



20 October 2016

Australian Securities Exchange Limited

## **PULSE HEALTH RECEIVES NON-BINDING, INDICATIVE PROPOSAL FROM HEALTHE CARE**

- **Proposal values Pulse at \$0.47 a share in cash via a scheme of arrangement**
  - **Represents a 42.4% premium to last closing price on 19 October**
    - **Proposal subject to due diligence**

Leading Australian private hospital operator Pulse Health Limited (ASX:PHG) ("**Pulse**") announces that it has received a preliminary, non-binding and indicative proposal from Healthe Care Australia Pty Ltd ("**Healthe Care**") to acquire 100% of the outstanding shares in Pulse for \$0.47 per share in cash via a scheme of arrangement (the "**Proposal**").

Healthe Care is part of the Luye Medical Group which comprises a network of healthcare service facilities across major cities in China. Healthe Care operates a portfolio of 17 hospital sites located in major cities and key regional areas across Australia. The company has over 1,800 beds, more than 50 operating theatres and 4,500 employees.

### **Details of the Proposal**

The Proposal of \$0.47 cash per share represents a premium of 42.4% over the closing price of Pulse shares of \$0.33 on 19 October 2016, the last trading day prior to this announcement.

The Proposal is conditional on several matters, including satisfactory completion of due diligence and entering into a scheme implementation deed with Pulse on customary terms and conditions.

The Proposal states that the implementation of the scheme will also be conditional on a number of matters, including that all required regulatory approvals are obtained and Pulse does not become subject to a material adverse change or 'prescribed occurrence', as well as other usual scheme conditions.

### **Due Diligence and Exclusivity**

The Board, together with its advisers, has determined that it is in the best interest of shareholders to allow Healthe Care to undertake due diligence and to engage further with Healthe Care in order to determine if a transaction capable of Board recommendation can be developed and presented to shareholders. The due diligence process is expected to be completed within six weeks of this announcement.

Pulse entered into an Exclusivity Deed with Healthe Care pursuant to which it grants Healthe Care four weeks from the time information is substantially provided to Healthe Care (unless extended by agreement) to complete its due diligence and negotiate documentation. A copy of the Exclusivity Deed is attached.

During the exclusivity period (which commences immediately and ends at the end of the four week period described above), Pulse has agreed to customary "no shop", "no talk", 5 business days matching rights and notification obligations, with the "no talk" obligation subject to a customary fiduciary carve out. Pulse has also



agreed to reimburse Healthe Care for its costs incurred in pursuing the Proposal with a maximum of \$500,000 if:

- ▶ during the exclusivity period the Board recommends a competing proposal, or if the Pulse board does not recommend a firm proposal presented to it by Healthe Care before the end of the exclusivity period on terms which are no less favourable to Pulse and its shareholders than the terms proposed to date, or if during the exclusivity period Pulse receives a competing proposal, Healthe Care elects not to match it and Pulse terminates the Exclusivity Deed and recommends the competing proposal; or
- ▶ Pulse breaches the exclusivity obligations mentioned above.

The Board intends to continue to progress negotiations with Healthe Care during the exclusivity period to a point where it is able to assess whether a suitable binding agreement can be considered and, if thought appropriate, put to shareholders.

The Board notes that there is no certainty that the Proposal will result in a binding offer or scheme, or that there will be a recommendation by the Board to accept the offer.

The Board cautions its shareholders not to make any decisions about Pulse shares on the assumption that a transaction will proceed. Pulse shareholders do not need to take any action in response to the Proposal at this stage.

Pulse's advisers are Allier Capital as Financial Advisor and Norton Rose Fulbright as Legal Advisor.

**For more information, contact:**

Stuart James  
Chairman  
Pulse Health Limited  
Tel: +61 2 8262 6300

Matthew Stubbs  
Managing Director  
Allier Capital  
Tel: +61 2 8014 6041

**ABOUT PULSE HEALTH**

Pulse Health was established in 2007 as an ASX listed private hospital operator. It is a leading operator of specialist private hospitals. Our hospitals, as key members of their communities, partner with local specialist doctors to provide high quality specialist care for local patients. We acquire or develop and operate high quality specialist private hospitals in locations in which specialist doctors want to live and work.

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Dated 20 October 2016

## **Exclusivity Deed**

Parties

**Pulse Health Limited**

ABN 69 104 113 760

**Healthe Care Australia Pty Ltd**

ABN 93 117 285 300

James Stewart  
Norton Rose Fulbright Australia  
Level 15, RACV Tower, 485 Bourke Street  
Melbourne 3000  
Tel: +61 3 8686 6573  
nortonrosefulbright.com  
Our ref: 2806735

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**Deed** dated October 2016

**Parties** **Pulse Health Limited** ABN 69 104 113 760  
of Suite 4, Level 1, 175 Castlereagh Street, Sydney NSW 2000  
(**Pulse**)

**Healthe Care Australia Pty Ltd** ABN 93 117 285 300  
of 160 Sussex Street, Sydney NSW 2000  
(**Healthe**)

## Introduction

- A** Healthe and Pulse are contemplating the Proposed Transaction.
- B** The parties have agreed to be bound by certain matters as set out in this deed to facilitate Healthe's consideration of the Proposed Transaction.

## It is agreed

### 1 Definitions and interpretation

#### 1.1 Deed components

This deed includes any schedule.

#### 1.2 Definitions

The meanings of the terms used in this deed are set out below:

- (1) **Business Day** means a day on which banks are open for business in Melbourne, other than a Saturday, Sunday or public holiday;
- (2) **Break fee** means an amount equal to Healthe's out-of-pocket expenses (other than success fees) directly relating to the Proposed Transaction, excluding any amount for costs of Healthe's management and directors' time or any opportunity cost, up to a maximum of \$500,000;
- (3) **Competing Transaction** means a transaction other than a Proposed Transaction with Healthe which, if completed, would result in a person directly or indirectly:
  - (a) acquiring a Relevant Interest in Pulse shares such that the person obtains a total Relevant Interest of 50% or more of the issued Pulse shares or the issued shares of any material Subsidiary of Pulse;
  - (b) acquiring a legal or equitable interest in all, or a substantial part of, the assets of Pulse or of any material Subsidiary of Pulse not held by that person as at the date of this deed;

- (c) acquiring the capacity to control the financial and operating policies, assets or management of Pulse or of a material Subsidiary of Pulse or of a material part of the business of any such entity; or
- (d) otherwise acquiring or merging with Pulse or a material Subsidiary of Pulse,

including, without limitation, by way of takeover bid, scheme of arrangement, plan of arrangement, capital reduction, sale of assets, sale of shares or joint venture;

- (4) **Confidentiality Agreement** means the Confidentiality Agreement dated 19 August 2016 between Healthe and Pulse;
- (5) **Corporations Act** means the *Corporations Act 2001* (Cth);
- (6) **Exclusivity Period** means the period:
  - (a) commencing on the earlier of:
    - (i) the date of this deed; and
    - (ii) the date access to an online data room is made available to Healthe which substantially includes the information in the possession of Pulse (that is not publicly available) required for Healthe to investigate the matters referred to in Schedule 1 to its letter to Pulse dated 4 October 2016; and
  - (b) ending on the Expiry Date;
- (7) **Expiry Date** means the date 28 days after the date referred to in sub-paragraph (a)(ii) of the definition of Exclusivity Period or such other date as the parties agree in writing;
- (8) **Proposed Transaction** means a transaction agreed between the parties under which Healthe or a Related Body Corporate of Healthe may acquire all or substantially all of the shares in Pulse at a minimum price per share of \$0.47 (less any dividend or other distribution announced, determined, declared or paid after the execution of this deed), which may be implemented by a scheme of arrangement under Part 5.1 of the Corporations Act;
- (9) **Related Body Corporate** has the same meaning as in the Corporations Act;
- (10) **Related Person** of an entity means another entity which is:
  - (a) related to the first entity within the meaning of section 50 of the Corporations Act; or
  - (b) a director, officer, employee, representative, agent, adviser, financier or consultant of the first entity or any entity referred to in paragraph (a);
- (11) **Relevant Interest** has the same meaning as in the Corporations Act;
- (12) **Subsidiary** has the same meaning as in the Corporations Act; and
- (13) **Third Party** means a person other than Healthe, its Related Persons or related bodies corporate.

### 1.3 Interpretation

In this deed, headings and bold type are for convenience only and do not affect interpretation and, unless the context requires otherwise:

- (1) 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;
- (2) a reference to a clause, party or schedule is a reference to a clause of, and a party or schedule to, this deed;
- (3) a reference to an asset, share or business includes any interest in the asset, share or business;
- (4) a reference to sell, selling and sale in relation to a share includes an issue of new shares by Pulse or a Related Body Corporate;
- (5) a reference to a party to this deed includes that party's successors and permitted assigns;
- (6) a reference to any thing (including, but not limited to, any right) includes a part of that thing; and
- (7) no provision of this deed may be construed adversely to a party solely on the ground that the party was responsible for the preparation of this deed or that provision.

## 2 No shop

During the Exclusivity Period, Pulse must ensure that neither it nor any of its Related Persons, directly or indirectly, solicits, initiates, invites or otherwise encourages any enquiries, negotiations or discussions in relation to, or with a view to obtaining, or which would reasonably be expected to encourage or lead to the making of, any expression of interest, offer or proposal from any person in relation to a Competing Transaction, or communicate to any person an intention to do any of the foregoing.

## 3 No-talk

### 3.1 No-talk during Exclusivity Period

During the Exclusivity Period, Pulse must ensure that neither it nor its Related Persons directly or indirectly:

- (1) facilitates, enters into or otherwise participates in any negotiations or discussions with any person regarding a Competing Transaction;
- (2) communicates to any person an intention to do any of the things referred to in clauses 3.1(1);
- (3) approves or recommends a Competing Transaction; or
- (4) gives any Third Party any information relating to Pulse or any of its Subsidiaries or any of their businesses or operations in connection with or for the purposes of an actual, proposed or potential Competing Transaction.

### 3.2 **Fiduciary carve-out**

The restrictions and obligations in clause 3.1 will not apply to the extent that they would restrict Pulse or its directors from taking any action with respect to a written bona fide offer or proposal for a Competing Transaction which was not directly or indirectly brought about by, or facilitated by, a breach of clause 2 and which the Pulse directors have determined, acting in good faith, would if consummated result in a transaction more favourable to Pulse's shareholders than the Proposed Transaction. Any such determination may only be made after consultation with Pulse's legal and financial advisers, taking into account all material legal, financial, regulatory and other aspects of the Competing Transaction and the identity of the relevant third party.

## 4 **Notice of Competing Transaction**

- (1) If Pulse or any of its Related Persons are approached by any person during the Exclusivity Period to discuss or engage in any activity in relation to an actual, proposed or potential Competing Transaction, Pulse must notify Healthe within 24 hours in writing of:
  - (a) the identity of the person who has made the approach, and the identity of the person making or proposing any actual, proposed or potential Competing Transaction, together with the key terms and conditions of any actual, proposed or potential Competing Transaction;
  - (b) any approach, inquiry or proposal made to, and any attempt or any intention on the part of any person to initiate or continue any negotiations or discussions with, that party or any of its Related Persons with respect to, or that could reasonably be expected to lead to, any Competing Transaction, whether unsolicited or otherwise;
  - (c) any request for information relating to Pulse or any of its Subsidiaries or any of their businesses or operations or any request for access to the books or records of Pulse or any of its Subsidiaries in relation to a Competing Transaction; and
  - (d) any breach of this clause 4(1).
- (2) Pulse represents and warrants to Healthe that, as at the date of this deed, neither it nor any Related Person is currently in negotiations or discussions in respect of any Competing Transaction, nor any proposal likely to reduce the prospects for the Proposed Transaction succeeding.

## 5 **Opportunity to match**

- (1) Without limiting any other provision of this deed, Pulse must:
  - (a) not enter into an agreement in relation to a Competing Transaction; and
  - (b) procure that none of the directors of Pulse publicly recommend a Competing Transaction,unless:
  - (c) Pulse gives Healthe not less than 5 Business Days notice in writing of its intention to do so accompanied by the key terms and conditions of the Competing Transaction; and

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- (c) the processes in clauses 5(2) and 5(3) below have been adhered to.
- (2) If Pulse gives Healthe notice in writing under clause 5(1), Healthe will have the right, but not the obligation, at any time during the period of 5 Business Days following the receipt of the relevant notice, to amend the terms and conditions of the Proposal including but not limited to increasing the amount of consideration offered under the Proposal (**Counter Proposal**) and, if Healthe does so, then the board of directors of Pulse must review the Counter Proposal in good faith.
- (3) If the board of directors of Pulse determine that the Counter Proposal (or if Healthe does not submit a Counter Proposal, the Proposal) would not be more favourable to Pulse shareholders than the Competing Transaction (having regard to all aspects of the Proposal (if still relevant), the Counter Proposal and the Competing Transaction), Pulse may terminate this deed by giving written notice to Healthe.

## 6 Steps toward implementation

### 6.1 Transaction Documents

During the Exclusivity Period and prior to the Expiry Date, Healthe and Pulse agree to work together in good faith to:

- (1) determine the structure of the Proposed Transaction;
- (2) agree the terms of the Proposed Transaction; and
- (3) use all reasonable endeavours to negotiate a mutually agreed implementation agreement that is in a form capable of execution by the parties on or prior to the Expiry Date.

### 6.2 Notification

On or before the Expiry Date, Healthe must either:

- (1) present to Pulse's board of directors an offer or proposal to proceed with the Proposed Transaction:
  - (a) which has been approved by the board of Healthe and is not subject to further due diligence or confirmation of finance;
  - (b) the conditions of which are no less favourable to Pulse or its shareholders than those set out in the non-binding indicative proposal given by Healthe to Pulse prior to the date of this deed; and
  - (c) which is capable of being considered by Pulse's board of directors for recommendation to Pulse shareholders (**Firm Proposal**) together with the implementation agreement (or equivalent) negotiated in accordance with clause 6.1(3) and which is on terms and conditions consistent with clause 6.2(1)(b) and otherwise on terms which are customary for an implementation agreement (or equivalent); or
- (2) provide Pulse with a written notification that it does not intend to proceed with the Proposed Transaction, at that time, in which case:
  - (a) this deed will automatically terminate and each party will be released from its obligations under this deed; and

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- (b) Pulse will announce that notification on ASX's market announcements platform.

### 6.3 **No obligation to proceed with Proposed Transaction**

Except to the extent that the parties agree otherwise in any executed agreement relating to, or connected with any Proposed Transaction, the parties acknowledge and agree that there is no obligation for the parties to proceed with any Proposed Transaction, even if the parties work together and take action, or refrain from taking action, on the assumption or an expectation that a Proposed Transaction will be agreed.

### 6.4 **Costs**

Subject to clause 7, each party is responsible for its own costs and expenses incurred by them or their respective Related Persons in relation to any negotiations with the other party in connection with a Proposed Transaction.

## **7 Break Fee**

### 7.1 **Acknowledgement**

Each party acknowledges that this clause 7 has been agreed to in circumstances where:

- (1) each party believes the completion of the Proposed Transaction will provide significant benefits to Healthe, Pulse and their respective shareholders, and each party acknowledges that, if they enter into this deed and the Proposed Transaction is subsequently not completed, Healthe will incur certain costs;
- (2) Healthe has requested provision be made for the payment outlined in this clause 7, without which Healthe would not have entered into this deed or otherwise agreed to proceed with the Proposed Transaction; and
- (3) each party has received legal advice in relation to this deed and the operation of this clause 7.

### 7.2 **Payment of Break Fee by Pulse**

Subject to clause 7.4, Pulse must pay the Break Fee to Healthe, without set-off or withholding, if during the Exclusivity Period:

- (1) Pulse breaches any of its obligations in this deed in any material respect;
- (2) Healthe presents to Pulse's board of directors an offer or proposal in relation to a Proposed Transaction in accordance with clause 6.2(1) which is not recommended by Pulse's board of directors to Pulse shareholders before or on the Expiry Date, and Healthe has complied with clause 6.1;
- (3) Pulse enters into an agreement or deed in relation to, or to undertake, a Competing Transaction;
- (4) a Competing Transaction is recommended by Pulse's board of directors; or
- (5) Pulse terminates this deed under clause 5(3) and the Competing Transaction that resulted in that termination is recommended by Pulse's board of directors.

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### 7.3 **Health written demand**

Pulse must pay the Break Fee to Health within 10 Business Days after receiving a written demand from Health. The demand for payment of the Break Fee can only be made after the occurrence of an event referred to in clause 7.2. Pulse is only liable to pay the Break Fee once.

### 7.4 **Compliance with law**

This clause 7 does not impose an obligation on Pulse to pay any amount to the extent (and only to the extent) that the obligation:

- (1) constitutes unacceptable circumstances as declared by the Takeovers Panel; or
- (2) is held to be unenforceable by Pulse against Health as determined by a court,

after all proper avenues of appeal and review, whether judicial or otherwise, have been exhausted. The parties must take all reasonable steps to ensure that any such determination applies to the minimum extent possible. No party must make, or cause to be made, or encourage or support the making of, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in this clause 7.4.

### 7.5 **Sole remedy**

It is the intention of the parties that Health's sole remedy in relation to any claim in connection with this deed will be the Break Fee, to the extent it is payable in accordance with clause 7.2. Accordingly, Pulse does not have any liability to Health:

- (1) in relation to a matter which is the subject of this deed; or
- (2) resulting from or implied by conduct made in the course of communications or negotiations in respect of the Proposed Transaction or the matters the subject of the implementation agreement (or equivalent) negotiated in accordance with clause 6.1(3),

unless that claim is for payment of the Break Fee or arises out of a statutory right or other claim that cannot be excluded by contract.

## **8 General**

### 8.1 **Notices**

- (1) A notice or other communication connected with this deed (**Notice**) has no legal effect unless it is in writing.
- (2) In addition to any other method of service provided by law, the Notice may be:
  - (a) sent by prepaid priority post to the address of the addressee set out in this deed or subsequently notified;
  - (b) sent by email to the email address of the addressee notified by the addressee on or about the date of this deed or subsequently notified; or
  - (c) delivered at the address of the addressee set out in this deed or subsequently notified.
- (3) If the Notice is sent or delivered in a manner provided by clause 8.1(2), it must be treated as given to and received by the party to which it is addressed:

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- (a) if sent by post, on the 3<sup>rd</sup> Business Day (at the address to which it is posted) after posting;
- (b) if sent by email, the earlier of:
  - (i) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email; and
  - (ii) two hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that two hour period, an automated message that the email has not been delivered,
- (c) if otherwise delivered, upon delivery,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or at a time that is later than 5.00pm in the place to which the Notice is sent, it will be conclusively taken to have been duly given or made at the start of business on the next business day in that place.

## 8.2 **Governing law**

- (1) This deed is governed by the laws of New South Wales.
- (2) The parties irrevocably submit to the non exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia.

## 8.3 **Termination**

This deed will automatically terminate on the Expiry Date.

## 8.4 **Severance**

If a provision of this deed is wholly or partly invalid or unenforceable, the provision or part must be treated as deleted from this deed. This will not affect the validity or enforceability of the remaining provisions.

## 8.5 **Waiver**

- (1) Waiver of any right, power, authority, discretion or remedy arising from a breach of this deed must be in writing and signed by the party granting the waiver.
- (2) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy created or arising from a breach of this deed does not result in a waiver of that right, power, authority, discretion or remedy.

## 8.6 **Whole agreement**

This deed and the Confidentiality Agreement contain the whole agreement between the parties relating to the subject matter and replace any previous agreement, representation, warranty or understanding between the parties concerning the subject matter.

## 8.7 **Variation**

A variation of this deed must be in writing and signed by the parties or persons authorised to sign for them.

**8.8 Costs and expenses**

Each party must pay its own legal costs and expenses in respect of the negotiation, preparation, completion and stamping of the deed.

**8.9 Assignment**

Neither party may assign or otherwise transfer its rights or obligations under this deed without the prior written consent of the other party.

**8.10 Further action**

Each party must do at its own cost all things and execute all further documents necessary to give full effect to this deed.

**8.11 Counterparts**

This deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

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**Executed** as a deed and delivered on the date shown on the first page.

Signed sealed and delivered by **Pulse Health Limited** in accordance with section 127 of the *Corporations Act 2001*:

>signature redacted<

>signature redacted<

Director/company secretary

Director

STUART JAMES

CRAIG COLEMAN

Name of director/company secretary  
(BLOCK LETTERS)

Name of director  
(BLOCK LETTERS)

Signed sealed and delivered by **Healthe Care Australia Pty Ltd** in accordance with section 127 of the *Corporations Act 2001*:

>signature redacted<

>signature redacted<

Director/company secretary

Director

ANTHONY MARSHALL

STEVE ATKINS

Name of director/company secretary  
(BLOCK LETTERS)

Name of director  
(BLOCK LETTERS)