

This unexecuted consolidated copy comprises the provisions of the Centric Platform Investor Directed Portfolio Service Deed Poll dated 8 November 2018, as amended by the following deeds:

1. Deed of Amendment [executed but undated, and having the effect of making minor corrections to ACNs and ABNs, and changing the name of the Service to the 'Centric Platform Investor Directed Portfolio Service']; and
2. Amending Deed dated 9 November 2023.

# Centric Platform Investor Directed Portfolio Service Deed Poll

**Specialised Private Capital Limited**

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# Centric Platform Investor Directed Portfolio Service Deed Poll

Date 8 November 2018

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Parties **Specialised Private Capital Limited**

ABN 87 095 773 390 of Level 24, 1 O'Connell Street, Sydney, NSW, 2000

(Operator)

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Recitals

A. The Operator wishes to establish an Investor Directed Portfolio Service, for which it will act as operator pursuant to ASIC Class Order CO 13/763.

B. This deed sets out the terms on which the Investor Directed Portfolio Service is established.

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This deed witnesses that the Operator declares as follows:

## 1. Definitions and interpretation

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### 1.1 Definitions

The following words have these meanings unless the contrary intention appears:

<b>Adviser</b>	means an Investor's financial adviser, appointed to advise the Investor in relation to the Investor's Portfolio, as set out in the Adviser Nomination Form.
<b>Adviser Nomination Form</b>	means the most current document submitted by the Investor to the Operator, and accepted by the Operator, which nominates the Investor's Adviser and sets out the extent to which the Adviser can provide Instructions to the Operator in relation to the Investor's Portfolio.
<b>Agent</b>	means an agent of the Operator (which includes any Custodian) engaged to perform functions that the Operator must or may perform for the Service or as contemplated by the relevant IDPS Contract, or functions relating to the performance of those functions.



<b>Application Form</b>	means the application form through which a client applies to become an Investor, whether in written printed or electronic form or otherwise.
<b>ASIC</b>	means the Australian Securities and Investments Commission.
<b>ASIC Relief</b>	means any relief from the provisions of the Corporations Act granted by ASIC on which the Operator relies in respect of the Service from time to time, including the Class Order.
<b>Asset</b>	means an asset forming part of a Portfolio from time to time.
<b>Australian ADI</b>	has the meaning given in the Corporations Act.
<b>Business Day</b>	means a business day as defined in the ASX Listing Rules of the Australian Securities Exchange.
<b>Cash Account</b>	means a account with an Australian ADI or an interest in a cash management trust held by or on behalf of the Operator in relation to the Service.
<b>Centric Terms and Conditions</b>	Means the terms and conditions available at <a href="http://centricwealth.com.au/policies">centricwealth.com.au/policies</a> , as updated from time to time.
<b>Charges</b>	means the charges, expenses, Taxes and Duties payable by an Investor in respect of the Operator effecting a Transaction on their behalf.
<b>Class Order</b>	means <u>ASIC Corporations (Investor Directed Portfolio Services) Instrument 2023/669</u> as amended or replaced from time to time.
<b>Corporate Action Notice</b>	means any report, form of proxy, notice of meeting and other material, letter, notice or announcement relating to an Asset in an Investor's Portfolio, other than in respect of legal proceedings as contemplated in clause 5.10.
<b>Corporations Act</b>	means the <i>Corporations Act 2001</i> (Cth).
<b>Custodian</b>	means any custodian, depository, clearing agency, nominee, or other similar person, including the Operator, appointed by the Operator pursuant to this Deed, until its appointment terminates.
<b>Deed</b>	means this deed, as amended from time to time.
<b>Disclosure Document</b>	means a Product Disclosure Statement, IDPS Guide, prospectus, a profile statement or an offer information statement or any other form of document lawfully offering financial products in Australia.
<b>Distribution Agreement</b>	means the agreement between the Operator and the relevant distributor as to the distributor's distribution of the Service as referred to in clause 8.3 (eg an agreement to white-label the

Service with the distributor's brand).

<b>Distributor</b>	means any person who is authorised under a Distribution Agreement, to distribute the Service.
<b>Duty</b>	means any stamp, transaction or registration duty or similar charge imposed by any Governmental Agency and includes any interest, fine, penalty, charge or other amount imposed in respect of the above but excludes any Tax.
<b>Eligible Asset</b>	means such asset or type or class of asset (including money) as the Operator determines under clause 4.3 from time to time which may be transferred or delivered to or acquired or accepted by the Operator or its Custodian under this Deed and includes all assets, property and rights which are held for an Investor under this Deed or, if the context requires, are being acquired for an Investor under this Deed.
<b>Fees</b>	means any fees disclosed in the relevant IDPS Guide or as the Operator notifies to an Investor from time to time and on reasonable notice in relation to their Portfolio.
<b>Government Agency</b>	means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world and includes any self-regulatory organisation established under statute or any stock exchange.
<b>GST</b>	has the meaning given to that term in the GST Act or any replacement or other relevant legislation and regulation.
<b>GST Act</b>	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>IDPS Guide</b>	means the disclosure document issued from time to time by: <ul style="list-style-type: none"> <li>(a) where no Distribution Agreement is in operation: the Operator; or</li> <li>(b) where a Distribution Agreement is in operation: the Operator with the agreement of the Distributor;</li> </ul> which offers the provision of the Service to potential Investors.
<b>IDPS Contract</b>	means a contract or contracts between the Operator and an Investor under which the Investor agrees to be bound by the terms of the Service, and the Operator agrees to provide the Investor with the Service or the performance of some functions which together constitute the Service. The IDPS Contract for an Investor consists of: <ul style="list-style-type: none"> <li>(a) this Deed;</li> <li>(b) the IDPS Guide;</li> </ul>

- (c) the Centric Terms and Conditions; and
- (d) the Investor's Application Form, once completed and submitted by the Investor and accepted by the Operator.

<b>Indemnified Person</b>	means a person whom an Investor agrees to indemnify under the terms of an, IDPS Contract.
<b>Instruction</b>	means an instruction from or on behalf of the Investor in relation to the Investor's Portfolio, which meets the requirements set out in the relevant IDPS Contract, including the IDPS Guide and this Deed.
<b>Investor</b>	<p>means a client of the Service, being the person named as the client in the relevant Application Form, once that application has been accepted by the Operator. The client ceases to be an Investor when they cease to be a client of the Service.</p> <p>If there is more than one client, 'Investor' means each of them jointly and severally.</p> <p>Investor includes successors, executors, administrators, substitutes and permitted assigns.</p>
<b>Minimum Asset Balance</b>	means the minimum required value of a class or type of Asset (if any) to form or forming part of an Investor's Portfolio as disclosed in the relevant IDPS Guide or as notified to Investors from time to time.
<b>Minimum Cash Account Balance</b>	means the minimum required value of the Investor's interest in the Cash Account (if any) as disclosed in the relevant IDPS Guide or as communicated to Investors from time to time.
<b>Minimum Portfolio Balance</b>	means the minimum required value of an Investor's Portfolio (if any) as disclosed in the relevant IDPS Guide or as notified to Investors from time to time.
<b>Minimum Regular Withdrawal</b>	means the minimum required value of a transfer of Assets to an Investor, or realisation of Assets, to be paid or transferred under this Deed (if any) at such frequency, and on such terms, as are disclosed in the relevant IDPS Guide or as notified to Investors from time to time.
<b>Minimum Transaction Value</b>	means the minimum required value of a Transaction (if any) as disclosed in the relevant IDPS Guide or as notified to Investors from time to time.
<b>Minimum Withdrawal</b>	means the minimum required value of a transfer of Assets to an Investor, or realisation of Assets, to be paid or transferred under this Deed (if any) on such terms as are disclosed in the relevant IDPS Guide or as notified to Investors from time to time.
<b>Nominated</b>	means the account nominated by an Investor where the Investor has made a direct debit request in accordance with the relevant

<b>Account</b>	IDPS Contract.
<b>Operator</b>	means Specialised Private Capital Limited ACN 87 095 77 390, as operator of the Service.
<b>Portfolio</b>	means any money, other assets or other property from time to time: <ul style="list-style-type: none"> <li>(a) transferred, delivered or paid by the Investor, or on the Investor's behalf, to the Operator; or</li> <li>(b) acquired by the Operator on the Investor's behalf;</li> </ul> which is held by the Operator or a Custodian on that Investor's behalf under this Deed, and all investments for the time being representing them and all accretions to them, as reduced by any applicable diminutions to them, until transferred, delivered or paid by the Operator or a Custodian in accordance with the relevant IDPS Contract, and unless the context otherwise requires, includes the Title Documents relating to them.
<b>Product Disclosure Statement</b>	means has the meaning given in the Corporations Act and includes a Supplementary Product Disclosure Statement.
<b>Security Interest</b>	means an interest held by a third party in an Investor's Portfolio.
<b>Security Interest Holder</b>	means a person whose Security Interest in the Assets comprising an Investor's Portfolio is noted in the Operator's records in accordance with a notice referred to in clause 4.8(a).
<b>Service</b>	means the investor directed portfolio service established and governed by this Deed, and offered to potential Investors pursuant to an IDPS Guide.
<b>Supplementary Product Disclosure Statement</b>	has the meaning given in the Corporations Act.
<b>Tax</b>	means any income tax, capital gains tax, goods and services tax (including GST), levy, charge, impost, fee, assessment, contribution, deduction, or withholding tax, which is assessed, levied, imposed or collected by any Governmental Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above, but excludes Duty.
<b>Title Document</b>	means any document which the Operator reasonably believes sufficiently evidences title to an Asset.
<b>Transaction</b>	means any dealing or, if the Operator determines, class or set of dealings, by the Operator or on its behalf with or in relation to Assets of an Investor, including without limitation giving effect to

Instructions.

1.2 **Interpretation**

In this Deed unless a contrary intention is expressed:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of this Deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a gender includes all other genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning;
- (e) a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate and any Government Agency (whether or not having a separate legal personality);
- (f) a reference to any thing (including any right) includes a part of that thing, but nothing in this clause 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this Deed and a reference to this Deed includes any clause, annexure, exhibit and schedule;
- (h) a reference to a document (including this Deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to any document includes that party's successors and permitted assigns;
- (j) a reference to time is to Melbourne, Victoria, Australia time;
- (k) a reference to any legislation includes all delegated legislation made under it and includes all amendments, consolidations, replacements or re-enactments of any of them, from time to time;
- (l) a reference to a document includes any agreement or contract, or any certificate, notice, deed, instrument or other document of any kind;
- (m) a reference to a document, agreement, contract, certificate, notice, deed or instrument in writing, is a reference to such document, agreement, contract, certificate, notice, deed or instrument in printed or electronic form;
- (n) a reference to a body, other than the party to this Deed (including an institute, association, authority or Government Authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is

a reference to the body which replaces it or which substantially succeeds to its powers or functions;

- (o) the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in this Deed do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;
- (p) a reference to a day is to the period of time commencing at midnight and ending 24 hours later;
- (q) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day;
- (r) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5.00 pm on that day, it is taken to have occurred or been done on the next day;
- (s) a reference to '\$', 'A\$', 'AUD', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia; and
- (t) all defined terms in this Deed which are defined in the Corporations Act, have the same meaning as in the Corporations Act.

### 1.3 **Business Day**

If anything under this Deed is required to be done by or on a day that is not a Business Day, that thing must be done by or on the next Business Day.

## 2. **Establishment and term**

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This Deed establishes an investor directed portfolio service known as the Centric Platform Investor Directed Portfolio Service (**Service**) on and from the date the Operator enters into its first IDPS Contract. The Service continues until terminated as provided for in this Deed or by law.

## 3. **Becoming an Investor**

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### 3.1 **Application**

A person may complete and submit to the Operator an Application Form to apply to become an Investor, and if the Operator accepts the person's application, the person becomes an Investor and is bound by the IDPS Contract, including this Deed, on and from the date of that acceptance. However, the Operator is under no obligation to accept a person as an Investor, and may decline to accept a person as an Investor for any reason whatsoever.

### 3.2 Portfolio held on trust

The Operator holds an Investor's Portfolio on trust for each Investor on and subject to the terms of this Deed.

### 3.3 Agent and attorney

The Operator acts as agent and attorney on the terms of this Deed for each Investor in respect of the Investor's Portfolio, up until such time as the person ceases to be an Investor.

### 3.4 Investor preconditions

Without limiting the effect of the terms of the IDPS Contract, the obligations and duties of the Operator in this Deed are subject to the preconditions that the Investor:

- (a) has properly completed and executed the IDPS Contract (including the Application Form), so as to be bound by the IDPS Contract, including the relevant IDPS Guide; and
- (b) repeats for the purposes of this Deed the acknowledgements, representatives, warranties and undertakings specified in the IDPS Contract, including the relevant IDPS Guide.

### 3.5 Instructions

- (a) The Investor may give Instructions to the Operator in relation to the Investor's Portfolio, and the Operator must use reasonable endeavours to carry out those Instructions where permitted to do so under the IDPS Contract and applicable law.
- (b) Without limiting anything in this Deed, the service of Instructions by or on behalf of the Investor must be in accordance with the relevant IDPS Contract.
- (c) Instructions must be accompanied by such information and documents as the Operator reasonably needs, or the Operator reasonably requests, to enable the Operator or its Agents reasonably to:
  - (i) satisfy themselves as to ownership of the Assets;
  - (ii) perform the Operator's functions under this Deed in relation to the Investor's Portfolio;

otherwise the Operator is not obliged to carry out the Instructions.

## 4. Operator's powers

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### 4.1 Separation of Investors' Assets

- (a) Subject to this Deed, the Operator must keep Assets of Investors separately identified as far as practicable but may mix Assets of an Investor with the Assets of other Investors or of any other person.
- (b) Where:
  - (i) the Operator holds or receives an Asset which relates to or is to be divided between two or more Investors and the Operator reasonably believes that it is not divisible, or is not reasonably able to be divided between the relevant Investors (including without producing a remainder); and
  - (ii) there are no Instructions from the relevant Investors which reasonably resolve how the Asset is to be dealt with;

the Operator may seek further Instructions from the relevant Investors in relation to the Asset and if it does so it is not required to take any action in relation to the Asset until reasonable Instructions are received.
- (c) If the Operator considers it is impossible for it to keep Assets of Investors separately identified:
  - (i) the Operator may mix Assets of an Investor with the Assets of other Investors without such records; and
  - (ii) Investors agree that their interests in the relevant Assets will be as tenants in common.

### 4.2 Powers

To the extent permitted under applicable law, the Operator may:

- (a) deal with a Portfolio and act on Instructions, and do all things reasonably necessary or desirable for those purposes;
- (b) act as the relevant IDPS Contract or other relevant form or agreement contemplates, and do all things reasonably necessary or desirable for those purposes;
- (c) receive and hold, or procure the receipt and holding of, Portfolios and any Title Document relating to them in safe custody;
- (d) procure safe custody of the relevant Portfolio by utilising the safe custody facilities of any Australian ADI or any company the business of which includes custody;



- (e) effect or settle the acquisition or disposal of Assets in accordance with normal market practice through a securities clearing or settlement system;
- (f) procure registration of any Asset in the name of the Operator or a Custodian; and
- (g) do such other things in relation to a Portfolio as relevant Instructions, the relevant IDPS Contract, the Adviser Nomination Form or other relevant form of agreement may require or permit, or as the Operator reasonably considers incidental, or necessary or desirable to give effect to those things relating to that Portfolio (including without limitation completing any application form from a Disclosure Document),

in accordance with this Deed.

#### 4.3 **Eligible Asset**

The Operator may from time to time determine which assets and classes of assets are eligible to be Assets for the purposes of this Deed and if assets or classes of assets are no longer determined by the Operator as eligible, the Operator will, where reasonably practicable, provide reasonable notice to Investors.

#### 4.4 **Discretion to refuse**

The Operator has no obligation to accept as part of a Portfolio, or act on any Instruction to acquire as part of a Portfolio or continue to hold as part of a Portfolio:

- (a) any partly-paid asset or asset to which a liability relates, unless the Investor has made arrangements satisfactory to the Operator for payment of unpaid amounts, or the Operator is otherwise satisfied its liability in relation to such asset is limited in such manner it reasonably considers necessary; or
- (b) if:
  - (i) the value of the Investor's Portfolio would be less than the Minimum Portfolio Balance;
  - (ii) the value of a class or type of Asset forming part of an Investor's Portfolio would be less than the Minimum Asset Balance;
  - (iii) the value of the Investor's interest in the Cash Account would be less than the Minimum Cash Account Balance; or
  - (iv) in doing so, the Operator would be acting contrary the relevant IDPS Contract, the Adviser Nomination Form or any other relevant form or agreement.

In the circumstances outlined above, where the Operator will not act on an Instruction, the Operator will provide reasonable notice to the Investors unless, in the circumstances, it would not be reasonable to do so.

#### 4.5 **Recognition of Security Interests**

The Operator may from time to time determine that clauses 4.7 to 4.11 will apply to one or more parts of the Service. They only have effect to the extent to which such a determination is made and a contrary determination has not been made under clause 4.6.

#### 4.6 **Ceasing to recognise Security Interests**

The Operator may from time to time determine acting reasonably that clauses 4.7 to 4.11 will cease to apply to one or more parts of the Service. If it does so, it may decline to accept any further notices under clause 4.7. However, it must give all relevant Investors and relevant Security Interest Holders at least three months' prior notice of the date from which the determination takes effect.

#### 4.7 **Form of Security Interest Notice**

The Operator may from time to time determine acting reasonably the form of notice which:

- (a) an Investor or their duly appointed agent must give in order for a Security Interest to be noted on the Operator's records; and
- (b) a Security Interest Holder must give in order for a Security Interest to be removed from the Operator's records,

provided that the form of notice is reasonable and that the Operator provides reasonable notice to Investors and Security Interest Holders of the required form of notice.

#### 4.8 **Effect of Security Interest Notice**

If an Investor or their duly appointed agent gives the Operator a notice of the kind referred to in clause 4.7(a) in respect of a Security Interest:

- (a) the Operator must cause a note of the Security Interest to be recorded in the Operator's records in respect of the relevant Investor. Such a recording may only be removed under clause 4.6 or if the Security Interest Holder gives a notice under clause 4.7(b); and
- (b) the Investor authorises the Security Interest Holder to give directions on their behalf, for the purpose of the Security Interest Holder receiving or securing the payment of money owing by the Investor to the Security Interest Holder and directs the Operator to act on directions from the Security Interest Holder.

#### 4.9 **No obligation to enquire**

To the extent permitted by law, the Operator is not taken to be bound by, or obliged to enquire into, the terms of any Security Interest of which it has notice.

#### 4.10 **Restriction on transfer or realisation**

If the interest of a Security Interest Holder is noted on the Operator's records in respect of a particular Investor, the Operator may not, subject to the Operator's rights under the relevant IDPS Contract, give effect to a transfer or realisation of that Investor's Assets to which the Security Interest attaches, without the written permission of the Security Interest Holder.

#### 4.11 **Distributions to Security Interest Holder**

Subject to the Corporations Act, while a Security Interest remains entered on the Operator's records in respect of an Investor if the Operator receives an Instruction (in such form as the Operator determines) signed by the Investor or their duly appointed agent to the effect that it must pay to the Security Interest Holder any or all dividends, bonuses or other share of profits, return of capital, income or other assets which are paid or otherwise distributed in respect of the Asset or Assets to which the Security Interest attaches, whether on termination or otherwise and whether of capital or income, which would in the absence of such direction have been made or paid to the relevant Investor, the Operator may act on that direction until it is revoked by the Investor or their duly appointed agent with the written consent of the Security Interest Holder.

#### 4.12 **Certificates**

The Operator may execute or make on behalf of the Investor any certificates, declarations, affidavits or other documents which are in the Operator's reasonable opinion necessary or desirable for it or a Custodian to receive into its or their custody any property to form part of the Investor's Portfolio or otherwise perform its obligations under the relevant IDPS Contract, or in relation to the Service.

#### 4.13 **Operator may have interests in Transactions**

The Operator or any Agent may in:

- (a) the ordinary course of their businesses; or
- (b) in relation to acting under this Deed,

without reference to the Investor, effect Transactions in which they have directly or indirectly a material interest, or a relationship of any kind with another person, which may involve a potential conflict with any duty to the Investor, unless prohibited by law, and subject to their regulatory and other legal obligations, including in respect of the management of conflicts of interest.

#### 4.14 **Not liable to account**

Neither the Operator nor any Agent is liable to account to the Investor for any profit, commission or remuneration made or received in relation to Transactions referred to in clause 4.13 or any connected Transactions, subject to their regulatory and other legal obligations, including in respect of the management of conflicts of interest.

#### 4.15 **Non exhaustive powers and rights**

The powers and rights conferred on the Operator under this Deed in relation to the Service are in addition to any powers and rights (whether express or implied) conferred on it by applicable law, the relevant IDPS Contract or any other relevant form or agreement.

#### 4.16 **Equivalent securities and adjustment of records**

- (a) The transfer or delivery to the Investor of the same number, type and value of securities consistently with Instructions will release the Operator from the obligation to transfer or deliver particular securities of that number, type and value held for an Investor under this Deed.
- (b) Notwithstanding any other provision of this Deed, the Operator may give effect to Instructions, or perform any of its functions under this Deed, by properly amending its records (including without limitation, records of beneficial ownership by Investors of Assets).
- (c) Without limiting any other provision of this Deed, the Operator may sell, dispose of or otherwise transfer securities from time to time (including by retaining the securities for itself in its personal capacity):
  - (i) to ensure that the number, type and value of securities it holds for Investors are consistent with Instructions; or
  - (ii) to deal with surplus securities that arise from rounding down to the nearest whole number of securities, individual Investor entitlements that arise from following Instructions.
- (d) Neither the Operator nor any Agent is liable to account to the Investor for any profit, commission or remuneration made or received in relation to Transactions referred to in this clause 4.16 or any connected Transactions.

#### 4.17 **Discretion on the exercise of powers**

- (a) Subject to this Deed, in particular clause 15.2, the Operator has discretion as to the exercise of its powers and performance of its duties under this Deed.
- (b) Where the Investor is a trustee or acts on behalf of another person, the Operator and any Agent will treat the person recorded in the Application Form as the client of the Service, and the Operator and any Agent will not take notice of any trust or equity (whether express, implied or constructive). No beneficial interests will be recognised.

## 5. Duties of the Operator

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### 5.1 Receive income

Subject to this Deed, the Investor is entitled to receive all dividends, bonuses or other share of profits, return of capital, income or assets which are paid or otherwise distributed in respect of any Asset of their Portfolio.

### 5.2 Dealing with income

Where any dividend, bonus or share of profits, income, return of capital or other assets relating to an Investor's Assets is received by the Operator, the Operator must:

- (a) hold it as part of the Investor's Portfolio; or
- (b) where the Operator has relevant Instructions, act in accordance with those Instructions or otherwise deal with it as the relevant IDPS Contract contemplates.

### 5.3 Funds for payments

Subject to the Class Order, the Operator is not required to act on an Instruction where the relevant IDPS Contract contemplates that the Instruction need not be implemented.

### 5.4 Corporate Communications

The Operator must forward or otherwise make available (including by means of a standing facility) to the relevant Investor on request, a copy of all communications in relation to Assets of the Investor's Portfolio that are required by law to be given to the holder of such an Asset (including communications that are required to be given on request), in accordance with its legal obligations. An Investor may make a request in relation to a particular future communication or a standing request in relation to a class of future communications. The Operator must give, otherwise make available, or cause to be given or otherwise made available, a copy of the communication as soon as practicable after the information is received or otherwise becomes available to the Investor, in accordance with its legal obligations. Except to the extent set out in this clause, the Operator is not obliged to forward or otherwise make available any Corporate Action Notice to an Investor.

### 5.5 Corporate actions

Subject to the relevant IDPS Contract, neither the Operator nor any Agent is obliged to act in relation to any Corporate Action Notice received by it or on its behalf relating to Assets of an Investor's Portfolio (including exercising a right to vote or lodging an executed form of proxy to vote in respect of any Asset), unless the Operator has received Instructions applicable to the Corporate Action Notice from the relevant Investor with reasonable notice.

**5.6 Exercise of discretions**

Subject to this Deed, if the Operator has received an Instruction from an Investor applicable to a Corporate Action Notice relating to Assets of the Investor's Portfolio, the Operator may only exercise a discretion relating to the Corporate Action Notice and those Assets in accordance with the Instruction.

**5.7 Other duties specified by Investors**

Subject to this Deed, the Operator must perform such other particular functions as are specified in respect of a particular Investor or Portfolio in the relevant IDPS Contract.

**5.8 No duty to review or advise, etc**

To the extent permitted by law, neither the Operator nor any Agent is responsible for monitoring, reviewing or advising the Investor on their Portfolio, including in respect of volatility, performance or risk.

**5.9 Completeness of information**

Subject to this Deed and any laws (including the *Australian Securities and Investments Commission Act 2001* (Cth)) which cannot be excluded, neither the Operator nor any Agent is responsible for the accuracy or completeness of any service or information provided by or information received from any Distributor, Adviser, or any third parties and passed to or accessed by the Investor, except to the extent caused or contributed to by the breach of an IDPS Contract, fraud, negligence or willful misconduct of the Operator or any Agent.

**5.10 Legal proceedings**

- (a) Neither the Operator nor any Agent is obliged to institute, defend, or otherwise participate in legal proceedings on an Investor's behalf.
- (b) The Operator or Agent may take any action it considers necessary or desirable in relation to legal proceedings instigated or defended by the Operator or Agent, as relevant, and is under no obligation to obtain an Investor's instructions in relation to any such proceedings.
- (c) The Operator may act in accordance with any instructions to participate in legal proceedings where it has afforded the Investor any opportunity to instruct the Operator or Agent in respect of a Corporate Action.

**5.11 Non exclusivity**

The services of the Operator and its Agents under or as contemplated by this Deed are not exclusive and they are free to provide similar services to others.

### 5.12 No obligation to disclose

Subject to this Deed, and any laws (including the Australian Securities and Investments Commission Act 2001 (Cth)) which cannot be excluded, the Operator and any Agent is not obliged to disclose to any person:

- (a) anything which comes to its notice while providing the Service or otherwise in the performance of its functions under or as contemplated by this Deed; or
- (b) the terms of their appointment as Operator or Agent.

### 5.13 Confidentiality

The Operator undertakes that it will:

- (a) keep confidential;
- (b) not use directly or indirectly; and
- (c) not disclose directly or indirectly,

all information relating to, arising under or acquired under or as a consequence of this Deed and the performance of its functions under this Deed, and relating to the Service, except (and each Investor permits such disclosure):

- (d) as required by law or any regulatory authority or stock exchange;
- (e) with the express consent of the Investor;
- (f) as contemplated by, or for the proper purposes of discharging its obligations under this Deed or the relevant IDPS Contract, including disclosing to an employee, Adviser, auditor, Distributor or other Agent requiring the information for the purposes of this Deed or the relevant IDPS contract;
- (g) as strictly and necessarily required in connection with legal proceedings relating to this Deed or an IDPS Contract; or
- (h) where the information is generally or publicly available (other than by breach of this clause),

and must ensure that as relevant its Custodians, Agents, officers and employees so comply, and this clause survives termination of this Deed.

### 5.14 Exchange

The duties of the Operator are subject to the precondition that the Investor:

- (a) give to the Operator such information as the Operator reasonably requests to enable it to give effect to its obligations under this Deed and the relevant IDPS Contract;

- (b) will not unreasonably withhold any consents required to be given by the Investor under this Deed or under the relevant IDPS Contract and, subject to this Deed, any obligations of the Investor under this Deed or the relevant IDPS Contract will be performed as soon as is practicable; and
- (c) provide reasonable assistance to the Operator and its Agents as is reasonably necessary or desirable for the obligations of the Operator to be performed.

#### 5.15 **Records of Investors**

- (a) The Operator must maintain a record of Investors and keep proper records and accounts in relation to each Investor's Portfolio specifying at least the following:
  - (i) how the records of the Portfolio are held;
  - (ii) the transactions affecting the Portfolio;
  - (iii) how, by whom and when those transactions were authorised; and
  - (iv) how the records will be made available to the Investor.
- (b) The Operator must apply verification procedures for the appropriately frequent reconciliation and checking of such records against the relevant Portfolio.

#### 5.16 **Alterations to Service**

The Operator may amend the Service:

- (a) without notice to the Investor when reasonably necessary:
  - (i) having regard to the quality, efficiency, integrity and security of the Service or in order to maintain or improve the Service for the benefit of Investors; or
  - (ii) due to a change in applicable law, ASIC Relief or a change in regulatory policy or practice;
- (b) otherwise on reasonable notice to the Investor or as the relevant IDPS Contract contemplates, and must notify the relevant Distributor of such amendments as an IDPS Contract contemplates.

#### 5.17 **Manner in which the Portfolio is held**

The Operator must acknowledge to the Investor, on its written request, the manner in which it holds the Investor's Portfolio.

#### 5.18 **Reporting to Investors**

The Operator must report (or cause reporting) to Investors as contemplated by the relevant IDPS Guide, IDPS Contract, applicable law, the Class Order and any other applicable ASIC Relief.



### 5.19 **Business continuity**

The Operator must maintain business continuity and disaster recovery procedures that are reasonable for the nature, scale and complexity of its financial services business.

## 6. **Receiving Instructions**

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### 6.1 **Operator must act**

Subject to this Deed, the Operator must act, or to cause an Agent or Custodian appointed in accordance with this Deed to act, on Instructions which it (or the Agent or Custodian, as the case may be) has no reason to doubt are genuine and properly given, in accordance with the Operator's obligations under this Deed. Neither the Operator nor its Agent is obliged to conduct any enquiry as to this.

### 6.2 **Form of Instructions**

An Investor or their Adviser must communicate Instructions to the Operator only in the following manner:

- (a) by providing the Instruction in such form and doing such things as the Operator reasonably requires;
- (b) by making such acknowledgments and giving such undertakings as the Operator reasonably requires; and
- (c) subject to the Class Order, by doing such other things,

in each case as the relevant IDPS Contract and Adviser Nomination Form requires.

### 6.3 **Recording of Instructions**

The Operator may record any Instructions in such manner as it considers reasonably necessary or desirable.

### 6.4 **Inconsistency with IDPS Contract or the Adviser Nomination Form**

Where an Instruction from an Investor or Adviser is inconsistent with the relevant IDPS Contract or the Adviser Nomination Form, or the relevant IDPS Contract or Adviser Nomination Form otherwise contemplates that the Instruction need not be implemented, the Operator is not obliged to act on that Instruction.

In the circumstances outlined above, where the Operator will not act on an Instruction, the Operator will provide reasonable notice to the Investor unless, in the circumstances, it would not be reasonable to do so.

## 6.5 Ambiguity of Instructions

The Operator need not act on any Instruction if it is not reasonably satisfied:

- (a) as to the meaning of the Instruction;
- (b) it has received the Title Documents or other authorities, documents or information it reasonably considers necessary to so act; and
- (c) that it is indemnified to its satisfaction acting reasonably against possible liability arising from acting on that Instruction.

In the circumstances outlined above, where the Operator will not act on an Instruction, the Operator will provide reasonable notice to the Investor unless, in the circumstances, it would not be reasonable to do so.

## 6.6 Where no Instructions

Subject to the relevant IDPS Contract and Adviser Nomination Form, where the Operator has no Instructions in relation to a matter for which it requires or anticipates it will require Instructions, or does not have the information or documents referred to in clause 3.5(c), it is not obliged to take any action in relation to the relevant matter, but it will seek such Instructions, information or documents.

## 6.7 Acting without Instructions

If the Operator has not received Instructions in relation to any matter, the Operator may:

- (a) subject to ASIC Relief, act as this Deed or the relevant IDPS Contract or Adviser Nomination Form permits or contemplates; and
- (b) attend to all details in connection with dealings with the Investor's Portfolio which do not require the exercise of a discretion on the part of the Operator (other than the decision to act),

as if it had received Instructions.

## 6.8 Inconsistency with other Instructions

Where Instructions received by the Operator are inconsistent with Instructions received earlier, then as far as practicable the later Instructions prevail to the extent of that inconsistency.

## 6.9 Verification of Instructions

Subject to applicable law, the Operator (including any Agent or Custodian acting on its behalf) when acting in good faith is not obliged in relation to Instructions to:

- (a) verify the authenticity of Instructions received; or

- (b) make enquiries as to whether or not they comply with the law or any financial market rules, practices or procedures; or
- (c) make enquiries as to whether or not the Investor or their Adviser is acting in proper exercise or performance of its powers or duties.

#### 6.10 **Breach of law**

The Operator is not obliged to act on any Instruction in breach of law, ASIC Relief, regulatory policy or practice, or financial market rules, practices or procedures, or which would result, or is likely to result, in such a breach.

#### 6.11 **Signature necessary**

The Operator is not obliged to act on any Instruction if it reasonably believes:

- (a) it has not been signed (whether by written or electronic signature) by the Investor or Adviser (although it is under no obligation to verify this);
- (b) the Instruction is not otherwise authorised using a method accepted by the Operator, including by digital certificate or personal identification number (PIN); or
- (c) the Instruction is not electronically verified to the Operator's reasonable satisfaction if the Operator requires (although it is under no obligation to do so).

#### 6.12 **Time for Implementation**

Subject to the relevant IDPS Contract, the Operator will use its reasonable endeavours to give effect to Instructions as soon as practicable but is not bound to do so by a particular time, except where doing so would be in breach of an IDPS contract, negligent, fraudulent or amount to willful misconduct.

#### 6.13 **Lapsing**

As long as the Operator acts reasonably, instructions will lapse after 28 Business Days if not given effect, unless the Operator permits or the relevant IDPS Contract specifies otherwise, except where doing so would be in breach of an IDPS contract, negligent, fraudulent or amount to willful misconduct.

#### 6.14 **Minimum Portfolio Balance etc**

The Operator may specify a and notify Minimum Portfolio Balance, Minimum Asset Balance, Minimum Withdrawal, Minimum Transaction Value and Minimum Regular Withdrawal, and alter those by reasonable notice to Investors or as the relevant IDPS Contract otherwise contemplates.

#### 6.15 **Less than minimums**

- (a) If compliance with Instructions, or the Operator otherwise acting under this Deed, causes or would cause:
- (i) an Investor's Portfolio to be less than the Minimum Portfolio Balance; or
  - (ii) a class or type of Asset forming part of an Investor's Portfolio to be less than the Minimum Asset Balance,

then the Operator may deal with that Asset or Portfolio as contemplated by clause 6.17 or as the relevant IDPS Contract otherwise contemplates.

- (b) The Operator need not comply with Instructions in relation to a Transaction with a value less than any Minimum Transaction Value.

#### 6.16 **Cash Account**

- (a) The Operator may specify a Minimum Cash Account Balance and alter this from time to time by reasonable notice to Investors or as the relevant IDPS Contract otherwise contemplates.
- (b) If compliance with Instructions or otherwise acting under this Deed causes or would cause the value of an Investor's Cash Account to be less than the Minimum Cash Account Balance, then the Operator:
- (i) must notify the Investor or their Adviser accordingly within a reasonable time and in accordance with the IDPS Contract; and
  - (ii) is not obliged to so act until the balance in the relevant Investor's Cash Account is at least the Minimum Cash Account Balance.
- (c) Subject to the Class Order, the Operator may realise such of that Investor's Assets as it considers necessary or desirable to enable it to pay the proceeds of such realisation to the Cash Account to enable the Cash Account balance for that Investor to equal at least the Minimum Cash Account Balance, and/or do such other things as the relevant IDPS Guide and IDPS Contract contemplates.

#### 6.17 **Realisation without Instructions**

If:

- (a) Clauses 6.15 or 6.16 allows; or
- (b) subject to the Class Order, where the relevant IDPS Contract contemplates;

the Operator may transfer Assets or sell Assets and transfer the proceeds to the Investor.

#### 6.18 Proceeds of realisation

- (a) Where Investors Instruct the Operator to realise their Assets or where this Deed or the relevant IDPS Contract otherwise permits or contemplates such realisation, the relevant Investor authorises the Operator to pay the proceeds to them or to the Cash Account or otherwise as the IDPS Contract contemplates (such as to their Nominated Account).
- (b) The Operator is not obliged to act on Instructions or otherwise act under this Deed where the value of Assets to be paid or transferred under this Deed is less than the Minimum Withdrawal or the Minimum Regular Withdrawal (as relevant).
- (c) Nothing in clause 6.18(a) prohibits the Operator from transferring Assets of an Investor to the Investor instead of realising those Assets.

#### 6.19 Reversing Transactions

- (a) The Operator may act in relation to any Portfolio without Instructions so as to reverse or otherwise rectify any Transaction to the extent affected by it in breach of an IDPS Contract.
- (b) The costs of so acting are a Charge payable by the Investor, except to the extent arising out of the Operator's (or any Agent or Custodian acting on the Operator's behalf) breach of an IDPS Contract, fraud, negligence or willful misconduct.

#### 6.20 Consent required

Unless the Operator consents, the Operator will not act on Instructions in circumstances where:

- (a) the Instruction is to acquire or accept something which is not an Eligible Asset;
- (b) acting on the Instruction would be impracticable or contrary to relevant financial market rules, practices or procedures;
- (c) the Investor has not made arrangements which the Operator reasonably considers satisfactory for payment of any unpaid amounts or amounts which the Operator reasonably considers will become payable;
- (d) the Operator is not indemnified to its reasonable satisfaction against possible liability arising from acting on that Instruction;
- (e) the Service has been suspended or terminated for the Investor; or
- (f) any other circumstances apply or do not apply in connection with the Instruction under which the relevant IDPS Contract provides that the Instruction must not be communicated.

In the circumstances outlined above, where the Operator will not act on an Instruction, the Operator will provide reasonable notice to the Investor unless, in the circumstances, it would not be reasonable to do so.

## 7. Appointment of agents

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### 7.1 Operator's agents

- (a) This clause 7.1 does not apply to Agents who are Custodians, as Custodians are dealt with at clause 7.2.
- (b) Subject to this Deed, the Operator may appoint Agents to perform its functions under this Deed. Any appointment must be contained in a written agreement and comply with (which includes containing terms which comply with) applicable law, the Class Order and any other applicable ASIC Relief.

### 7.2 Custodians

- (a) Subject to clause 7.2(b), the Operator may appoint a Custodian to hold any Portfolio on behalf of the Operator and perform such other duties of the Operator as the Operator considers necessary or desirable.
- (b) Where the Operator proposes to appoint a Custodian to hold any of the Assets, the Operator must give the Investor written notice of, and contact information for, the proposed Custodian:
  - (i) as soon as reasonably practicable; and
  - (i) in any event before for the Assets are held by the Custodian,
 

except in exceptional circumstances, being where the Operator believes in its reasonable opinion that it would be prejudicial to the position of the Operator or the Investor.
- (c) Any appointment of a Custodian must be contained in a written agreement and comply with (which includes containing terms which comply with) applicable law, the Class Order and any other applicable ASIC Relief.

### 7.3 Pooling by Custodian

If the Operator agrees, a Custodian may hold Assets on a pooled basis with property of other Investors and with property held for other principals.

### 7.4 Deleted

## 7.5 **Persons may be associated**

Persons appointed or engaged by the Operator under this Deed as Agent or Custodian may be related to or associated with the Operator and may be paid and receive their normal fees or commissions, subject to their regulatory and other legal obligations, including in respect of the management of conflicts of interest.

## 8. **Advisers and Distribution Agreements**

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### 8.1 **Appointment of Adviser**

Unless otherwise agreed with the Operator, an Investor may only nominate an Adviser in relation to the Service, pursuant to an Adviser Nomination Form. The Operator is under no obligation to accept a person as an Adviser, and may decline to accept a person as an Adviser for any reason whatsoever.

### 8.2 **Ceasing to be an Adviser**

Where a person is an Investor's Adviser, and the Operator informs the Investor that the Operator no longer accepts the appointment of the person as Adviser, the person ceases to be an Adviser for the purposes of and the relevant IDPS Contract, the Adviser Nomination Form and the Service. The Operator, acting reasonably, may determine that it no longer accepts the appointment of a person as an Investor's Adviser, and is not obliged to give reasons for the decision.

### 8.3 **Distribution Agreements**

The Operator may enter into an agreement with a Distributor for the distribution of the Service by the Distributor (**Distribution Agreement**) on such terms as it sees fit. This may include terms under which the Operator will create a distinct class of offering of the Service for Investors who are clients of the Distributor, and brand the offering as agreed with the Distributor. (For example, by producing a Distributor branded IDPS Guide, IDPS Contract, Adviser Nomination Form and other relevant documents for the Distributor's clients).

### 8.4 **Appointment of Advisers where Distribution Agreement**

Subject to applicable law, where a Distribution Agreement is in operation:

- (a) any Advisers appointed by Investors who are the Distributor's clients must be approved by the relevant Distributor; and
- (b) where the relevant Distributor informs the Operator that a person is not, or is no longer so approved by the relevant Distributor as an Adviser, the person ceases to be an Adviser for the purposes the relevant IDPS Contract, the Adviser Nomination Form and the Service.

## 9. Service suspension

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The Operator will use reasonable endeavours to provide the Service at all times. The Operator may suspend the Service:

- (a) for such period as it considers reasonably necessary:
  - (i) without prior notice to the Investor when reasonably necessary having regard to the quality, efficiency, integrity and security of computer and other systems and equipment owned by the Operator or such systems that the Operator is entitled to use which support the Service; and
  - (ii) otherwise on reasonable notice to the Investor; or
- (b) as disclosed in the relevant IDPS Contract,

and must provide reasonable notice to the relevant Distributor (if any) of any such suspension.

## 10. Fees and Charges

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### 10.1 Generally

The Investor must pay any Fees and the Charges as the relevant IDPS Guide contemplates.

### 10.2 Increase in Fees

Subject to applicable law, Fees may be increased on reasonable notice to the Investor or as the relevant IDPS Guide otherwise contemplates.

### 10.3 Waiver

The Operator may waive or defer any Fee or Charge to which it is entitled.

### 10.4 Deduction of Fees and Charges

Without limiting any other provision of this Deed, the Operator may:

- (a) pay Fees and Charges from the relevant Portfolio; or
- (b) set off Fees and Charges payable against any amount payable by it to the Investor under this Deed or otherwise.

### 10.5 Suspension of service for unpaid Fees and Charges

Without limiting any other provision of this Deed, the Operator may suspend the Service for an Investor for such time as relevant Fees or Charges remain unpaid, except to the



extent such non-payment is caused or contributed to by the Operator's or Agent's breach of an IDPS Contract, fraud, negligence or willful misconduct.

## 10.6 Lien

The Operator is prohibited from taking or granting a charge, mortgage, lien or other encumbrance over, or in relation to, an Investor's Portfolio or the assets held under that arrangement except:

- (a) for a lien to which the Operator is entitled by operation of law over the relevant Portfolio for Fees, Charges and other outlays contemplated by this Deed; or
- (b) in accordance with the Investor's written Instructions (whether given under the relevant IDPS Contract, the Adviser Nomination Form or otherwise).

## 10.7 Matters or transactions to be dealt with separately

Without derogating from any rights of the Operator, any negligence, default or breach of duty by the Operator in relation to a particular matter or transaction does not affect any rights of the Operator under this clause 10 in relation to any other matter or transaction.

# 11. Indemnities and limitations of liability

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## 11.1 Liability of Operator and Agents

Subject to applicable law, the Class Order and any other applicable ASIC Relief, neither the Operator nor its Agents are liable in contract, tort or otherwise to an Investor or any Security Interest Holder for any losses or liabilities incurred by the Investor or any Security Interest Holder in relation to the Service, the relevant IDPS Guide, the IDPS Contract, the Adviser Nomination Form or this Deed, except to the extent caused or contributed to by the Operator's or Agent's breach of this Deed, an IDPS Contract, fraud, negligence or willful misconduct or failure to mitigate.

## 11.2 Limitation of liability

Subject to applicable law, the Class Order and any other applicable ASIC relief, and without limiting clause 11.1, the Operator is not liable for losses or liabilities arising from:

- (a) any act or omission of a Custodian, Distributor, Adviser or Agent;
- (b) performance or non-performance of the Operator's obligations under the Service, this Deed, the IDPS Contract or the Adviser Nomination Form (including without limitation, acting or not acting on Instructions) and including the failure of any person to carry out any such obligation, including without limitation any of the Custodian, Distributor, Adviser or Agent;
- (c) any delay in giving effect to Instructions;

- (d) any act or omission with respect to an Instruction that the Operator or its Agent reasonably believed was in accordance with local market rules, practice or procedures;
- (e) loss of any property during the transmission amongst the Operator, the Investor, any Distributor, Adviser, Agent, Custodian or Security Interest Holder or other third party; or
- (f) the corruption or loss of any data that is transmitted electronically or to which access is given by the Operator to the Investor, any Distributor, Adviser, Agent, Custodian or Security Interest Holder or other third party,

except to the extent caused or contributed to by the Operator's or Agent's breach of this Deed, an IDPS Contract, fraud, negligence or willful misconduct or failure to mitigate.

### 11.3 **Reliance on documents and information provided**

The Operator and its Agents may take and act upon:

- (a) the opinion or advice of or information obtained from any persons believed by the Operator or its Agents in good faith and on reasonable grounds at the time of appointment to be an expert in relation to matters on which they are consulted;
- (b) a document or information provided by an Investor, an Investor's agent or Adviser, a Security Interest Holder or third party; or
- (c) any other document or information provided to the Operator or its Agent that is reasonably believed to be both genuine and to have been executed or transmitted by or on behalf of the proper persons,

and, to the extent permitted by law, the Operator or its Agent will not be liable for anything done or not done by it in reliance in good faith upon such opinion, advice, statement, information or document, except to the extent caused or contributed to by the Operator's or Agent's breach of this Deed, an IDPS Contract, fraud, negligence or willful misconduct or failure to mitigate.

### 11.4 **Taxes and other costs**

- (a) To the extent permitted by law, neither the Operator nor any Agent is liable for any payments for Taxes and Duties, costs, charges and expenses properly incurred by it with respect to any Asset or Transaction under or as contemplated by this Deed, notwithstanding that such payment ought not or need not have been made, except to the extent caused or contributed to by the Operator's or Agent's breach of this Deed, an IDPS Contract, fraud, negligence or willful misconduct or failure to mitigate.
- (b) To the extent permitted by law, neither the Operator nor any Agent is liable for any Fees and Charges incurred by it on the Investor's behalf in connection with or as contemplated by this Deed, the relevant IDPS Contract, or on their termination of acting on the Investor's behalf, except to the extent caused or contributed to by the

Operator's or Agent's breach of this Deed, an IDPS Contract, fraud, negligence or willful misconduct or failure to mitigate.

#### 11.5 **Illegality and impossibility**

If for any other reason the Operator reasonably believes that it is impossible, impracticable or illegal to carry out the provisions of this Deed in respect of an Investor or otherwise, the Operator is not liable because of anything done or not done by it in good faith, except to the extent caused or contributed to by the Operator's or Agent's breach of this Deed, an IDPS Contract, fraud, negligence or willful misconduct or failure to mitigate.

#### 11.6 **Reliance on signature**

The Operator is entitled to rely on any signature (electronic or otherwise) on any document provided to it if, acting reasonably, it has no reason to believe that signature is not genuine, and, to the extent permitted by law, is not liable for any loss arising from such reliance.

#### 11.7 **Errors**

To the extent permitted by law, neither the Operator nor its Agents are responsible for any loss, damage or expense arising from it acting properly on any Instruction, including acting reasonably in relation to Instructions which contain any error or ambiguity, except to the extent caused or contributed to by the Operator's or Agent's breach of this Deed, an IDPS Contract, fraud, negligence or willful misconduct or failure to mitigate.

#### 11.8 **Portfolio Insurance**

Unless it agrees with an Investor otherwise, the Operator is not responsible for insuring any Portfolio.

#### 11.9 **Indemnity**

To the extent permitted by law, the Operator and the Investor indemnify each other from and against all claims, liabilities, costs and expenses which the other suffers arising from a breach of the relevant IDPS Contract by the indemnifying party, its employees, servants or agents except to the extent caused or contributed to by the Operator's or Agent's breach of this Deed, an IDPS Contract, fraud, negligence or willful misconduct or failure to mitigate.

#### 11.10 **Limitation of indemnity**

The indemnity in clause 11.9 is without prejudice to any other indemnity (whether under law, this Deed or the terms of an IDPS Guide, IDPS Contract or otherwise).

### 11.11 Enforcement of indemnities

It is not necessary for a person to incur expense or make payment before enforcing a right of indemnity conferred by this Deed.

### 11.12 Liability cap

Notwithstanding anything in this Deed, any liability of the Operator to the Investor is limited to the value of the Investor's Portfolio.

### 11.13 Survival

Each indemnity under this Deed is a continuing obligation, separate and independent of the other obligations of the Operators, and survives the termination of this Deed.

## 12. Termination

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### 12.1 Investors linked to a Distributor

The Operator may terminate this Deed as far as it relates to Investors relating to a particular Distributor in the circumstances contemplated by the relevant IDPS Guide or this Deed.

### 12.2 Termination for an Investor

The Operator may terminate this Deed as far as it relates to an Investor if:

- (a) an event occurs which the relevant IDPS Guide describes as entitling any party to arrangements with the Investor, as described in the relevant IDPS Guide, to terminate those arrangements;
- (b) there are no Instructions resulting in Transactions for that Investor for a continuous 12 month Period;
- (c) the Investor commits a material breach of its material obligations under the IDPS Contract; or
- (d) the Investor's Adviser ceases to be an Adviser in accordance with clauses 8.2 or 8.4(b) and no replacement Adviser is appointed within 10 Business Days;

subject to completion of any Transactions which the Operator or any Custodian is under an obligation to complete at the time of termination.

### 12.3 Termination by Investor

This Deed terminates as far as it relates to an Investor if the Investor properly terminates their arrangements with the Operator in the way the relevant IDPS Contract

contemplates, subject to completion of any Transactions which the Operator or any Custodian is under an obligation to complete at the time of termination.

#### 12.4 **Ceasing Services**

The Operator is under no obligation to continue to perform its obligations under this Deed to any Investor where the continuing performance of such obligations would in the reasonable opinion of the Operator breach or be likely to breach this Deed, applicable law or the relevant IDPS Contract.

#### 12.5 **Transfer of Portfolio, documents and data**

Upon the termination of this Deed or termination of any arrangements with an Investor, and subject to any lien in clause 10.6 or Instruction, the Operator must:

- (a) deliver and transfer to the relevant Investor's Portfolio all Title Documents, property and relevant data relating to the relevant Portfolio, as the relevant IDPS Contract and the Distributor Agreement (if any) contemplate, to the Investor; or
- (b) otherwise transfer the Portfolio as the Investor lawfully directs,

in each case, within a reasonable time, and the Investor is liable for any Fees, Charges or other costs and expenses incurred as a result of the Operator doing so.

### 13. **Communication**

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#### 13.1 **Method**

Communications under this Deed must be given in accordance with the relevant IDPS Contract and, to the extent that such documents are silent, may be given personally, by being left at the person's last known address or sent there by prepaid mail, by facsimile transmission to the person's last known facsimile number or electronically to the person's last known e-mail address or in such other manner agreed between the Operator and the Investor.

#### 13.2 **Service**

- (a) If a communication is given by the Operator to an Investor:
  - (i) by post, it is deemed to be received:
    - (A) on the sixth Business Day after the date of posting, if sent to an address place within Australia;
    - (B) on the tenth Business Day after the date of posting, if sent to an address outside Australia;

- (ii) by facsimile, it is deemed to be received one hour after a report from the sender's machine confirming receipt, and this is prima facie evidence the facsimile was received; and
  - (iii) electronically, it is deemed to be received one hour after it is sent to the latest electronic address advised to the Operator by the Investor.
- (b) If communication is given by or on behalf of an Investor to the Operator by post, facsimile or electronically, it is deemed to be received when received.

## 14. Application of Generally Accepted Accounting Principles and Standards

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Notwithstanding any other provision of this Deed, if:

- (a) the consideration that is to be paid to acquire an interest in the Service;
- (b) the amounts to be paid on termination or withdrawal of the Service (either generally or as it relates to an Investor);
- (c) the fees payable to the Operator or any Agent who holds Investors' property;
- (d) the extent of any limitation on borrowings or on the investment of Investors' property; or
- (e) any amount payable to Investors by way of income or capital,

is required to be calculated by reference to:

- (f) the value of any property; or
- (g) the amount of any liability that under the Deed may be discharged from any property,

the value or amount is to be worked out by applying generally accepted accounting principles or methodology set out in an accounting standard (including Australian Accounting Standards) as generally accepted or in force from time to time.

## 15. Miscellaneous

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### 15.1 Waiver

- (a) The Operator may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. The Operator does not waive a right, power or remedy if it delays in exercising, fails to exercise or only partially exercises that right, power or remedy.

- (b) A single or partial exercise of a right, power or remedy by the Operator does not prevent a further exercise of that or of any other right, power or remedy under this Deed, nor is it to be construed as a waiver of any other obligation or breach. Failure by the Operator to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

## 15.2 Exercise of rights

A party may (acting reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this Deed. Any conditions must be complied with by the party relying on the consent, approval or waiver.

## 15.3 Remedies cumulative

Except as provided in this Deed and permitted by law, the rights, powers and remedies provided in this Deed to the Operator are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this deed.

## 15.4 Further assurances

The Investor must, at its own expense, on the request of the Operator, do everything reasonably necessary to give effect to this Deed and the transactions contemplated by it (including the execution of documents) and to use all reasonable endeavours to cause relevant agents and third parties to do likewise.

## 15.5 Assignment

- (a) An Investor cannot assign its rights under an IDPS Contract without the written consent of the Operator.
- (b) The Operator may assign its rights under this Deed without the written consent of the relevant Investor.

## 15.6 Amendments

The Operator may amend:

- (a) this Deed by supplemental deed; and
- (b) an IDPS Guide's terms by written notice to the relevant Investor (for example, by sending a new IDPS Guide).

Subject to the relevant IDPS Guide, the Operator must give reasonable prior written notice to affected Investors of any amendment which the Operator reasonably considers would be adverse to the interests of those Investors.

## 16. Governing law and jurisdiction

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- 16.1 This deed is governed by and is to be construed under the laws in force in New South Wales, Australia.
- 16.2 Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this Deed. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

## 17. Application of the Class Order

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### 17.1 Inconsistency

To the extent that a provision of this Deed is inconsistent with the Class Order and is capable of being read down or severed, that provision must be read down or severed.

### 17.2 Deemed inclusion

This deed is deemed to contain any provisions necessary for the Operator to obtain relief from the Corporations Act as set out in the Class Order (including, without limitation, provisions required under the Class Order to be included in each IDPS Contract). Subject to clause 17.3, those provisions apply as if they were set out in full in this Deed.

### 17.3 Application period

Any provision included to reflect a provision of the Class Order, including (without limitation) those included by virtue of clause 17.2 applies only during a period that the Operator (and any other relevant Agent or Custodian) relies on the Class Order in respect of the Service, unless the Operator determines otherwise. Any such provision ceases to apply to the extent to which and from the time that the provision ceases to be a requirement for relief under the Class Order.

## 18. General Severance

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If a provision in this Deed or the application of that provision to any person or circumstance is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this Deed for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of this Deed.