b) if sent by email, four business hours (being the hours between 9am and 5pm on a Business Day in the jurisdiction of the recipient) after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered (excluding an "out of office" automated message),

but if the notice or other communication would otherwise be taken to be received after 5.00 pm or on a Saturday, Sunday or public holiday in the place of receipt then the notice or communication is taken to be received at 9.00 am on the next day that is not a Saturday, Sunday or public holiday in the place of receipt.

6.3 Proof of service

In proving service of a notice or other communication, it is sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted either by prepaid post or by prepaid airmail or that the e-mail was properly addressed and transmitted by the sender's server into the network and there was no apparent error in the operation of the sender's e-mail system, as the case may be.

6.4 Documents relating to legal proceedings

This clause 6 does not apply in relation to the service of any claim form, notice, order, judgment or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this Deed Poll.

7. General

7.1 Waiver

- (a) Bidder may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right in respect of the Scheme unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (b) For the purposes of clause 7.1(a):
 - (i) conduct includes a delay in exercising a right;
 - (ii) right means any right arising under or in connection with this Deed Poll and includes the right to rely on this clause; and
 - (iii) waiver includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

7.2 Variation

- (a) Subject to clauses 7.2(b) and 7.2(c), this Deed Poll may not be varied.

- (b) Before the date on which the Final Orders are made, this Deed Poll may be varied by agreement in writing between Bidder and Target, in which event Bidder will enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation.
- (c) If the Court orders that it is a condition of the Scheme that Bidder enters into a new deed poll which has the effect of reversing any variation under clause 7.2(b), then, if Bidder so agrees, Bidder must promptly enter into a further deed poll in favour of the Scheme Shareholders to give effect to the reversal of that variation.

7.3 Cumulative rights

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

7.4 Assignment

The rights and obligations of Bidder and each Scheme Shareholder under this Deed Poll are personal. They cannot be assigned, charged or otherwise dealt with at law or in equity. Any purported dealing in contravention of this clause 7.4 is invalid.

7.5 Further assurance

Bidder must, at its own expense, do all things reasonably required of it to give full force and effect to this Deed Poll and the transactions contemplated by it.

7.6 Governing law and jurisdiction

- (a) This Deed Poll and any non-contractual obligations arising out of or in connection with it is governed by the law applying in New Zealand.
- (b) The courts having jurisdiction in New Zealand have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed Poll (including a dispute relating to any non-contractual obligations arising out of or in connection with this Deed Poll) and Bidder irrevocably submits to the exclusive jurisdiction of the courts having jurisdiction in New Zealand.

Execution

Executed as a deed poll.

Asia Pacific Village Group Limited
by

Director

Director

Print Name

Print Name