

26 August 2014

Acurity Health Group Limited

30 Florence Street

Newtown

**WELLINGTON**

By email: [ian.england@acurity.co.nz](mailto:ian.england@acurity.co.nz)

NZX Limited

Level 2, NZX Centre, 11 Cable Street

**WELLINGTON**

By email: [announce@nzx.com](mailto:announce@nzx.com)

The Takeovers Panel

Level 3, Solnet House

70 The Terrace

**WELLINGTON**

By courier and by email: [takeovers.panel@takeovers.govt.nz](mailto:takeovers.panel@takeovers.govt.nz)

Registrar of Companies

Level 18, ASB Centre, 135 Albert Street

**AUCKLAND**

By hand delivery

## Despatch notice pursuant to rule 45 of the Takeovers Code in relation to the full takeover offer in respect of Acurity Health Group Limited

1. We refer to the takeover notice given by Connor Healthcare Limited (**Connor**) to Acurity Health Group Limited (**Acurity**) on 28 July 2014 in relation to its full takeover offer for all of the ordinary shares in Acurity (**Offer**) that it does not already hold.
2. Connor hereby gives notice pursuant to rule 45 of the Takeovers Code that the document containing the Offer dated 26 August 2014 has today been sent to all Acurity shareholders being the holders of those equity securities as at the record date of 18 August 2014.
3. **Enclosed** is a copy of the covering letter and Offer document sent to Acurity shareholders.

Yours faithfully

**Connor Healthcare Limited**



Andrew Savage / Ben Thynne

Directors

26 August 2014

Dear Acurity Health Group Limited Shareholder

## Full Takeover of Acurity Health Group Limited at \$7.25 per share

We are pleased to enclose Connor Healthcare Limited's full takeover offer for your shares in Acurity Health Group Limited.

The price that Connor is offering is NZ\$7.25 per Acurity share, payable in cash. This revised offer has the unanimous support of the Independent Directors of Acurity, including the Chairman, who recommend your acceptance (absent a higher value alternative proposal emerging).

Our revised offer of \$7.25 per share (an increase of 75c on our initial offer price) exceeds the midpoint of the valuation range stated in the Independent Adviser's Report. We believe this is a very attractive price. This letter and the offer document are very important and we encourage you to read them in full.

### **In short, the reasons we suggest that you should accept this offer are as follows:**

- The Independent Directors who hold or control Acurity shares have advised that, absent a higher value alternative proposal emerging, they intend to accept the offer for all of their respective Acurity shares.
- It is unlikely that a competing takeover offer will emerge, as Connor has commitments from shareholders, which when taken with Connor's existing shareholding, exceed 70% of all Acurity shares.

### **\$7.25 is a full and fair price, and represents a significant premium:**

- It is a 38% premium to the closing price of Acurity shares on 25 July 2014, which was the last business day before the offer was announced.
- Acurity shares have traded as low as \$3.93 in the past year.
- Over the three months prior to Connor announcing the offer, Acurity shares have traded within the range of \$5.15 to \$5.50. The price being offered to you is a 36% premium to the volume weighted average during that period.
- The price exceeds the midpoint of the valuation range stated in the Independent Adviser's Report. That range is an estimate of the value for 100% of Acurity, and the Independent Adviser notes that it does not expect minority parcels to trade at this level (in the absence of a takeover offer).

**The offer provides you with an opportunity to:**

- Release cash at a premium price range for infrequently traded shares.
- Avoid potential future equity contributions to support the required capital expenditure to replace Acurity's flagship hospital in Wellington and the current Wakefield Medical Consultant Centre – estimated at \$60 million.

Connor Healthcare has been established by existing shareholders in Acurity – namely Royston Hospital Trust Board, interests associated with the Stewart family of Christchurch and Sydney-based Evolution Healthcare (NZ) Pty Limited.

The takeover offer is subject to conditions including a 90% minimum acceptance condition and approvals from the Overseas Investment Office and the Commerce Commission.

To accept this offer for your Acurity shares, please carefully follow the instructions set out in the Acceptance and Transfer Form attached at the back of the enclosed offer document.

If you have any questions on the offer, please call Geoff Senescall on +64 9 309 5659, or if you have any questions about the procedure to accept the offer, please call Link Market Services Limited on +64 9 375 5998.

Yours faithfully

**Connor Healthcare Limited**



Andrew Savage / Ben Thynne  
Directors

**Full takeover offer under the Takeovers Code by**

# **Connor Healthcare Limited**

**to purchase all of the ordinary shares in Acurity Health Group Limited that it does not already hold**

## **IMPORTANT**

If you are in doubt as to any aspect of this offer, you should consult your financial or legal adviser.

If you have sold all your shares in Acurity Health Group Limited to which this offer applies, you should immediately hand this offer document and the accompanying acceptance form to the purchaser or the agent (e.g. the broker) through whom the sale was made, to be passed to the purchaser.

Acurity Health Group Limited's target company statement, together with an independent adviser's report on the merits of this offer either accompanies this offer or will be sent to you within 14 days and should be read in conjunction with this offer.

**This is an important document and requires your immediate attention**

# Full offer by Connor Healthcare Limited to purchase all of the ordinary shares in Acurity Health Group Limited that it does not already hold

## 1. The Offer

- 1.1 Connor Healthcare Limited (**Offeror**) offers to the shareholders of Acurity Health Group Limited (**Acurity**) to purchase, on the terms and subject to the conditions set out in this offer document, all of the fully paid ordinary shares in Acurity (**Acurity Shares**) that it does not already hold.
- 1.2 A holder of Acurity Shares may accept the offer (**Offer**) in respect of all or any of their Acurity Shares.
- 1.3 This Offer is dated 26 August 2014 (**Offer Date**) and remains open for acceptance until 5.00 p.m. (**Closing Time**) on the date that is 88 days from and including the Offer Date (being 21 November 2014), or such later date to which the Offer may be extended by the Offeror or the Takeovers Panel in accordance with the Takeovers Code (the date on which the Offer closes being the **Closing Date**). The period from and including the Offer Date up to the Closing Time on the Closing Date is referred to in this Offer document as the **Offer Period**.
- 1.4 This Offer is made on the terms, and subject to the conditions, set out in this Offer document and on the terms contained in the Takeovers Code (except to the extent that the terms contained in the Takeovers Code are, where permitted by the Takeovers Code, varied by this Offer document).

## 2. Consideration

- 2.1 You will receive \$7.25 cash for each Acurity Share in respect of which this Offer is accepted and which is taken up under this Offer, subject to adjustment in accordance with paragraphs 8.1, 8.2 and 8.3.

## 3. Payment of consideration

- 3.1 The consideration payable to each person in respect of that person's Acurity Shares that are taken up under this Offer will be paid by cheque (sent by ordinary mail) or an electronic transfer of cleared funds (at the election of such person) not later than seven days after the latest of:
- (a) the date on which this Offer becomes unconditional;
  - (b) the date on which your acceptance is received; and

(c) 21 November 2014, being the date that is 88 days from and including the Offer Date.

3.2 If the consideration is paid by electronic transfer, you will be notified in writing.

3.3 If the consideration for this Offer is not sent within the period specified in paragraph 3.1 to any person whose Acurity Shares are taken up under this Offer, that person may withdraw acceptance of this Offer by notice in writing to the Offeror, but only:

(a) after the expiration of seven days' written notice to the Offeror of that person's intention to do so; and

(b) if that person does not receive the consideration to which that person is entitled during the seven day period referred to in paragraph 3.3(a).

## 4. Acceptance

4.1 To accept this Offer, you must complete the acceptance and transfer form enclosed with this Offer document (**Acceptance and Transfer Form**) in accordance with the instructions printed on it, and return it to the Offeror as soon as possible, but in any event so as to arrive before the end of the Offer Period, by one of the following methods:

(a) mailing it (in the enclosed prepaid envelope) to:

Connor Healthcare Limited  
c/- Link Market Services Limited  
PO Box 91976  
Auckland 1142  
New Zealand

(b) delivering it to:

Connor Healthcare Limited  
c/- Link Market Services Limited  
Level 7, Zurich House  
21 Queen Street  
Auckland 1010  
New Zealand

(c) faxing it to Connor Healthcare Limited, c/- Link Market Services Limited, on +64 9 375 5990. If you do this, you should post your original Acceptance and Transfer Form to the address in (a) above (although if you do not your acceptance will still be valid); or

(d) emailing it to Connor Healthcare Limited, c/- Link Market Services Limited at [operations@linkmarketservices.com](mailto:operations@linkmarketservices.com). If you do this, please type "Connor Healthcare Acceptance" in the subject line for easy identification and you should

post your original Acceptance and Transfer Form to the address in sub-paragraph (a) above (although if you do not your acceptance will still be valid).

- 4.2 No acknowledgement of the receipt of acceptances will be issued by or on behalf of the Offeror.
- 4.3 The Offeror may, in its discretion, treat any Acceptance and Transfer Form received as valid whether or not it complies with paragraph 4.1 or is otherwise irregular. The Offeror may also, in its discretion, rectify any errors in, or omissions from, any Acceptance and Transfer Form to enable it to constitute a valid acceptance of the Offer and to facilitate registration of the transfer of the Acurity Shares including inserting or correcting details of the Acurity Shares recorded on an Acceptance and Transfer Form and filling in any blanks.
- 4.4 Except as provided in paragraphs 3.3 and 4.5 of this Offer document, acceptances are irrevocable and any person who accepts this Offer (**Acceptor**) is not entitled to withdraw that person's acceptance, whether or not this Offer has been varied by the Offeror in accordance with the Takeovers Code.
- 4.5 The Offeror and every Acceptor shall be released from their obligations under this Offer, and arising from acceptance of this Offer, if:
- (a) this Offer is withdrawn with the consent of the Takeovers Panel; or
  - (b) this Offer lapses as a result of any condition in section 6 not being satisfied or waived (if capable of waiver) by the latest date for satisfaction or waiver of that condition.
- 4.6 This Offer is open for acceptance by all persons who hold Acurity Shares whether acquired before or after the Offer Date.
- 4.7 All Acurity Shares in respect of which this Offer is accepted must be free of all security interests, liens, charges, mortgages, encumbrances and other adverse interests or claims of any kind, when they are transferred to the Offeror.
- 4.8 By acceptance of this Offer, each Acceptor will be deemed to:
- (a) authorise the Offeror to advise Acurity and / or its share registrar of the details of that Acceptor's acceptance and to note those details in Acurity's share register;
  - (b) represent and warrant to the Offeror that title to that Acceptor's Acurity Shares, and to all other shares, options and other securities of the nature referred to in paragraphs 8.2, 8.3 and 8.4 of this Offer document, will pass to the Offeror free of all security interests, liens, charges, mortgages, encumbrances and other adverse interests or claims of any kind, but together with all rights attaching to them, and that that Acceptor has full power and capacity to sell and transfer all such securities; and
  - (c) authorise the Offeror to effect any rectification of any Acceptance and Transfer Form in the manner contemplated in paragraph 4.3.

## 5. Brokers

5.1 During the Offer Period, the Offeror may choose to engage the services of one or more Primary Market Participants (in terms of the NZX Participant Rules) or other financial advisory firms (together, **Brokers**) to contact Acurity shareholders and receive Acceptance and Transfer Forms. If the Offeror chooses to do this, the key terms of the engagement will be as follows:

- (a) For each completed and valid Acceptance and Transfer Form procured by a Broker, the Offeror will, subject to the terms set out in this section 5, pay that Broker a handling or procurement fee in respect of the Acurity Shares the subject of that Acceptance and Transfer Form (**Handling Fee**). The amount of the Handling Fee will be 0.75% of the consideration payment by the Offeror under the Offer to the relevant Acceptor in respect of the Acceptance and Transfer Form received.
- (b) The Broker will be paid, and receive, the Handling Fee solely in connection with its services to the Offeror and must not, directly or indirectly, pass any or all of the Handling Fee on to any Acceptor, or share the Handling Fee with any Acceptor.
- (c) The payment of a Handling Fee to a Broker in respect of an Acceptance and Transfer Form procured by that Broker is in all respects conditional on:
  - (i) the Offer being declared unconditional by the Offeror;
  - (ii) the Acurity Shares which are the subject of that Acceptance and Transfer Form being validly transferred to the Offeror; and
  - (iii) the Acceptance and Transfer Form being delivered in accordance with paragraph 4.1 and being stamped by the Broker (and only that Broker).
- (d) The conditions referred to in paragraph 5.1(c) are for the sole benefit of the Offeror and, accordingly, each such condition may be waived, in whole or part and in respect of all Acceptance and Transfer Forms procured by Brokers or in respect of any one or more particular Acceptance and Transfer Form(s) only, by the Offeror, on such terms as it decides, in its sole discretion.
- (e) The Offeror may, in determining the Handling Fee payable to a Broker, aggregate and / or disregard any acceptance of the Offer procured by that Broker if the Offeror believes that a party has structured holdings of Acurity Shares for the purpose or with the effect of enabling parties to take advantage of the arrangements described in this paragraph 5.1.
- (f) The Offeror will determine, in its sole discretion, any disputes relating to the payment of a Handling Fee. The determination of the Offeror will be final and binding on all parties.



- (g) No Handling Fees are payable in respect of any Acurity Shares that are held or controlled by a party or parties to, or are otherwise subject to, the lock-up agreements referred to in paragraph 12.12.

## 6. Conditions

This Offer, and any contract arising from acceptance of it, are conditional on:

- 6.1 Acceptances being received in respect of that number of Acurity Shares which, when taken together with the Acurity Shares already held or controlled by the Offeror, confer on the Offeror 90% or more of the total voting rights in Acurity.
- 6.2 All consents necessary under the Overseas Investment Act 2005 to complete the acquisition of all of the Acurity Shares in accordance with this Offer having been obtained, on terms which are usual for the granting of such consents.
- 6.3 The Commerce Commission having given clearance or granting authorisation under the Commerce Act 1986 to the acquisition which will result from completion of this Offer.
- 6.4 During the period from the date on which notice of this Offer was given to Acurity (that date being 28 July 2014, and being referred to as the **Notice Date**) to and including the latest date on which the Offeror may declare this Offer unconditional, unless the Offeror consents in writing:
- (a) no dividends, bonuses or other distributions of any nature being declared, paid or made on, or in respect of, any Acurity Shares or on or in respect of any shares or other securities in any of Acurity's subsidiaries;
  - (b) none of the Acurity Shares being subdivided, consolidated or bought back by Acurity, no further shares, options or other securities of any nature of Acurity or any of its subsidiaries being issued or made the subject of any option or agreement to issue, and there being no alteration to the rights, privileges or restrictions attaching to any Acurity Shares;
  - (c) the business of Acurity and its subsidiaries being carried on in the ordinary course;
  - (d) neither Acurity nor any of its subsidiaries disposing of, purchasing, transferring, leasing, granting a security interest or other security over, granting an option or legal or equitable interest in respect of, or otherwise dealing with a legal or equitable interest in, any asset, business operation or property or agreeing to do any such thing for, or in respect of, an asset having a value of an amount in excess of \$500,000 (either by a single act or series of related acts) otherwise than in the ordinary course of business;
  - (e) neither Acurity nor any of its subsidiaries entering into any new contract, commitment or agreement, or altering the terms of any existing contract, commitment or agreement, involving an amount, or providing for any payments

over its term, in excess of \$250,000 or having a term of more than 1 year, otherwise than in the ordinary course of business;

- (f) there being no amendment to any existing, or entry into any new, arrangement relating to the capital structure, or shareholding arrangements between one or more shareholders, of Acurity or any of its subsidiaries or any other entity in which Acurity has an interest (other than any shareholding arrangements to which the Offeror, or an associate of the Offeror, is a party);
- (g) neither Acurity nor any of its subsidiaries establishing, nor entering into any agreement or arrangement to establish, any new business operations or facilities, whether in New Zealand or elsewhere, otherwise than in the ordinary course of business;
- (h) neither Acurity nor any of its subsidiaries changing, or agreeing to change, the remuneration or any other material terms of employment of any employee (except for ordinary wage or salary increases in accordance with any established review policy) or commencing the employment of any person (except where such commencement is for the purposes of filling a vacant position), at a rate of remuneration in excess of \$150,000 per annum, otherwise than in the ordinary course of business;
- (i) no event of default, potential event of default, repayment event, prepayment event or event of review (however described) under any financing agreement to which Acurity or any of its subsidiaries is subject occurring as a consequence of Acurity or any of its subsidiaries becoming a subsidiary or under the control of the Offeror or any of its subsidiaries;
- (j) there not occurring any material adverse change in the financial position, trading operations or assets of Acurity or any of its subsidiaries as compared with the position as at the Notice Date, and no event occurring which gives or may give rise to such a material adverse change;
- (k) no building or any other real property owned or used by Acurity or any of its subsidiaries failing to comply with all applicable laws and regulations;
- (l) there being no alteration to the constitution of Acurity or any of its subsidiaries (otherwise than as required to comply with the listing rules of the New Zealand stock exchange market operated by NZX);
- (m) no receiver of any property or assets of Acurity or any of its subsidiaries being appointed and no proceedings for the liquidation of Acurity or any of its subsidiaries being commenced;
- (n) no proceedings, other than any which have been publicly disclosed by Acurity prior to the Notice Date, being notified, threatened or commenced against Acurity or any of its subsidiaries, involving a claim or claims together totalling in excess of

\$500,000 (other than any proceedings brought by the Offeror, or an associate of the Offeror);

- (o) there being no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction in New Zealand or elsewhere or other legal restraint or prohibition making implementation of this Offer, or any aspect of it, void, unenforceable or illegal;
- (p) no resolution being passed for any amalgamation or liquidation of Acurity or any of its subsidiaries, and none of Acurity or any of its subsidiaries being involved in any merger, share buyback or scheme of arrangement, or any agreement or proposal relating to any merger, share buyback or scheme of arrangement being announced in respect of any of them;
- (q) no board resolution or shareholders' resolution of Acurity or any of its subsidiaries being passed to do, or to authorise the doing of, any act or matter referred to in this paragraph 6.4;
- (r) Acurity not making any announcement or profit warning to the effect that its underlying earnings (as defined in Acurity's annual report for the year ended 31 March 2014) for the six month period ending 30 September 2014 or for the six month period ending 31 March 2015 will or may be less than its underlying earnings (as defined in Acurity's annual report for the year ended 31 March 2014) for the six month period ended 31 March 2014 by greater than 10%;
- (s) no shares, notes, options or other securities or interests held, controlled or owned by Acurity or any of its subsidiaries in any company or other entity, or in any unincorporated body, being subject to forfeiture, transfer or any right of pre-emption in the event of Acurity or any of its subsidiaries becoming a subsidiary or under the control of any other company; and
- (t) nothing occurring or failing to occur that would entitle the Offeror's bankers, under certain facilities entered into with the Offeror for the purposes of providing funding to the Offeror in respect of this Offer, not to make any or all of that funding available to the Offeror (other than where the occurrence or failure is a result of an act or omission in the power, or under the control, of the Offeror or an associate of the Offeror).

## 7. General provisions relating to the conditions

7.1 Each of the conditions set out in section 6 is a separate condition, and acceptance of this Offer by each Acceptor shall constitute a contract by that Acceptor with the Offeror subject to those conditions. The Offer will only proceed if all the conditions in section 6 are satisfied or waived (if capable of waiver). However, the Offeror may not allow this Offer to lapse:

- (a) in unreasonable reliance on a condition; or

- (b) in reliance on a condition that restricts Acurity's activities in the ordinary course of its business during the period beginning with the Notice Date and ending on the latest date on which the Offeror can declare this Offer unconditional in accordance with paragraph 7.5.
- 7.2 The conditions set out in paragraphs 6.2, 6.3 and 6.4 of this Offer document have been inserted solely for the benefit of the Offeror. Each condition set out in paragraphs 6.2, 6.3 and 6.4 may be waived by the Offeror in its absolute discretion, wholly or in part. The condition set out in paragraph 6.1 cannot be waived.
- 7.3 Without affecting paragraphs 7.1(a) and 7.1(b), where any condition requires a determination before it may be invoked as to whether a matter is material or not, is usual or not, constitutes or involves a material adverse change or not, or is in the ordinary course of business or not, such determination must be made by a suitably qualified expert appointed by the Offeror that is not an associate of the Offeror, prior to the Offeror being able to invoke the condition.
- 7.4 The latest time by which the Offeror may declare the condition in paragraph 6.1 to have been satisfied is the Closing Time on the Closing Date.
- 7.5 Subject to paragraph 7.4, if the Offer Period is not extended then the latest date on which the Offeror can declare this Offer unconditional is 30 days after the end of the Offer Period. If the Offer Period is extended, then the latest date on which the Offeror can declare this Offer unconditional is the date that is 30 days after the end of the Offer Period as extended (excluding any part of the Offer Period that is extended in accordance with Rule 24B of the Takeovers Code beyond 23 November 2014). If the Offer Period is extended the Offeror will, at the time of extension, specify in the variation notice the new date by which it must declare this Offer unconditional.

## 8. Changes in circumstances

- 8.1 If Acurity declares, pays or makes any dividend or other distribution on, or in respect of, the Acurity Shares on or after the Notice Date, and the Offeror waives the condition in paragraph 6.4(a), then, at the option of the Offeror, either:
- (a) Acceptors will be bound to pay to the Offeror in respect of each Acurity Share for which they have accepted this Offer an amount equal to that dividend or other distribution; or
  - (b) the consideration which would otherwise have been paid by the Offeror in respect of each Acurity Share to those Acceptors will be reduced by an amount equivalent to that dividend or other distribution payable to Acceptors in respect of each Acurity Share.
- 8.2 If Acurity makes any bonus issue of shares, options, or other securities in respect of Acurity Shares on or after the Notice Date, and the Offeror waives the conditions in paragraphs 6.4(a) and 6.4(b), then, at the option of the Offeror, either:

- (a) each Acceptor must transfer to the Offeror, without additional consideration, the number of those securities which is attributable to the Acurity Shares agreed to be transferred to the Offeror by the Acceptor; or
- (b) if the bonus issue is of fully paid ordinary shares in Acurity, the Offeror may extend this Offer to include those bonus shares, in which case the consideration payable for each Acurity Share as set out in section 2 will be proportionally reduced to take account of such bonus issue, such that the total aggregate consideration payable for all fully paid ordinary shares in Acurity under this Offer (including those bonus shares), if accepted in full, remains the same as it would have had no such bonus issue taken place.

8.3 If Acurity subdivides or consolidates the Acurity Shares on or after the Notice Date, and the Offeror waives the condition in paragraph 6.4(b), this Offer will be for the securities resulting from such subdivision or consolidation and the consideration for each Acurity Share will be correspondingly reduced or increased (as the case may be) and Acceptors must transfer the relevant subdivided or consolidated Acurity Shares to the Offeror without any additional consideration.

8.4 If Acurity issues any further fully paid ordinary shares on or after the Notice Date, whether pursuant to any dividend reinvestment plan, share investment scheme or employee share scheme, or otherwise, and the Offeror waives the condition in paragraph 6.4(b), and paragraph 8.2 does not apply in respect of such shares, this Offer will extend to such of those shares which the Offeror does not hold following such issue.

## 9. Single class of securities

9.1 No report is required under Rule 22 of the Takeovers Code (which, if the offer is for more than one class of securities, requires a report by an independent adviser on the fairness and reasonableness of the consideration and terms of the offer as between different classes of voting securities).

## 10. Notices

10.1 Except where the Offeror is required by the Takeovers Code to give or send notice of any matter to the holders of Acurity Shares, notice by the Offeror to NZX and to Acurity of any matter relating to this Offer will constitute notice of that matter to holders of Acurity Shares and will be deemed to have been duly given on the day following the date of notification to NZX.

10.2 Notice of any variation of the Offer will be sent to each holder of Acurity Shares, Acurity, the Takeovers Panel and NZX in accordance with the Takeovers Code unless (and except to the extent that) such notice is not required to be given by the Takeovers Code.

## 11. General

- 11.1 All cheques, Acceptance and Transfer Forms and other documents to be delivered or sent by or to a holder of Acurity Shares will be delivered or sent by or to that holder at that holder's own risk.
- 11.2 The provisions set out in any Acceptance and Transfer Form form part of the terms of this Offer.
- 11.3 All references in this Offer document and in any Acceptance and Transfer Form to:
- (a) currency, are to New Zealand currency;
  - (b) time, are to New Zealand time;
  - (c) the singular, includes the plural and vice versa, unless the context otherwise requires;
  - (d) NZX, are to NZX Limited, or any successor.
- 11.4 A reference in this Offer document or in an Acceptance and Transfer Form to the Takeovers Code, or any Rule of the Takeovers Code, is a reference to the Takeovers Code or Rule recorded in the Takeovers Code Approval Order 2000 as consolidated, amended, re-enacted or replaced from time to time and as varied by any applicable exemption granted by the Takeovers Panel. Where the term Takeovers Panel is used in this Offer document or in an Acceptance and Transfer Form, it means the Takeovers Panel established by the Takeovers Act 1993.
- 11.5 Headings are for convenience only and do not affect the interpretation of this Offer document or any Acceptance and Transfer Form. Any expression that is defined in the Takeovers Act 1993, or in the Takeovers Code, and used (but not defined) in this Offer document or any Acceptance and Transfer Form, has the same meaning as in the Takeovers Act 1993 or the Takeovers Code, unless the context otherwise requires.
- 11.6 This Offer, and all contracts arising from acceptance of it, will be governed by the laws of New Zealand. The Offeror and each Acceptor submits to the non-exclusive jurisdiction of the courts of New Zealand.

## 12. Additional information

- 12.1 The information required by Schedule One to the Takeovers Code, and not stated elsewhere in this Offer document, is set out below.

### **Offeror and its directors**

- 12.2 The registered office of the Offeror is:

c/- Mayne Wetherell

Level 23, SAP Tower  
151 Queen Street, Auckland

12.3 The directors of the Offeror are Andrew George Edward Savage and Benedict Joseph Thynne.

*Ownership of Offeror*

12.4 The Offeror is presently wholly owned by Evolution Healthcare (NZ) Pty Ltd (**Evolution**). However, Evolution has entered into a takeover implementation deed with Austron Limited (**Austron**), a major shareholder of Acurity, pursuant to which:

- (a) a takeover committee, comprised of Austron's directors and the Offeror's directors, control the takeover process being run by the Offeror; and
- (b) Austron must subscribe for a majority shareholding (of 75%) in the Offeror contemporaneously with settlement under this Offer.

12.5 As a result, at the settlement of the Offer, the shares in the Offeror will be owned by Austron (as to 75%) and by Evolution (as to 25%).

12.6 The mechanics contained in that implementation deed for Austron taking its shareholding in the Offeror (which involves both a subscription for shares and the advancing of a shareholder loan) ensure that the final capital structure of the Offeror:

- (a) reflects the capital contributions made by each of Evolution and Austron to the Offeror (such that neither party is receiving more from the Offeror than it contributed to the Offeror); and
- (b) mirrors the capital structure that would result if Evolution and Austron formed a new company to make the Offer which was jointly owned from the commencement of the Offer.

12.7 A copy of the takeover implementation deed was filed with NZX and Acurity on 28 July 2014 and may be obtained from those parties.

**Ownership of equity securities of Acurity**

12.8 The table below sets out the number, designation and percentage of equity securities of any class of Acurity held or controlled by:

- (a) the Offeror;
- (b) any related company of the Offeror;
- (c) any person acting jointly or in concert with the Offeror;
- (d) any director of any of the persons described in sub-paragraphs (a) to (c) above; and

- (e) any other person holding or controlling 5% or more of the class, to the knowledge of the Offeror.

Name	Description	Number of equity securities held or controlled	Type of equity securities	Percentage of Class
Connor Healthcare Limited	- The Offeror	2,019,780	Ordinary shares	11.702%
Evolution Healthcare (NZ) Pty Ltd	- Parent company of the Offeror. - Person acting jointly or in concert with the Offeror.	2,019,780	Ordinary shares	11.702%
Evolution Healthcare Partners Pty Ltd	- Parent company of the Offeror.	2,019,780	Ordinary shares	11.702%
Austron Limited	- Person acting jointly or in concert with the Offeror. - Person holding or controlling 5% or more of Acuity Shares.	8,631,800	Ordinary shares	50.011%
Royston Hospital Trust Board	- Shareholder of Austron Limited. - Person acting jointly or in concert with the Offeror.	773,168	Ordinary shares	4.480%
Medusa Limited	- Shareholder of Austron Limited. - Person acting jointly or in concert with the Offeror.	773,168	Ordinary shares	4.480%
Anaconda Limited	- Parent company of Medusa Limited.	773,168	Ordinary shares	4.480%
Adrienne Lady Stewart, Mark Stewart and Richard Burt	- Trustees of certain trusts that together control Anaconda Limited - Mark Stewart is a director of Austron	773,168	Ordinary shares	4.480%
AMP Capital Investors (New Zealand) Limited and AMP Capital Investors Limited*	- Person holding or controlling 5% or more of the class, to the knowledge of the Offeror	951,505	Ordinary shares	5.513%

\*This information is taken from the latest publicly available information at the time of printing and dated as at 30 May 2014 (being the last date on which Acuity published a list of its twenty largest shareholders).

- 12.9 Except as stated in the above table, no person referred to in paragraphs 12.8(a) to (d) above holds or controls equity securities of Acuity.

#### Trading in Acuity equity securities

- 12.10 The table below sets out details of the acquisition or disposition of equity securities of Acuity by persons referred to in paragraphs 12.8(a) to (d) above during the 6 month period before the Offer Date.



Name	Date of transaction	Number of equity securities	Type of equity security	Acquisition or disposal	Consideration (to two decimal places)
Connor Healthcare Limited	28 July 2014	2,019,780	Ordinary Shares	Acquisition from Evolution Healthcare (NZ) Pty Ltd	\$5.49 per share
Evolution Healthcare (NZ) Pty Ltd	28 July 2014	2,019,780	Ordinary Shares	Disposition to Connor Healthcare Limited	\$5.49 per share
Evolution Healthcare (NZ) Pty Ltd	21 May 2014	2,019,780	Ordinary Shares	Acquisition from Evolution Healthcare Partners No 1 Pty Ltd as trustee for the EHPP Trust	\$5.49 per share
Evolution Healthcare Partners No 1 Pty Ltd as trustee for the EHPP Trust	21 May 2014	2,019,780	Ordinary Shares	Disposition to Evolution Healthcare (NZ) Pty Ltd	\$5.49 per share
Evolution Healthcare Partners No 1 Pty Ltd as trustee for the EHPP Trust	28 April 2014	45,588	Ordinary Shares	On market acquisition	\$5.39 per share
Evolution Healthcare Partners No 1 Pty Ltd as trustee for the EHPP Trust	11 April 2014	7,175	Ordinary Shares	On market acquisition	\$5.49 per share
Evolution Healthcare Partners No 1 Pty Ltd as trustee for the EHPP Trust	31 March 2014	11,456	Ordinary Shares	On market acquisition	\$5.46 per share
Evolution Healthcare Partners No 1 Pty Ltd as trustee for the EHPP Trust	25 March 2014	31,396	Ordinary Shares	On market acquisition	\$5.39 per share

12.11 Except as stated in the above table, none of the other persons referred to in paragraphs 12.8(a) to (d) above has acquired or disposed of equity securities in Acuity during the 6 month period before the Offer Date.

#### Agreements to accept Offer

12.12 On 28 July 2014 each of the following persons (each a **Lock-Up Counterparty**) entered into a lock-up agreement to accept this Offer in respect of their respective entire holdings of Acuity Shares:

- (a) Austron Limited which, as at the Notice Date, holds 8,631,800 Acuity Shares (which constitutes 50.011% of all Acuity Shares on issue);
- (b) Royston Hospital Trust Board which, as at the Notice Date, holds 773,168 Acuity Shares (which constitutes 4.480% of all Acuity Shares on issue); and
- (c) Medusa Limited which, as at the Notice Date, holds 773,168 Acuity Shares (which constitutes 4.480% of all Acuity Shares on issue).

12.13 The material terms of each lock-up agreement are as follows:

- (a) the Offeror was obliged to:
  - (i) send the Takeover Notice to Acurity in accordance with Rule 41 of the Takeovers Code as soon as practicable, and in any event within 2 days of the date of the agreement; and
  - (ii) make the Offer as soon as reasonably possible, and in any event no later than 30 days after sending the Takeover Notice as referred to above; and
- (b) subject to this Offer being made, the relevant Lock-Up Counterparty irrevocably agreed to accept the Offer, once made, in respect of all Acurity Shares held by it, no later than 2 business days after the date on which the Offer is received by that Lock-Up Counterparty.

12.14 A copy of the agreements referred to in paragraph 12.12 were filed with NZX and Acurity on 28 July 2014 and may be obtained from those parties.

12.15 Other than as disclosed above, no person has agreed conditionally or unconditionally to accept this Offer as at the Offer Date.

#### **Arrangements to pay consideration**

12.16 The Offeror confirms that sufficient resources will be available to it to meet the consideration to be provided on full acceptance of this Offer and to pay any debts incurred in connection with this Offer (including the debts arising under Rule 49 of the Takeovers Code).

12.17 A statement setting out the rights of each holder of Acurity Shares under Rule 34 of the Takeovers Code is set out in paragraph 3.3 of this Offer document.

#### **Arrangements between the Offeror and Acurity**

12.18 No agreement or arrangement (whether legally enforceable or not) has been made or is proposed to be made between the Offeror (or any associate of the Offeror) and Acurity or any related company of Acurity in connection with, in anticipation of, or in response to, this Offer other than:

- (a) a mutual confidentiality agreement dated 2 May 2014 between Austron Limited (being a related company of Acurity) and Medusa Limited (also being a related company of Acurity), Royston Hospital Trust Board and Evolution Healthcare Partners No 1 Pty Limited as trustee for the EHPP Trust;
- (b) a confidentiality letter agreement dated 6 May 2014 between Austron Limited (being a related company of Acurity) and AMP Capital Investors (New Zealand) Limited and AMP Capital Investors Limited;

- (c) a takeover implementation agreement dated 28 July 2014 between Austron Limited (being a related company of Acurity) and the Offeror (as described in paragraphs 12.4 to 12.7 above);
- (d) a stapling agreement dated 28 July 2014 between Austron Limited (being a related company of Acurity), Evolution Healthcare (NZ) Pty Ltd and the Offeror (pursuant to which Austron and Evolution agree not to transfer:
  - (i) the legal or beneficial ownership to all or any of its shares in the Offeror without transferring to the same transferee a corresponding proportion of its shareholder loan(s); or
  - (ii) all or any part of its shareholder loan(s) without transferring to the same transferee a corresponding proportion of its shares in the Offeror;
- (e) a multilateral lock-up agreement dated 28 July 2014 between Austron Limited (being a related company of Acurity), Medusa Limited (also being a related company of Acurity), Royston Hospital Trust Board, and the Offeror (as described in paragraph 12.12 above);
- (f) after giving its takeover notice on the Notice Date:
  - (i) the Offeror agreed certain accommodations with Acurity in respect of the conditions of the Offer, as follows:
    - (A) the Offeror agreed to amend the wording of the condition in paragraph 6.4(r) to that which is contained in this Offer;
    - (B) the Offeror consented to an investment by Acurity through the exercise of Acurity's call options to acquire a further 10% shareholding in each of Endoscopy Auckland Limited and Laparoscopy Auckland Limited;
    - (C) the Offeror consented to an increase in the Acurity directors' fee pool to \$467,250 per annum;
    - (D) the Offeror consented to certain capital expenditure intended to be incurred by Acurity in relation to Wakefield Hospital; and
    - (E) the Offeror confirmed its intention to consent to any event of review that may be triggered under Acurity's banking facilities were the Offer to complete;
  - (ii) the Offeror agreed, for the purposes of rule 46(1)(a)(i) of the Takeovers Code, to the receipt of Acurity's response documents after the default period stipulated by the Takeovers Code;
  - (iii) the Offeror entered into a confidentiality agreement dated 16 August 2014 with Acurity; and

- (iv) the directors of Acurity approved, for the purposes of rule 44(1)(b)(ii) of the Takeovers Code, the changes made to this Offer from the terms and conditions contained in or accompanying the Offeror's takeover notice.

#### **Arrangements between the Offeror, and directors and officers of Acurity**

12.19 No agreement or arrangement (whether legally enforceable or not) has been made, or is proposed to be made, between the Offeror or any associate of the Offeror and any of the directors or senior officers of Acurity (or any related company of Acurity) in connection with, or in anticipation of, or in response to, this Offer, except that:

- (a) each of Jacqueline Gray, Mark Stewart and Warwick Webb, who are directors of Acurity, and Stuart Signal, who is an alternate director of Acurity, have agreed:
  - (i) to be appointed as a member of the takeover committee appointed by the Offeror pursuant to the takeover implementation deed (as described in paragraphs 12.4 to 12.7 above); and
  - (ii) to be appointed as a director of the Offeror contemporaneously with settlement under this Offer; and
- (b) after giving its takeover notice on the Notice Date, the directors of Acurity sought confirmation from the Offeror, which the Offeror provided, that it would procure Acurity retain (and pay for) directors' and officers' insurance for any current Acurity directors who leave the board in connection with the Offer succeeding.

#### **Financial assistance**

12.20 The Offeror has entered into funding arrangements in relation to this Offer. If, as a result of this Offer, the Offeror becomes entitled to compulsorily acquire Acurity Shares, it is intended that those rights will be exercised and the Offeror will thereafter procure that those funding arrangements be consolidated into Acurity (and that each of Acurity's wholly-owned subsidiaries will grant security over its assets to secure Acurity's obligations under those funding arrangements).

#### **Likelihood of changes in Acurity**

12.21 As this Offer is conditional upon acceptances being received in respect of that number of Acurity Shares which, when taken together with the Acurity Shares already held or controlled by the Offeror, confer on the Offeror 90% or more of the total voting rights in Acurity, and that condition cannot be waived, pursuant to clause 14(4) of Schedule 1 of the Takeovers Code a statement as to the likelihood of changes in Acurity is not required.

### **Pre-emption clauses in Acurity's constitution**

- 12.22 There are no restrictions contained in the constitution of Acurity on the right to transfer Acurity Shares which would have the effect of requiring holders of Acurity Shares to offer such Acurity Shares for purchase to members of Acurity or another person before transferring those Acurity Shares.

### **Escalation clauses**

- 12.23 There is no agreement or arrangement (whether legally enforceable or not) to which the Offeror or any of its related entities is a party, under which any existing holder of equity securities in Acurity will or may receive in relation to, or as a consequence of, this Offer, any additional consideration or other benefit over and above the consideration set out in this Offer, or under which any prior holder of equity securities in Acurity will or may receive any consideration or other benefit as a consequence of this Offer.

## Please Note

### **If you have sold all of your Acurity shares**

Please send this Offer document and all enclosures (including the relevant Acceptance and Transfer Form) immediately to the new holder of the Acurity Shares or the broker through whom you made the sale requesting that they be forwarded to the new holder of the Acurity Shares.

### **If you have sold some of your Acurity shares**

When accepting the Offer, please alter the total holding on the relevant Acceptance and Transfer Form to the number of Acurity Shares which you have retained and forward the amended form to the Offeror in the reply paid envelope supplied.

Upon receipt of the amended form, the Offeror will recalculate the amount of your consideration to reflect the number of Acurity Shares sold by you.

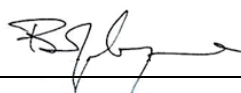
Please also request the broker through whom you made the sale to advise the purchaser or purchasers of your Acurity Shares of this Offer and that copies of it are available from the share registrar, Link Market Services Limited, and advise the share registrar of the number of Acurity Shares sold and the broker concerned.

## Certificate

To the best of our knowledge and belief, after making proper enquiry, the information contained in or accompanying the offer document is, in all material respects, true and correct and not misleading, whether by omission of any information or otherwise, and includes all the information required to be disclosed by the Offeror under the Takeovers Code.

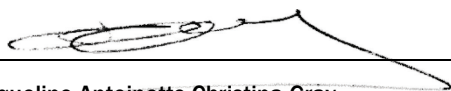


Andrew George Edward Savage



Benedict Joseph Thynne

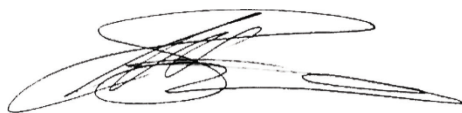
being the directors of the Offeror.



Jacqueline Antoinette Christina Gray



Stuart Geoffrey Signal



Mark James Stewart



Warwick Graham Webb

being, together with the directors of the Offeror, the persons fulfilling the roles of chief executive officer and chief financial officer of the Offeror.

Connor Healthcare Limited  
c/- Mayne Wetherell  
Level 23, SAP Tower  
151 Queen Street, Auckland







**1. NOTES AND INSTRUCTIONS FOR COMPLETION OF THIS ACCEPTANCE AND TRANSFER FORM**

**1.1 To accept the Offer:**

- (a) Insert the date of signing in the space provided. Please ensure that all details on this Acceptance and Transfer Form are correct. Please alter this Acceptance and Transfer Form if required.
- (b) Sign this Acceptance and Transfer Form where marked "Signature(s)". Companies must sign where marked "For A Company" in accordance with the Companies Act 1993 or other applicable law.
- (c) If the Acurity Shares are registered in the names of joint holders, **all holders must sign** this Acceptance and Transfer Form.

**1.2 Acurity Shares held by Nominees:** If your Acurity Shares are held through a nominee, advise your nominee that you wish to sell all your Acurity Shares and instruct it to complete, sign and return this Acceptance and Transfer Form to the Offeror in accordance with the instructions set out below.

**1.3 Method of Payment:** You should select a method of payment. If you do not, or if you do not provide sufficient details to enable an electronic transfer to you, you will be paid by cheque. Overseas shareholders should take particular care to provide all information that is required to make an electronic transfer to them. If they do not, payment will be made by cheque to them, and neither the Offeror nor Link Market Services Limited has any responsibility to verify any such details. Overseas shareholders who have not provided a New Zealand bank account and that elect to be paid by electronic transfer will need to make their own arrangements with their bank to ensure that their designated account is capable of receiving funds transfer in New Zealand dollars. Your bank may charge you fees in relation to receipt of an electronic transfer.

**1.4 Power of Attorney:** If this Acceptance and Transfer Form is signed under a power of attorney, the certificate of non-revocation printed on this Acceptance and Transfer Form must be completed by the party holding the Power of Attorney and signing this Acceptance and Transfer Form.

**1.5 On Completion:** Either mail, deliver, fax or email this Acceptance and Transfer Form as provided for below as soon as possible, but in any event so as to be received by the Offeror on or before 5.00 p.m. on the Closing Date.

- (a) **MAIL:** Place the signed Acceptance and Transfer Form in the enclosed prepaid envelope and send by post to the following address:

Connor Healthcare Limited  
c/- Link Market Services Limited  
PO Box 91976  
Auckland 1142  
New Zealand

- (b) **DELIVER:** Deliver the signed Acceptance and Transfer Form to the Offeror, at the following address:

Connor Healthcare Limited  
c/- Link Market Services Limited  
Level 7, Zurich House  
21 Queen Street  
Auckland, New Zealand

**NOTE:** *These offices are only open on weekdays during normal business hours.*

- (c) **FAX:** Fax the signed Acceptance and Transfer Form to Connor Healthcare Limited c/- Link Market Services Limited, on +64 9 375 5990.

- (d) **EMAIL:** Email the signed Acceptance and Transfer Form to the Offeror at:

Connor Healthcare Limited  
c/- Link Market Services Limited  
[operations@linkmarketservices.com](mailto:operations@linkmarketservices.com)  
(Please type "Connor Healthcare Acceptance" in the subject line for easy identification)

**IF YOU ARE IN DOUBT ABOUT THE PROCEDURE FOR ACCEPTANCE, PLEASE TELEPHONE  
LINK MARKET SERVICES LIMITED ON +64 9 375 5998.**