



## Third Amended and Restated Unitholders' Deed

in relation to Newbale Clothing Unit Trust

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**Newbale Clothing Nominees Pty Limited**  
ACN 138 591 401

**Unitholders**

**Trustee Shareholder(s)**

I CERTIFY THAT THIS DOCUMENT WHICH IS 87 PAGES IS A TRUE COPY OF THE ORIGINAL DOCUMENT.

T. Wilson 01/09/2014.

TROY WILSON

CHARTERED ACCOUNTANT # 96089

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**Dated**

30 MAY 2014

**Parties**

**Newbale Clothing Nominees Pty Ltd** ACN 138 591 401  
in its capacity as trustee of the Newbale Clothing Unit Trust  
**Address:** Level 2, Suite 2.16, 100 Collins Street, Alexandria NSW 2015  
**Attention:** The Board  
**(Company)**

The parties referred to in Part A of Schedule 1 as “Unitholders”  
(each a **Unitholder** and together **Unitholders**)

The party referred to in Part B of Schedule 1 as “Manager”

The party referred to in Part C of Schedule 1 as “Trustee Shareholder”

**Background**

- A The Company is the sole trustee of the Trust.
- B The Trust controls the Group.
- C The Group operates the Business.
- D As at the date of this deed, the issued units in the Trust are as set out in Part D of Schedule 1.
- E The parties agree that the Trust will be operated, and the Group and Business will be managed and controlled, in accordance with the terms of this deed.

**Operative Provisions**

It is agreed as follows.

**1. Defined terms & Interpretation**

**1.1 Defined terms**

In this deed, unless the contrary intention appears, the following words have the following meanings:

<b>Term:</b>	<b>Definition:</b>
<b>Accounting Standards</b>	(a) accounting standards approved under the Corporations Act and its requirements about the preparation and contents of accounts; and  (b) generally accepted accounting principles, policies, practices and procedures in Australia.
<b>Affiliated Company</b>	in respect of a person, means a company where all of the shares in the company are owned, legally and beneficially, by the person and where the affairs of the company are controlled by the person.

<b>Affiliated Trust</b>	<p>in respect of a person, means any trust under which no person other than that person or an Affiliated Company of that person:</p> <ul style="list-style-type: none"> <li>(a) has or acquires a material interest, whether legal or beneficial, direct or indirect, vested or unvested, in any trust property; or</li> <li>(b) receives, is entitled to receive, or may become entitled to receive, any material distribution of any of the income or capital of the trust.</li> </ul>
<b>Board</b>	the board of directors of the Company from time to time.
<b>Business</b>	<p>the business of:</p> <ul style="list-style-type: none"> <li>(a) menswear clothing retail, wholesale and online; and</li> <li>(b) such other business as the Board determines from time to time.</li> </ul>
<b>Business Day</b>	a day that is not a Saturday, Sunday, bank holiday or public holiday in New South Wales, Australia.
<b>CEO</b>	the chief executive officer of the Group from time to time, as at the date of this deed the person referred to in clause 7.2(d).
<b>Chairperson</b>	the chairperson of the Company from time to time, as at the date of this deed the person referred to in clause 9.12(b).
<b>Change in Control</b>	<ul style="list-style-type: none"> <li>(a) in relation to a Unitholder that is a company or a trust, means that the person having Control of that Unitholder on the date it becomes bound by this deed ceases to have such Control; and</li> <li>(b) in relation to the Trust, means that Unitholders having Control of the Trust from time to time collectively cease to have such Control.</li> </ul>
<b>Confidential Information</b>	<p>any of the following which is not in the public domain:</p> <ul style="list-style-type: none"> <li>(a) all data bases, source codes, methodologies, manuals, artwork, advertising manuals, trade secrets and all financial, accounting, marketing and technical information, customer and supplier lists, know-how, technology, operating procedures and other information, used by or relating to the Group and its transactions and affairs;</li> <li>(b) the contents of any information memorandum or similar document issued in relation to a Group Company, and the terms of subscription for any Units;</li> <li>(c) all notes and reports incorporating or derived from information referred to in paragraphs (a) or (b); and</li> <li>(d) all copies of the information, notes and reports referred to in paragraphs (a) to (c).</li> </ul>

<b>Constitution</b>	the constitution of the Company and/or a Group Company, as the context requires.
<b>Control</b>	<p>(a) of a company by a person:</p> <ul style="list-style-type: none"> <li>(i) the person determines the composition of the board of directors of the company or has the capacity to do so;</li> <li>(ii) the board of directors of the company is accustomed to act in accordance with the instructions, directions or wishes of the person; or</li> <li>(iii) the person holds or owns (alone or with its associates or related bodies corporate): <ul style="list-style-type: none"> <li>A the majority of the issued shares of the company;</li> <li>B the majority of the issued shares of the ultimate holding company of the company; or</li> <li>C the majority of any securities or other rights granted by the company entitling holders to distributions based on the profits, earnings or net liquidation proceeds of the company; and</li> </ul> </li> </ul> <p>(b) of a trust by a person:</p> <ul style="list-style-type: none"> <li>(i) the person is the sole trustee of the trust;</li> <li>(ii) the composition of the board of directors of any trustee company of the trust is determined by the person or the person has the capacity to do so;</li> <li>(iii) the board of directors of any trustee company of the trust is accustomed to act in accordance with the instructions, directions or wishes of the person; or</li> <li>(iv) the person holds or owns (alone or with its associates or related bodies corporate): <ul style="list-style-type: none"> <li>A the majority of the issued shares of any trustee company of the trust;</li> <li>B the majority of the issued shares of the ultimate holding company of any trustee company of the trust; or</li> <li>C the majority of the units, securities or other rights granted by the trust which entitling holders to distributions from the trust,</li> </ul> </li> </ul> <p>and <b>Controlled</b> has a corresponding meaning.</p>
<b>Corporations Act</b>	<i>Corporations Act 2001</i> (Cth).
<b>Director</b>	a director of the Company from time to time.

<b>Encumbrance</b>	any mortgage, lien, charge, pledge, assignment by way of security, security interest (as that term defined in the <i>Personal Property Securities Act 2009</i> (Cth)), title retention, preferential right or trust arrangement, claim, covenant, profit a prendre, easement or any other security arrangement or any other arrangement having the same effect.
<b>Excluded Issue</b>	an issue of Units of a kind referred to in clause 12.9.
<b>Executive Service Agreement</b>	Matthew Jensen's executive service agreement dated 3 March 2014, amended from time to time.
<b>Exit</b>	has the meaning in clause 6.1(a).
<b>Exit Bonus Scheme</b>	the scheme providing for the grant and payment of entitlements to participants in connection with defined Group-related exit events having, as at the date of this deed, the rules substantially in the form set out in Annexure A.
<b>Exit Costs</b>	all costs and expenses of the Company associated with an Exit, including all Trust, corporate, commercial, financial, accounting, legal, taxation, insurance, due diligence and other specialist advisory costs and expenses associated with the Exit.
<b>External Administrator</b>	an administrator, receiver, receiver and manager, trustee, provisional liquidator, liquidator, statutory manager or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.
<b>Financial Year</b>	the 12 months commencing on 1 July and ending on 30 June each year, or such other dates as the Board approves.
<b>Group</b>	the Company and all of its Subsidiaries from time to time, and <b>Group Company</b> means any one of them.
<b>Independent Valuer</b>	has the meaning in clause 16.4.
<b>Insolvency Event</b>	in respect of a party, the occurrence of any of the following: <ul style="list-style-type: none"> <li>(a) an application or an order is made for the appointment of an External Administrator in respect of the party (unless the application is withdrawn or dismissed within 14 days);</li> <li>(b) an application or an order is made for the Winding Up of the party (unless the application is withdrawn or dismissed within 14 days);</li> <li>(c) a resolution is passed, or a meeting is convened to consider a resolution, for the Winding Up of the party (other than for the purpose of a reconstruction or amalgamation, while solvent);</li> <li>(d) the person is, or states that it is, unable to pay its debts when they fall due or is deemed unable to pay its debts, or must be presumed by a court to be insolvent, under any applicable legislation (other than as a result of a failure to pay a debt or claim which is the subject of a good faith</li> </ul>

dispute);

- (e) other than for the purpose of a reconstruction or amalgamation, while solvent, either:
  - (i) the party enters into or resolves to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors generally or any class of its creditors; or
  - (ii) the party proposes a reorganisation, moratorium or other form of administration involving any such arrangement, composition, compromise or assignment, begins any negotiations for any such purpose or for the purpose of any re-scheduling or re-adjustment of all or a material part of its monetary obligations;
- (f) the party takes any steps to obtain protection or is granted protection from its creditors under the laws of any applicable jurisdiction;
- (g) an External Administrator is appointed to the party, over any of the party's assets or the party requests such appointment;
- (h) the party is deregistered, a similar occurrence occurs, in the jurisdiction in which the it was registered; or
- (i) the party stops or threatens to stop carrying on its business or a material part of it.

<b>IPO</b>	an initial public offering of securities by a Group Company and its admission to the official list of ASX Limited or another recognised stock exchange.
<b>Manager</b>	the person(s) referred to in Part B of Schedule 1.
<b>Option</b>	an option to subscribe for a Unit.
<b>Option Plan</b>	the employee option plan providing for the grant of 250,000 Options approved by the Board having, as at the date of this deed, the plan rules set out in Annexure B.
<b>Permitted Transfer</b>	a transfer of Units permitted under clause 13.8.
<b>Permitted Transferee</b>	those persons listed in clause 13.8.
<b>Relative</b>	in respect of a person, means any spouse, de-facto spouse, sibling (or half-sibling), parent or child (whether natural, step or adopted) of that person.
<b>Reorganisation Event</b>	<ul style="list-style-type: none"><li>(a) a bonus issue of Units;</li><li>(b) a sub-division or consolidation of Units; or</li><li>(c) any other reorganisation or reconstruction of share capital where the Company neither pays nor receives cash.</li></ul>

<b>Simple Resolution</b>	<p>(a) in relation to Directors, a resolution which is approved by Directors present and voting who are not disqualified from voting on that resolution and who between them hold more than 50% of the total number of votes that may be exercised by all Directors present and voting who are not disqualified from voting on that resolution; and</p> <p>(b) in relation to Unitholders, a resolution of Unitholders which is approved by Unitholders present and voting who between them hold more than 50% of the total number of Units held by all Unitholders present and voting on that resolution.</p>
<b>Special Resolution</b>	in relation to Unitholders, a resolution of Unitholders which is approved by Unitholders present and voting who between them hold at least 65% of the total number of Units held by all Unitholders present and voting on that resolution.
<b>Subsidiary</b>	an entity Controlled by the Trust.
<b>Trade Sale</b>	<p>the sale of:</p> <p>(a) the whole or a substantial part of the business conducted by the Group;</p> <p>(b) all or substantially all of the assets of the Group; or</p> <p>(c) all of the Subsidiaries and units in any Controlled Trusts.</p>
<b>Transfer</b>	<p>in relation to Units:</p> <p>(a) to sell, assign, transfer, be subject to redemption or otherwise dispose of;</p> <p>(b) to agree or offer to sell, assign, transfer, be subject to redemption or otherwise dispose of;</p> <p>(c) to enter into any option which, if exercised, enables or requires the relevant Unitholder to sell, assign, transfer or otherwise dispose of; or</p> <p>(d) to create or agree or offer to create or permit to be created any Encumbrance in,</p> <p>some or all of those Units.</p>
<b>Trust</b>	the Newbale Clothing Unit Trust established by the Trust Deed.
<b>Trust Deed</b>	the trust deed dated 18 August 2009 establishing the Trust, as varied from time to time.
<b>Unit</b>	an issued unit in the Trust of any class, whether fully or partly paid.
<b>Unitholder</b>	a party that holds one or more Units.
<b>Unitholders' Agreement</b>	the further amended and restated unitholders' agreement between the Trustee, the Trustee Shareholder and certain



Unitholders dated 3 March 2014.

**Winding Up** includes dissolution, liquidation, provisional liquidation and bankruptcy and any analogous or equivalent procedure in any jurisdiction.

## 1.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph or schedule is to a clause or paragraph of or schedule to this deed and a reference to this deed includes any schedule or annexure;
- (d) a reference to a document or instrument, includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (f) a reference to time is to New South Wales time;
- (g) a reference to a party to this deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (k) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it;
- (l) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
- (m) the rights and obligations of the parties under this deed are several, and not joint or joint and several; and
- (n) headings are for ease of reference only and do not affect interpretation.

## 2. Term

This deed commences on the date of this deed and continues in full force and effect until terminated in accordance with clause 20.1.

### **3. Conflict with Trust Deed or Constitution**

#### **3.1 Trust Deed and Constitution**

- (a) If there is any conflict between the provisions of this deed and any provisions (whether express or implied) of the Trust Deed or a Constitution, the provisions of this deed prevail to the extent of the inconsistency.
- (b) Each Unitholder irrevocably and unconditionally authorises and directs the Company to comply with the requirements of this deed, despite any inconsistency between its provisions and those of the Trust Deed or a Constitution, and notwithstanding that by doing so the Company may breach any obligation owed to one or more Unitholders, and releases the Trustee Shareholder from all claims arising as a consequence.

#### **3.2 Exercise of rights**

Each Unitholder must exercise all its rights (including voting rights) under the Trust Deed in order to give full effect to the provisions of this deed.

#### **3.3 Unitholders' Agreement**

This deed replaces the Unitholders' Agreement, which each of the parties to this deed were also a party to that agreement (except Besen and Post) agree is terminated. Each relevant party acknowledges and agrees that termination of the Unitholders' Agreement does not affect any obligation which accrued prior to its termination or any liability of a party in respect of an antecedent breach to that agreement.

#### **3.4 Survival**

This clause 3 survives termination of this deed.

### **4. Trust and trustee**

#### **4.1 Capacity of Company**

The parties agree that all references to the Company in this deed are to be interpreted as references to the Company in its capacity as trustee of the Trust.

#### **4.2 Resignation, retirement and removal**

Subject to the Corporations Act, unless approved by Simple Resolution of the Unitholders:

- (a) the Company agrees that it will not resign or retire as trustee of the Trust; and
- (b) no party will seek to remove the Company as trustee of the Trust.

#### **4.3 Appointment of new trustee**

If at any time the Company resigns, retires or is removed as trustee of the Trust in accordance with this deed, the Unitholders agree that the appointment of a new trustee will be subject to the following conditions:

- (a) the new trustee must agree to become a party to this deed; and
- (b) the appointment must be approved by Simple Resolution of the Unitholders.

#### **4.4 Trustee's Fees**

The parties agree that the Company will not be entitled to be paid any fees for acting as trustee of the Trust.

#### **4.5 Obligations of Trustee Shareholder**

The Trustee Shareholder irrevocably and unconditionally undertakes to each of the parties to exercise all of its rights as a shareholder of the Company (including voting rights) to ensure that:

- (a) any person nominated as a Director under clause 9 is duly and promptly appointed (and is not removed except in accordance with that clause); and
- (b) the Company does not register a person as a shareholder of the Company (whether pursuant to an issue of additional shares in the Company, a transfer of shares of the Company or otherwise), unless that person has first agreed in writing to be bound by the provisions of this clause 4.

### **5. Objectives and Covenants**

#### **5.1 Objectives**

The objectives of the Group are to:

- (a) carry on the Business; and
- (b) maximise the value of the Group.

#### **5.2 Mutual covenants**

Each Unitholder agrees to use all reasonable endeavours:

- (a) not to do anything improper to restrict the ability of the Group to carry on the Business;
- (b) to be just and faithful to the other Unitholders in all transactions relating to the Group;
- (c) upon every reasonable request being made of it, to inform the other parties of all matters which they may have become possessed of concerning the Group; and
- (d) to inform the other parties of any other investments or material involvement (direct or indirect) in businesses or entities that compete, or are likely to compete, with the Business from time to time.

#### **5.3 Incentive Schemes**

- (a) The parties acknowledge and agree that on the date of this deed, the Company has granted all Options under the Option Plan to Matthew Jensen or his nominee(s).
- (b) The Unitholders acknowledge and agree that on the date of this deed, the Company has adopted the Exit Bonus Scheme and granted Matthew Jensen or his nominee(s) the sole right to participate in that scheme.
- (c) The parties acknowledge and agree that in calculating Net Proceeds (as that term is defined in the Exit Bonus Scheme) or other entitlements under the Exit

Bonus Scheme, the Board will exclude from the calculation of the entitlement (as applicable) all amounts payable to:

- (i) Briskin in connection with its Units;
- (ii) Besen in connection with its Units;
- (iii) Post in connection with its Units; and
- (iv) a Unitholder in connection with its Cut-Off Date Units (as that term defined in the Exit Bonus Scheme).

## **6. Exit**

### **6.1 Intention to exit**

- (a) A Unitholder:
  - (i) may at any time Transfer all or part of its Units in accordance with the terms of this deed; or
  - (ii) will use all reasonable endeavours to procure an exit from their investment in the Trust by means of an IPO, Trade Sale and/or sale of all or substantially all of the Units on a date within the second anniversary of the date of this deed,

in each case, an **Exit**. The Company acknowledges this intention and will use all reasonable endeavours to facilitate an Exit, subject to obligations at law.

- (b) The parties agree that they will notify each other as soon as reasonably practicable of any approach they receive from a third party who is interested in acquiring all or substantially all of the Units or conducting a Trade Sale.

### **6.2 Unitholder right to facilitate exit**

- (a) Unitholders holding at least 65% of the Units, with the approval of the Board, may at any time notify the Company that it is to appoint an investment bank or stockbroker of good standing nominated by the Board (**Financial Adviser**) to act on behalf of the Company and all Unitholders to:
  - (i) make a recommendation to the Unitholders and the Company, on whether to proceed with an Exit, and the kind of Exit that would be likely to obtain the highest valuation of the Business and the best return on Exit for Unitholders; and
  - (ii) if Unitholders holding at least 65% of the Units accept the recommendation, to manage the Exit process in accordance with this clause 6.
- (b) Upon receiving such notice, the Company will promptly appoint the Financial Adviser.

### **6.3 Sale of Units or Trade Sale**

- (a) If:
  - (i) a recommendation by the Financial Adviser to conduct an Exit is accepted by the Unitholders under clause 6.2(a)(ii); or

(ii) a Unitholder proposes an Exit in accordance with clause 6.1(a)(i),

the Company and each Unitholder (and each Unitholder must ensure that any Director appointed by it to the Board) must cooperate and use all reasonable endeavours to do all acts, matters and things within its power to effect the Exit.

(b) If the accepted recommendation is to conduct a sale of all or substantially all of the Units, the provisions of clause 15 apply.

#### **6.4 IPO**

If a recommendation by the Financial Adviser to proceed with an IPO is accepted under clause 6.2(a)(ii), the Company and each Unitholder (and each Unitholder must ensure that any Director appointed by it to the Board) must as soon as reasonably practicable after service of the notice cooperate and use their best endeavours to do all acts, matters and things within its power to effect the IPO, including preparing a prospectus, applying to a recognised stock exchange for admission of the relevant Group Company to the official list of that stock exchange and seek official quotation of the relevant shares on that stock exchange.

#### **6.5 Exit obligations**

If, at any time, some or all of the parties decide to Exit (**Exiting Unitholders**), the Exiting Unitholders will each (without limitation) provide such warranties and indemnities as are reasonable and customary, provided that, unless otherwise agreed as between the Exiting Unitholders, no Exiting Unitholder will be obliged to provide any warranties or indemnities beyond confirmation regarding unencumbered ownership of its Units and due authority to sell its Units.

#### **6.6 Company's obligations**

Without limiting the generality of this clause 6, the Company must in relation to any Exit proposal:

- (a) pay the costs of preparing any prospectus (or other relevant disclosure document), advisory fees, underwriting commissions (if any), expenses of due diligence investigations, stock exchange fees, fees of the relevant regulatory authorities, legal fees, expert's fees, printing expenses and postage expenses; and
- (b) use its best endeavours to satisfy all terms and conditions of admission to listing imposed by the stock exchange.

#### **6.7 Exit proceeds**

The parties acknowledge and agree that, in connection with any Exit and in respect of each Exiting Unitholder:

- (a) an Australian bank account will be established for the payment of all cash proceeds of the Exit (**Vendors' Account**);
- (b) the cash proceeds of the Exit will be paid into the Vendors' Account;
- (c) any two Directors (**Vendors' Representatives**) will be the authorised joint signatories of the Vendors' Account;
- (d) the Vendors' Representatives may:

- (i) accept any monies or notices on behalf of any Exiting Unitholder in connection with the Exit; and
  - (ii) direct payments to be made from the Vendors' Account in accordance with clause 6.7(f);
- (e) the Vendors' Representative will not be liable to any Exiting Unitholder as a result of any act or omission on the part of the Vendors' Representative unless the liability arises as a result of the wilful misconduct or dishonesty of the Vendors' Representative; and
- (f) the cash proceeds of the Exit will be paid from the Vendors' Account and distributed to the persons and accounts, and in the order of priority, specified in the table below:

No.	Distribution
1.	Pay Exit Costs incurred on or before completion and not paid on completion.
2.	Pay each person who immediately prior to Exit (if any) is entitled to receive a payment or distribution in accordance with the Exit Bonus Scheme, in the amounts (if any) calculated in accordance with the terms of that scheme.
3.	Pay or otherwise distribute to each Unitholder all unpaid arrears and accruals of any distribution in connection with its Units.
4.	Pay or otherwise distribute to each Exiting Unitholder their relevant proportion of the balance of proceeds of the Exit after deduction of the Exit Costs referred to in item 1 above, the payment of the amount (if any) calculated in accordance with the terms of the Exit Bonus Scheme under item 2 above and the amount of all arrears and accruals of distributions under item 3 above.

## 7. Management

### 7.1 General Management

Subject to the matters requiring Unitholder approval under clause 7.3:

- (a) the management of the Group vests in the Board; and
- (b) the Board is responsible for the overall direction and management of the Group and the formulation of the policies to be applied in the conduct of the Business.

### 7.2 CEO

- (a) The Board may appoint a CEO to manage and generally administer the Group in accordance with the terms of his or her service arrangement and as the Board otherwise directs.
- (b) The CEO must report directly to the Board.

- (c) The Board will from time to time and as it sees fit review the performance and remuneration of the CEO.
- (d) As at the date of this deed, the CEO is Matt Jensen. The parties acknowledge the terms of Matt Jensen's current executive service agreement are set out in the Executive Service Agreement.

### **7.3 Key Business Decisions**

Notwithstanding any other provision of this deed, the Company must not do or commit to do a thing listed in:

- (a) Part A of Schedule 2 without the prior approval of the Unitholders by Special Resolution; or
- (b) Part B of Schedule 2 without the prior approval of Board by Simple Resolution.

### **7.4 Management of the Group**

The Company undertakes to the Unitholders that it will:

- (a) ensure that the businesses of the Group will be properly managed in accordance with usual sound commercial practice and will comply with all applicable laws and the Group Companies will maintain all licences, consents and authorisations whatsoever which are required or necessary to carry on the Business from time to time;
- (b) if any Group Company has profits available, take such action as is necessary to ensure that those profits are distributed to the Trust to the extent necessary to enable any distributions payable on the Units to be paid on the due date for payment;
- (c) give such access to the Unitholders (or any person authorised by them) to the officers, employees and premises of the Group Companies as the Unitholders may reasonably require; and
- (d) on the request of the Unitholders, prepare, participate in and co-operate with such presentations to the Unitholders, prospective Unitholders and any financiers or potential financiers as the Unitholders may reasonably require from time to time.

### **7.5 Senior Management**

- (a) The Board may from time to time appoint other persons as senior management to provide executive management services to the Group and as the Board otherwise directs.
- (b) The Board will from time to time and as it sees fit review the performance and remuneration of the manager.

## **8. Unitholders Meetings**

### **8.1 Quorum**

- (a) The quorum for a meeting of Unitholders is any number of Unitholders who between them hold more than 50% of the total number of Units held by all Unitholders at that time, unless otherwise agreed by all Unitholders.

- (b) If a quorum is not present at a meeting of Unitholders within one hour from the time stated in the notice of meeting, the meeting must be adjourned to the same time and place seven days after the meeting, or such later time as is agreed by the Unitholders present when the meeting is adjourned.
- (c) Each Unitholder must be notified as soon as practicable of a meeting of Unitholders adjourned in accordance with clause 8.1(b).
- (d) At a meeting of Unitholders adjourned in accordance with 8.1(b) the quorum is any three Unitholders holding at least 40% of the total number of Units held by all Unitholders at that time.

## **8.2 Unitholder Resolutions**

Subject to clause 7.3 and the Corporations Act, at a meeting of Unitholders all resolutions may be passed by Simple Resolution.

## **8.3 Circulating Resolutions of Unitholders**

- (a) A written resolution signed by all Unitholders that would be entitled to vote on the resolution at a meeting of Unitholders is taken to be a resolution of Unitholders without the need for a meeting.
- (b) A copy of a written resolution passed in accordance with this clause 8.3(a) must be provided to each of the Directors as soon as practicable after it has been passed.

## **8.4 Annual General Meeting**

An annual general meeting of Unitholders will be held each Financial Year.

# **9. Board**

## **9.1 Board**

The Company must, and Trustee Shareholder(s) must exercise their rights to, ensure that the composition of the Board and the procedures for meetings of the Board are as specified in this clause 9.

## **9.2 Board Composition**

Unless as otherwise determined by Simple Resolution of Unitholders, the Board will consist of up to seven Directors.

## **9.3 Appointment and removal of Directors**

- (a) The parties agree that for so long as they each continue to hold Units:
  - (i) Jensen Nominee will have the right to appoint one Director;
  - (ii) the Unitholders (excluding RLG, Briskin and Jensen Nominee) will have the right to appoint two Directors;
  - (iii) RLG will have the right to appoint one Director;
  - (iv) Briskin will have the right to appoint one Director; and



- (v) the Directors may, subject to clause 9 and the Corporations Act, by Simple Resolution appoint other Directors.
- (b) For the purposes of clause 9.3(a)(ii), a Director is to be appointed by a resolution of Unitholders (excluding RLG, Briskin and Jensen Nominee) which is approved by Unitholders who are not disqualified from voting on that resolution and who between them hold more than 50% of the total number of Units held by the Unitholders entitled to vote on that resolution.
- (c) The parties acknowledge that, as at the date of this deed, the Board comprises:
  - (i) Matt Jensen, appointed by Jensen Nominee;
  - (ii) Matt Rogers, appointed by the Unitholders;
  - (iii) Neil Livingstone, appointed by the Unitholders;
  - (iv) David Briskin, appointed by Briskin; and
  - (v) Stuart King, appointed by the Directors.
- (d) If a Director appointed under clause 9.3(a) resigns or is removed as a Director, the Unitholder(s) who appointed that Director is entitled to appoint a replacement Director.
- (e) A Director appointed under clause 9.3(a) may only be removed by the Unitholder(s) who appointed that Director.
- (f) The appointment or removal of a Director in accordance with this clause 9.3 takes effect upon notice being received by the Company as to such removal or appointment.

#### **9.4 Alternate Directors**

- (a) Subject to the Corporations Act, a Director may appoint a person to be their alternate director, with all powers and rights of the Director, and for any period as the Director thinks fit.
- (b) A Director's alternate director may not vote on any resolution on which the Director could not vote.

#### **9.5 Observer**

- (a) The parties agree that Badja may nominate a person (**Badja Representative**) to be present at a meeting of the Board.
- (b) The Badja Representative may participate in a Board meeting, but he or she will not be counted towards the quorum and will not have any right to vote in any resolutions in the meeting of the Board.

#### **9.6 Voting**

At a meeting of the Board:

- (a) each Director has one vote;
- (b) the Chairperson has a casting vote in addition to a deliberative vote; and

- (c) subject to the Corporations Act, all resolutions may be passed by Simple Resolution.

#### **9.7 Quorum**

- (a) The quorum for a meeting of the Board is two-thirds of the number of Directors at the relevant time.
- (b) If a quorum is not present at a meeting of the Board within one hour after the time stated in the notice of meeting, the meeting must be adjourned to the same time and place seven days after the meeting, or such later time as is agreed by the Directors present when the meeting is adjourned.
- (c) Each Director must be notified as soon as practicable of a meeting of the Board adjourned in accordance with clause 9.7(b).

#### **9.8 Circulating Resolutions of Directors**

A written resolution signed by all Directors that would be entitled to vote on the resolution at a meeting of the Board is taken to be a resolution of the Board without the need for a meeting.

#### **9.9 Frequency**

A meeting of the Board must be held at least 6 times each Financial Year unless otherwise agreed by the Board.

#### **9.10 Notice of Directors Meetings**

Unless all the Directors agree otherwise, all Directors must receive at least five Business Days written notice of each meeting of the Board.

#### **9.11 Reimbursement of Directors**

Subject to this deed and unless agreed otherwise, a Director is entitled to be reimbursed out of the funds of the Trust his or her reasonable travelling, accommodation and other expenses that the Director incurs when travelling to or from meetings of the Board or when otherwise engaged in the Business.

#### **9.12 Chairperson**

- (a) The Directors may from time to time appoint, remove and replace one Director as Chairperson.
- (b) As at the date of this deed, the Director regarded as appointed under clause 9.12(a) as the Chairperson is Matt Rogers.
- (c) The Directors present at a meeting of the Board may elect one of themselves to act as chairperson of that meeting if the Chairperson is not there or is unwilling to act as Chairperson.

#### **9.13 Directors' and officers' insurance**

The Company must, to the full extent permitted by law, purchase and maintain insurance for each Director against any liability incurred by the Director as an officer of the Company or any Subsidiary including, but not limited to, liability for negligence, and for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal.

## **9.14 Subsidiaries**

Except in respect of Subsidiaries established solely to hold leasehold interests in connection with the Business, the Board and the Unitholders will do all things necessary to ensure that the provisions of clauses 7, 9 and 10 apply equally to all other Subsidiaries, so that:

- (a) the Unitholders have the same rights of appointment to the board of directors of those Subsidiaries as they have to the Board pursuant to this deed;
- (b) if such rights of appointment are exercised, the quorum necessary for any meeting of the board of each relevant Subsidiary will be in accordance with the requirements in clause 9.7; and
- (c) a Subsidiary must not do or commit to do a thing listed in Part B of Schedule 2 in respect of itself (amended as necessary to apply to that Subsidiary) without the prior approval of a simple majority of the board of that Subsidiary.

## **10. Financial and other reporting**

### **10.1 Reports**

The Company must prepare and give to:

- (a) the Directors and Unitholders, within 30 days after the end of each quarter, unaudited management accounts of the Group for the immediately preceding quarter;
- (b) the Directors and Unitholders, within 60 days after the end of each Financial Year, unaudited financial statements (including consolidated profit and loss accounts, balance sheets and cash flow statements) of the Group for the preceding Financial Year;
- (c) the Directors and Unitholders, within 120 days after the end of each Financial Year, audited financial statements (including consolidated profit and loss accounts, balance sheets and cash flow statements) of the Group for the preceding Financial Year; and
- (d) the Directors, not later than 30 days prior to the end of each Financial Year, the business plan and budget for the Group for the following Financial Year.

### **10.2 Confidentiality**

Any information given by the Company under clause 10.1 is subject to clause 19.

### **10.3 Accounts and records**

The Company must ensure that the Group's records and accounting books (including reports produced under clause 10.1) are prepared and kept in accordance with the Corporations Act and reflect Accounting Standards.

## **11. Distributions**

- (a) The Unitholders will be entitled to receive a distribution of the profits of the Trust in proportion to their respective unitholding in the Trust.

- (b) Any undrawn profits to which the Unitholders are entitled under clause 11(a) and which are used to fund working capital for the Trust will be treated as an interest free loan by the Unitholders to the Trust.

## **12. Issue of Units**

### **12.1 No obligation**

Except as otherwise agreed by all Unitholders, a Unitholder has no obligation to provide further funding or to subscribe for additional Units.

### **12.2 Subscription Notice**

Except in relation to an Excluded Issue, if the Board proposes to issue, or grant options over, any Units, it must first give a notice (**Subscription Notice**) to each Unitholder offering to issue the Units in accordance with this clause 12.

### **12.3 Terms of Subscription Notice**

The Subscription Notice must state:

- (a) the total number of Units available for subscription and the number being offered to that Unitholder (which must be that proportion of the total number of Units proposed to be issued that the number of Units held by the relevant Unitholder bears to the total number of Units held by all Unitholders at that time);
- (b) the type of Units being offered;
- (c) the proposed issue price or any other terms of the proposed issue of Units;
- (d) the period during which offers may be accepted by Unitholders (**Offer Period**), which may not be less than 15 Business Days following receipt of the Subscription Notice; and
- (e) the date(s) for issue of the Units, which may not be less than 10 Business Days or more than 30 Business Days after the last day of the Offer Period.

### **12.4 Acceptance by Unitholders**

- (a) Unitholders may accept the offer contained in its Subscription Notice by written notice to the Board during the Offer Period.
- (b) If a Unitholder wants to subscribe for a greater number of Units than the number specified in the Subscription Notice, it may include in the notice given under clause 12.4(a) a statement that it would like to subscribe for a specified number of those Units not subscribed for by other Unitholders under their respective Subscription Notices.

### **12.5 Failure to respond**

If a Unitholder does not give notice to the Board within the Offer Period of its acceptance or rejection of the offer contained in its Subscription Notice, the Unitholder is taken to have rejected the offer.

## **12.6 Subscription by accepting Unitholders**

If a Unitholder accepts all or a specified number of Units referred to in the offer contained in its Subscription Notice, the Unitholder must subscribe for that number of Units stated in its notice of acceptance of the offer on the terms specified in the Subscription Notice.

## **12.7 Disposal to third parties**

If any Units are not taken up under the offers contained in the Subscription Notice then, the Board may issue, or grant options over, those remaining Units:

- (a) first, to any Unitholders that have offered to subscribe for more Units under clause 12.4 (and, if there is competition between them, on a pro rata basis to their acceptances); and
- (b) secondly, subject to clause 12.8, to any person (including persons already holding Units), at any time within 60 Business Days after the end of the Offer Period on terms no more favourable than those offered to Unitholders under the Subscription Notice.

## **12.8 Accession Agreement**

The Board may only issue, or grant options over, Units, to a person that is not a Unitholder if the person has executed, and delivered to the Company, an accession agreement in a form acceptable to the Company agreeing to become bound by this deed.

## **12.9 Excluded Issue**

This clause 12 does not apply to any of the following:

- (a) an issue of Units approved by Unitholders holding not less than 95% of the Units held by all Unitholders at that time;
- (b) an issue of Units pursuant to an IPO;
- (c) an issue of Units under a Reorganisation Event;
- (d) an issue of Units on conversion of preference units;
- (e) an issue of Units pursuant to the exercise of Options granted under the Option Plan; and
- (f) an issue of Units to Group employees pursuant to any option incentive scheme established and approved in accordance with clause 7.3(b).

# **13. Transfers**

## **13.1 Transfers of Units**

A Unitholder must not Transfer any of its Units except in accordance with this clause 13 and clause 15.

## **13.2 Transfer Notice**

Subject to clause 13.8 and clause 15, if a Unitholder (**Seller**) proposes (and is entitled under this deed) to Transfer pursuant to a sale agreement that is unconditional, except with respect to any condition relating to satisfaction of the requirements of this clause 13,

any Units held by it (**Sale Units**), it must first give a notice (**Transfer Notice**) to each other Unitholder (each an **Offeree**).

### 13.3 Terms of Transfer Notice

A Transfer Notice must state:

- (a) the total number of Sale Units and the number of Sale Units being offered to each Offeree (which must be that proportion of the Sale Units that the number of Units held by the Offeree bears to the total number of Units held by all Offerees at that time);
- (b) the proposed sale price (**Sale Price**) and any other terms of the proposed Transfer;
- (c) the period during which offers may be accepted by an Offeree (**Offer Period**), which may not be less than 5 Business Days following receipt of the Transfer Notice; and
- (d) the settlement date for completion of the sale, which may not be less than 5 or more than 20 Business Days after the last day of the Offer Period.

### 13.4 Acceptance by Offeree

An Offeree may accept the offer contained in the Transfer Notice by written notice to the Seller and each other Unitholder during the Offer Period.

### 13.5 Second Round Offer

- (a) If an Offeree does not accept the offer contained in the Transfer Notice (**Initial Offer**) within the Offer Period, or accepts the offer contained in the Transfer Notice but in relation to a lesser number of Units, then the remaining Sale Units (**Unaccepted Units**) must be offered in a second round offer (**Shortfall Offer**) to each Offeree who has offered to take up their full entitlement of the Sale Units (**Accepting Unitholders**).
- (b) If there is more than one Accepting Unitholder, each will be offered that proportion of the Unaccepted Units that the number of Units held by the Accepting Unitholder bears to the total number of Units held by all Accepting Unitholders at that time.
- (c) A Shortfall Offer is an offer of Unaccepted Units:
  - (i) to Accepting Unitholders; and
  - (ii) on the same terms as the Initial Offer, except that the Offer Period will be 3 Business Days.

### 13.6 Transfer to Accepting Unitholders

If an Offeree accepts all or a specified number of Sale Units under this clause 13, the Offeree must purchase the relevant Units on the terms specified in the Transfer Notice.

### 13.7 Transfer to a Purchaser

If the procedures in clauses 13.2 to 13.5 are followed and there are Unaccepted Units after the expiry of the Offer Period then, subject to clause 13.11, the Seller may, at any time within 90 Business Days after the end of the Offer Period, Transfer all or part of

those Unaccepted Units to a purchaser on terms no more favourable to the purchaser than those offered to the other Unitholders under the Transfer Notice.

### **13.8 Permitted Transfers**

Notwithstanding any restriction on Transfer of Units under this deed each Unitholder may (without complying with clauses 13.2 to 13.5) at any time Transfer some or all of the Units held by it to a transferee that is:

- (a) a wholly-owned Subsidiary of that Unitholder;
- (b) a parent company which wholly owns that Unitholder;
- (c) a wholly owned Subsidiary of the parent company which wholly owns that Unitholder;
- (d) a Relative of that Unitholder; or
- (e) the trustee or trustees for the time being of any settlement made by any Unitholder,

(each a **Permitted Transferee**) provided that in each case the transferee, prior to the Transfer, executes an accession agreement in accordance with clause 13.11.

### **13.9 Re-transfer**

- (a) If a transferee who has taken a Transfer of Units pursuant to clause 13.8 ceases to be a person referred to in clauses 13.8(a) to 13.8(e), then that transferee must Transfer all the Units held by it to the transferor Unitholder (who will be liable to the other parties for any antecedent breach of this deed by that Subsidiary or parent company).
- (b) A Transfer under this clause 13.9 must be made no later than immediately prior to the transferee ceasing to be a person referred to in clauses 13.8(a) to 13.8(e).

### **13.10 Unitholder of Encumbrance bound**

The holder of an Encumbrance over Units must:

- (a) undertake to Unitholders not to Transfer any Units unless that person complies with this clause 13; and
- (b) acknowledge that those Units are subject to clause 15 and 16, and will be released from the Encumbrance to enable completion of a Transfer pursuant to clauses 15 and 16.

### **13.11 Accession Agreement**

A person may not be registered as the holder of Units (whether acquired upon an issue or transfer or otherwise) unless the person is a party to this deed or executes an accession agreement in a form acceptable to the Company agreeing to become bound by this deed.

### **13.12 Transfer of Units**

This clause 13 applies equally to a proposed Transfer of other securities (which are not Units) issued by the Company.

## 14. Tag Along Right

### 14.1 Invitation to Tag Along

Upon the expiration of the relevant period referred to in clause 13.7, if either:

- (a) one or more Unitholders holding in aggregate more than 50% of the Units; or
- (b) if the Jensen Nominee; or
- (c) the Jensen Trust,

become entitled to Transfer their Units under clause 13.7 and intend to do so to a bona fide third party purchaser (**Purchaser**) on arms' length terms, then it/they must give a notice to each of the other Unitholders (**Invitation to Tag Along**), which notice must state:

- (d) the number of Units being sold by the Seller(s) and the proportion of total Units held by the Seller(s) that those Units comprise in aggregate (**Sale Proportion**);
- (e) the Sale Price and any other terms of the proposed transfer by the Seller(s) to the Purchaser;
- (f) that the non-selling Unitholder has an option (a **Tag Along Option**) to direct the Seller(s) to require the Purchaser to buy that non-selling Unitholder's Units up to the Sale Proportion on the same terms;
- (g) the period during which the Tag Along Option must be open for acceptance, which (unless otherwise agreed) may not be less than 5 Business Days;
- (h) the settlement date for completion of the sale if the Tag Along Option is accepted, which (unless otherwise agreed) must be not less than 5 and not more than 20 Business Days after the last day for exercise of the Tag Along Option; and
- (i) the name of the Purchaser.

### 14.2 Exercise of Tag Along Option

- (a) A Tag Along Option may be exercised by notice in writing to the Seller(s) stating the number of Units that the non-selling Unitholder wishes to sell up to the Sale Proportion (**Tag Along Units**), such notice to be given within the period stated in the Invitation to Tag Along.
- (b) If a non-selling Unitholder exercises its Tag Along Option, then the Seller(s) must not sell its/their Units to the Purchaser unless the Purchaser, at the same time and subject to clause 14.2(c), buys the Tag Along Units at the same price, and on the same terms. If necessary, the Seller(s) will reduce the number of Units that it/they is/are selling to take account of the exercise of the Tag Along Option by the non-selling Unitholder(s).
- (c) For the avoidance of doubt, the right of first refusal mechanism provided for in clauses 13.2 to 13.5 applies so that the non-selling Unitholders have the right to purchase the Units subject to the sale on the terms and conditions set out in clauses 13.2 to 13.5 prior to the Tag Along Option being exercised.



## 15. Drag along right

### 15.1 Third party offer

If, at any time, the Company or a Unitholder receives an offer from a bona fide purchaser for all of the Units (**Offeror**), the Company or Unitholder (as applicable) may give a written notice (**Offer Notice**) to all the Unitholders specifying:

- (a) the proposed purchase price for the Units;
- (b) the proposed settlement date (**Settlement Date**);
- (c) the name of the Offeror; and
- (d) any conditions attaching to the offer.

### 15.2 Drag along right

Subject to clause 15.4, if one or more Unitholders holding in aggregate 65% or more of the Units propose(s) to accept the offer contained in the Offer Notice (**Selling Unitholders**), the Selling Unitholders may direct the Company to give and, if the Selling Unitholders so direct, the Company must give a written notice (**Drag Along Notice**) to each other Unitholder (**Non-Accepting Unitholders**):

- (a) stating that the Selling Unitholder(s) wish to sell all of their Units to the Offeror on the terms contained in the Offer Notice; and
- (b) subject to clause 15.5, requiring the Non-Accepting Unitholders to sell all of their Units to the Offeror on the terms contained in the Offer Notice at the same time as the Accepting Unitholders sell all of their Units to the Offeror.

### 15.3 Obligation to complete

Subject to clauses 15.4 and 15.5, if the Company gives a Drag Along Notice(s), then:

- (a) so that completion of the sale to the Offeror may occur on the Settlement Date, each Unitholder is prohibited with effect from the date of the Drag Along Notice from giving a Transfer Notice under clause 13.2; and
- (b) each Unitholder severally and irrevocably appoints any two Directors jointly as its agent and attorney with power to, in the manner contemplated in this clause 15:
  - (i) Transfer all Units legally or beneficially owned by that Unitholder;
  - (ii) execute all necessary documents to Transfer all Units on behalf of that Unitholder and warrant that the Unitholder has capacity to enter into those documents and has good title to all its Units free from any Encumbrance;
  - (iii) receive any sale consideration from the Transfer of Units on behalf of that Unitholder on trust for that Unitholder; and
  - (iv) otherwise complete the Transfer of all Units legally or beneficially owned by that Unitholder to the Offeror.

## **15.4 Withdrawal**

- (a) The Selling Unitholder(s) may, in their absolute discretion, withdraw from the proposed sale of all their Units to the Offeror by giving written notice (**Withdrawal Notice**) to the Company before the Settlement Date.
- (b) The Company must give the Unitholders a copy of any Withdrawal Notice as soon as practicable after the date it is received by the Company.

## **15.5 Pre-emptive rights where Drag Along Notice**

For the avoidance of doubt, the right of first refusal mechanism provided for in clauses 13.2 to 13.5 applies so that the Non-Accepting Unitholders have the right to purchase the Units the subject of the Offer Notice on the terms and conditions set out in clauses 13.2 to 13.5 prior to a Drag Along Notice having any effect.

## **16. Compulsory Transfer of Units**

### **16.1 Compulsory Transfer**

If in relation to any Unitholder:

- (a) a Change in Control of the Unitholder occurs without the prior written consent of the Company;
- (b) an Insolvency Event occurs in relation to the Unitholder; or
- (c) a person, who continues to hold Units and was a Permitted Transferee of the Unitholder when the Units were transferred to it, ceases to be a Permitted Transferee of the Unitholder (without the prior written consent of the Board) and does not transfer the relevant Units to the Unitholder or another Permitted Transferee of the Unitholder in accordance with clause 13.9 within 10 Business Days of that cessation,

then the relevant Unitholder (**Defaulting Seller**) is taken to have given an irrevocable Transfer Notice under clause 13.2 on the date the Company becomes aware that the relevant event specified in this clause 16.1 above has occurred in respect of all Units then held by it at a cash price per Sale Unit calculated in accordance with clause 16.3.

### **16.2 Transfer provisions apply**

Subject to the provisions of this clause 16 (including clause 16.3 with respect to price), clause 13, except clauses 13.8 to 13.9, applies with necessary changes to a Transfer under clause 16.1.

### **16.3 Price**

The cash price per Sale Unit in respect of a Transfer Notice taken to have been given under clause 16.1 is the price agreed between the Company and the relevant Defaulting Seller, and failing agreement within 15 Business Days of a Transfer Notice being taken to have been given, 90% of the fair value of the Sale Units determined in accordance with clauses 16.4 to 16.8.

### **16.4 If parties cannot agree on valuation**

If the Defaulting Seller and the Company cannot agree the price under clause 16.3, the Company must appoint an accountant of good standing or, in its discretion, request the President of the Institute of Chartered Accountants in Australia to appoint a member of at

least five years standing (**Independent Valuer**) to determine the fair value of the Sale Units within a further 30 Business Days on the basis set out in clauses 16.5 to 16.8.

#### **16.5 Fair value**

The Independent Valuer must be instructed to determine the fair market value of the Sale Units on a per Sale Unit basis having regard to all normal share valuation factors considered relevant to the Independent Valuer, including:

- (a) the assumption that there is a willing but not anxious buyer and a willing but not anxious seller;
- (b) disregarding the fact (if applicable) that the transferability of the Sale Units is restricted by this deed or the Trust Deed;
- (c) the assumption that a reasonable time is available in which to obtain a sale of the Sale Units in the open market (and for that purpose 60 Business Days is considered a reasonable time);
- (d) take account the rights attaching to the different classes or types of Sale Units; and
- (e) the assumption that there is no discount for a minority shareholding nor a premium for a shareholding that will give the buyer a controlling shareholding.

#### **16.6 Access**

The Company must ensure the Independent Valuer has access at all reasonable times to the accounting records and other records of the Group and can require from any officer of the Group any information or explanation the Independent Valuer requires to value the Sale Units.

#### **16.7 Expert not arbitrator**

The Independent Valuer will act as an expert and not as an arbitrator and its determination is final and binding on all parties to this deed.

#### **16.8 Costs**

The Defaulting Seller must pay the costs and expenses of the Independent Valuer within five Business Days of the date of the tax invoice issued by the Independent Valuer. If the Defaulting Seller does not pay the amount within the specified period, that amount will be deducted from any sale proceeds payable to the Defaulting Seller.

#### **16.9 Default**

If a Defaulting Seller fails to Transfer its Units or deliver documents required by this clause 16 within the specified time periods:

- (a) each of the Directors is irrevocably appointed as the joint and several attorney of the Defaulting Unitholder to execute all documents, receive all money and do all other things on the Defaulting Unitholder's behalf to effect compliance of its obligations; and
- (b) the Defaulting Unitholder ratifies and confirms all such actions.

## 16.10 Other remedies

The rights and remedies contained in this clause are in addition to and not to the exclusion of any other rights or remedies that a party may have against a party in default of this deed.

## 17. Restraint

### 17.1 Clause 17 definitions

In this clause 17 (and any other provision of this deed which relates to this clause or its subject matter), unless the contrary intention appears the following words have the following meanings:

<b>Term:</b>	<b>Definition:</b>
<b>Engage in</b>	to carry on, participate in, provide finance or services, or otherwise be directly or indirectly involved as a shareholder, unitholder, director, consultant, adviser, contractor, principal, agent, manager, employee, beneficiary, partner, associate, trustee or financier.
<b>Restraint Area</b>	(a) Australia or if that period is determined to be unenforceable then;  (b) Queensland, New South Wales and Victoria; and  (c) New South Wales.
<b>Restraint Period</b>	the period commencing on the date of this deed and ending on the date 12 months after the last of the Manager, the nominee of the relevant Manager referred to in Part B of Schedule 1 and each other affiliate of the Manager cease to be a Unitholder.

### 17.2 Restricted Activities

Each Manager agrees, covenants and undertakes with each of the other parties that, except with the prior consent in writing of all of the other parties, during the Restraint Period, he or she will not within the Restraint Area, either on his or her own account or in conjunction with or on behalf of any person, firm or company and whether directly or indirectly:

- (a) Engage in, be concerned or interested in carrying on (whether as principal, shareholder, member, partner, director, employee, consultant, agent or otherwise) any business competitive with the Business;
- (b) canvas or solicit orders for any goods or services competing with those supplied by the Company from any person, firm or company who is or was within the period of one year prior to the expiry of the Restraint Period a customer of the Business; or
- (c) solicit or entice away from the employment of the Business any officer, manager or other employee employed by the Business (whether or not such person would commit a breach of his or her contract of employment by reason of leaving service).

### 17.3 Interpretation

- (a) Clause 17.2 is to be construed and will take effect as if the Manager has entered into a series of separate and independent covenants (resulting from combining each Restraint Period and each Restraint Area with the restriction on competition) and if any of these separate and independent covenants are or become invalid or unenforceable for any reason then that invalidity or unenforceability will not affect the validity or enforceability of any of the other separate and independent covenants.
- (b) Each of the separate and independent covenants is several and has an independent operation from each of the other covenants, but each covenant will be cumulative in effect.

### 17.4 Restraints reasonable

Each party acknowledges and agrees:

- (a) that the prohibitions and restrictions contained in this clause 17 are important to protect the legitimate goodwill of the Business and are reasonable given the nature of the Business; and
- (b) damages may not be an adequate remedy if a Manager breaches this clause 17, and a party may apply for injunctive relief if a Manager breaches or threatens to breach this clause 17 or the party believes a Manager is likely to breach this clause 17.

### 17.5 Exceptions

- (a) This clause 17 does not restrict a Manager from:
  - (i) performing any employment agreement with any Group Company;
  - (ii) owning Units; or
  - (iii) holding 5% or less of the shares of a listed company.
- (b) This clause 17 will cease to apply in respect of a Manager if all of the following applies:
  - (i) the employment of the Manager under the Executive Service Agreement is terminated for any reason;
  - (ii) any of the Manager, the nominee of the relevant Manager referred to in Part B of Schedule 1 or other affiliate of the Manager (**Jensen Entities**) continues to hold Units;
  - (iii) the Jensen Entities deliver to the Company, in a form approved by the Company prior to the same being executed, a duly executed and irrevocable deed poll in favour of the Company, Unitholders and the Trust undertaking that:
    - (A) they will procure the resignation of Matthew Jensen and any other director appointed by them under clause 9.3;
    - (B) upon the resignation of Matthew Jensen or another director appointed by them in accordance with clause 9.3 waive all

rights in relation to the appointment of a director under clause 9.3;

- (C) they waive all rights to request and receive information of the Group under this deed and the Trust Deed, except annual financial statements of the Group and notice of meeting of Unitholders; and
  - (D) they each acknowledge and agree that, notwithstanding the operation of clause 17.5(b), that clause does not in any way vary the restraint obligations that may continue to apply under the Executive Service Agreement following the termination of the Manager's employment; and
- (iv) in relation to those things and matters in Part A of Schedule 2 requiring approval of Special Resolution of Unitholders, the parties acknowledge and agree that the Jensen Entities will be taken not to have any voting rights in respect of such things and matters and any votes cast by them will be taken to be invalid, and their holding of Units will be disregarded for the purposes of determining the total number of Units held by all Unitholders for a Special Resolution of Unitholders for as long as a Jensen Entity continues to hold Units.

## **17.6 Survival**

This clause 17 survives the expiry or termination of this deed.

## **18. Warranties**

### **18.1 General warranties**

Each party represents to each other party that each of the following statements is true and accurate as at the date of this deed:

- (a) if it is a corporate entity, it is validly existing under the laws of its place of incorporation;
- (b) it has the power to enter into and perform its obligations under this deed and to carry out the transactions contemplated by this deed;
- (c) it has taken all necessary action to authorise its entry into and performance of this deed and to carry out the transactions contemplated by this deed; and
- (d) its obligations under this deed are valid and binding and enforceable against it in accordance with their terms.

### **18.2 Trustee warranties**

Each party which is a trustee represents and warrants in favour of each other party in its capacity as the trustee of its respective trust that:

- (a) it is the sole trustee of its respective trust;
- (b) it has authority to enter into this deed;
- (c) it has the right to be fully indemnified out of the assets of its respective trust for obligations incurred under this deed;

- (d) no action has been or will be taken to terminate its respective trust;
- (e) a copy of the trust deed has been made available (or will, on request, be made available) to each other party which discloses all the terms of its respective trust;
- (f) it has not delegated any of its powers as trustee or exercised any power of appointment; and
- (h) all assets held by the trustee in its capacity as trustee for the trust are available to satisfy any obligations and liabilities arising under this deed.

### **18.3 Continuing Obligation**

The representations and warranties given under clause 18.1 are continuing obligations for the term of this deed and survive the expiry or termination of this deed.

### **18.4 General limitation on Claims**

Notwithstanding any other provision of this deed, a party's right to claim damages against a Unitholder for breach of this deed is limited (other than in relation to any breach of clauses 17 or 19) in respect of each Unitholder to the greater of:

- (a) the cost of acquisition of all of the Units held at the relevant time(s) by the Unitholder; and/or
- (b) the issue prices of all of the Units held at the relevant time(s) by the Unitholder.

### **18.5 Limitation of liability of trustee**

The parties agree that the liability as a Unitholder pursuant to this deed of any trustee of any party that is a trust will not be personal and unlimited, but will be limited to the amount(s) specified in clause 18.4.

## **19. Confidential Information**

### **19.1 Disclosure of information by Directors**

Subject to this clause 19, a Director may disclose any information (confidential or otherwise) about the affairs, finances and accounts of the Group that comes into the Director's possession from time to time to the Unitholder that appointed the Director.

### **19.2 Confidentiality obligations**

Each party must:

- (a) use Confidential Information only for the purposes of the Business or to make decisions regarding its investment in the Company; and
- (b) keep that Confidential Information confidential and not disclose it or allow it to be disclosed to any third party except:
  - (i) with the prior written approval of the other parties; or
  - (ii) to officers, employees and consultants or advisers of the parties (or their related bodies corporate) who have a need to know (and only to the extent that each has a need to know) and are aware that the Confidential Information must be kept confidential,

and the parties must take or cause to be taken reasonable precautions necessary to maintain the secrecy and confidentiality of the Confidential Information.

### **19.3 Announcements**

No announcement, press release or other communication of any kind relating to the negotiations of the parties or the subject matter or terms of this deed may be made or authorised by, or made on behalf of any party, without the prior written approval of each other party except where the announcement, press release or communication must be made by law or any order of any court, tribunal, authority or regulatory body.

### **19.4 Exceptions**

The obligations of confidentiality under this deed do not extend to information that (whether before or after this deed is executed):

- (a) is disclosed to a party, but at the time of disclosure is rightfully known to or in the possession or control of the party and not subject to an obligation of confidentiality on the party;
- (b) is public knowledge (except because of a breach of this deed or any other obligation of confidence);
- (c) is required to be disclosed by law or order of any court, tribunal, authority or regulatory body or in connection with the enforcement of this deed or by the rules of a stock exchange; or
- (d) a Unitholder wishes to disclose to an adviser of the Unitholder but only if the disclosure is made on a confidential basis.

### **19.5 Survival**

The rights and obligations of the parties set out in this deed with respect to Confidential Information survive the expiry or termination of this deed.

## **20. Termination**

### **20.1 Automatic termination**

Subject to clause 20.2, this deed terminates automatically:

- (a) if all parties agree;
- (b) when the Company is wound up by an order of a Court; or
- (c) with respect to a Unitholder, when that Unitholder ceases to be the legal or beneficial owner of any Units.

### **20.2 Accrued rights**

The termination of this deed (including with respect to a Unitholder) does not affect any obligation which accrued prior to its termination and which remains unsatisfied and any other provision of this deed which is expressed to come into effect on, or survive, expiry or termination.



## **21. Dispute Resolution**

### **21.1 No proceedings**

A party must not start Court proceedings about a dispute arising out of this deed (**Dispute**) unless it first complies with this clause, except:

- (a) where a party seeks urgent injunctive relief; or
- (b) where the dispute relates to compliance with this clause.

### **21.2 Notice**

A party claiming that a Dispute has arisen must notify each other party giving details of the Dispute.

### **21.3 Best efforts to resolve**

Each party to the Dispute must use all reasonable endeavours to resolve the Dispute within 15 Business Days of receiving notice of the Dispute or a longer period agreed by the parties to the Dispute.

## **22. Notices**

### **22.1 Service and notices**

- (a) A notice, demand, consent, approval or communication under this deed (**Notice**) must be:
  - (i) in writing, in English and signed by a person duly authorised by the sender; and
  - (ii) marked to the attention of the person, and hand delivered or sent by prepaid post, email or facsimile to the recipient's address for Notices specified in the Parties section of this deed or Schedule 1, as varied by any Notice given by the recipient to the sender.
- (b) Communications by email need not be marked for the attention in the way required by clause 22.1(a)(ii). However, the email must state the first and last name of the sender. Communications sent by email are taken to be signed by the named sender.

### **22.2 Effective on receipt**

A Notice given in accordance with clause 22.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by email, at the time email was sent unless the sender receives an automated message that the email has not been delivered;

- (d) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

## **23. General**

### **23.1 Variation and waiver**

A provision of this deed, or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

### **23.2 Discretion in Exercising Rights**

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this deed expressly states otherwise.

### **23.3 Approvals and consents**

Except where this deed expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this deed.

### **23.4 Costs**

Each party must pay its own costs and expenses incurred in connection with the preparation and execution of this deed and any instrument or other document executed to give effect to any provisions of this deed.

### **23.5 Assignment**

- (a) A party may only assign this deed or a right under this deed with the prior written consent of each other party.
- (b) A Unitholder may assign its rights under this deed to a person to whom it sells all its Units in accordance with this deed.

### **23.6 Survival**

- (a) Any indemnity or obligation of confidentiality under in this deed is independent from the other obligations of the parties and survives termination of this deed.
- (b) Any other term which by its nature is intended to survive termination of this deed survives termination of this deed.

### **23.7 Counterparts**

This deed may be executed in counterparts and all executed counterparts constitute one document.

### **23.8 No merger**

The rights and obligations of the parties under this deed do not merge on completion of any transaction contemplated by this deed.

**23.9 Entire agreement**

This deed constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

**23.10 Further action**

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this deed and any transaction contemplated by it.

**23.11 Severability**

A term or part of a term of this deed that is illegal or unenforceable may be severed from this deed and the remaining terms or parts of the term of this deed continue in force.

**23.12 Relationship**

Except where this deed expressly states otherwise, this deed does not create a relationship of employment, trust, agency or partnership between the parties.

**23.13 Governing law and jurisdiction**

This deed is governed by the law of New South Wales and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.

# Schedule 1

## Unitholders and Unitholdings

### Part A – Unitholders

Investor	Address
Akita Holdings Pty Ltd ACN 138 695 146 in its capacity as trustee of Akita (Investments) Trust ( <b>Jensen Nominee</b> )	11A Links Road Bowral NSW 2576  <b>Contact:</b> Matt Jensen Phone: +61 2 8208 8800 matt@mjbale.com
Rogere Capital Limited ( <b>Rogere</b> )	Kestrel S.A Ch. des Trois-Portes 11 2000 Neuchatel Switzerland <b>Contact:</b> Mr Maurice Emery Phone: +41 (0) 32 723 2500 Fax: +41 (0) 32 723 2501 maurice.emery@kestrel.ch
Donald Michael Cheesman and Sarah Marjorie Elsby in their capacities as trustee of the DCSE2009 Trust ( <b>Cheesman</b> )	Level 12, Gosling Chapman Tower 51-53 Shortland Street Auckland, New Zealand N/A <b>Contact:</b> Donald Cheesman donald.cheesman@gepartnerships.com
Denison Trading ATF Hough King Unit Trust ( <b>King</b> )	33 Gardyne Street Bronte NSW 2024 <b>Contact:</b> Stuart King <a href="mailto:s.king68@bigpond.com">s.king68@bigpond.com</a>
Gerard O'Connor ( <b>O'Connor</b> )	26 Coramba Street North Balgowlah NSW 2093 <b>Contact:</b> Gerard O'Connor Gerard.O'Connor@jbwere.com
Matthew Nimmo ( <b>Nimmo</b> )	55 Greek Street London W1D 3DT <b>Contact:</b> Matt Nimmo <a href="mailto:matt.nimmo@sirendesign.co.uk">matt.nimmo@sirendesign.co.uk</a>
John Braham ( <b>Braham</b> )	Level 1, 1 Martin Place Sydney NSW 2000 <b>Contact:</b> John Braham <a href="mailto:john.braham@macquarie.com">john.braham@macquarie.com</a>
Timothy Stack ( <b>Stack</b> )	Sevelands Farm Plumpton Garden Lewes, East Sussex, BN7 3DF <b>Contact:</b> Tim Stack <a href="mailto:timothystack@ymail.com">timothystack@ymail.com</a>

Investor	Address
Christopher McLeod ( <b>McLeod</b> )	1752 West Wesley Road. NW Atlanta, GA 30327 USA <b>Contact:</b> Chris Mcleod <a href="mailto:macbasc@mac.com">macbasc@mac.com</a>
Rogere Industries Pty Ltd as trustee for the Rogers Family Trust ( <b>Rogers FT</b> )	Address: 68 Cliff Road Northwood NSW 2066 <b>Contact:</b> Matt Rogers <a href="mailto:matt.rogers@rogereindustries.com">matt.rogers@rogereindustries.com</a>
Bazian Pty Limited in its capacity as trustee for the Pyreness Super Trust ( <b>Jensen Trust</b> )	11A Links Road Bowral NSW 2576 <b>Contact:</b> Matt Jensen <a href="mailto:matt@mjbale.com">matt@mjbale.com</a>
Neil Livingstone in his capacity as trustee for the Livingstone Family Super Fund ( <b>Livingstone</b> )	39 Sunshine Street Manly NSW 2093 <b>Contact:</b> Neil Livingstone <a href="mailto:neil.livingstone@cfoadvisory.com.au">neil.livingstone@cfoadvisory.com.au</a>
Beggars Banquet Pty Limited in its capacity as trustee for the Lacey Family Trust ( <b>Lacey</b> )	c/- McCabes Lawyers Level 14, 130 Elizabeth Street Sydney NSW 2000 <b>Contact:</b> Andrew Lacey <a href="mailto:a.lacey@mccabes.com.au">a.lacey@mccabes.com.au</a>
Badja Pty Ltd ACN 159 401 304 ( <b>Badja</b> )	Address: GPO Box 1551 Sydney NSW 2001 <b>Contact:</b> Rob Jackson <a href="mailto:rjackson@marinya.com.au">rjackson@marinya.com.au</a>
RLG-MJB Pty Limited ( <b>RLG</b> )	Address: PO Box 561 Brookvale NSW 2100 <b>Contact:</b> Simon Paterson <a href="mailto:simonpaterson@allanhall.com.au">simonpaterson@allanhall.com.au</a>
Sara Louise Lane and Robert Preston Cordukes in their capacities as trustee for the R.P. Cordukes Superannuation Fund ( <b>Cordukes Superfund</b> )	c/- Perpetual Limited Level 11, 123 Pitt Street Sydney NSW 2000 <b>Contact:</b> Robert Cordukes <a href="mailto:nativeflower@westnet.com.au">nativeflower@westnet.com.au</a>
Briskin Investments Pty Ltd ACN 115 717 998 in its capacity as trustee of the D Briskin Family Trust ( <b>Briskin</b> )	Address: c/- GMK Partners Level 27, 150 Lonsdale Street Melbourne VIC 3000 <b>Contact:</b> David Briskin <a href="mailto:david@briskin.com.au">david@briskin.com.au</a>
Besen Pty Ltd ACN 071 960 720 in its capacity as trustee of the Besen Trust ( <b>Besen</b> )	Address: Level 28, 1 Spring Street, Melbourne VIC 3000 <b>Contact:</b> Daniel Besen <a href="mailto:dbesen@besen.com.au">dbesen@besen.com.au</a>
Quill Post Investments Pty Ltd ACN 168 846 419 in its capacity as trustee of the Quill Post Family Trust ( <b>Post</b> )	Address: 9 Orchard Street, Brighton VIC 3186 <b>Contact:</b> Andrew Post <a href="mailto:apost@besen.com.au">apost@besen.com.au</a>

## Part B – Manager(s)

Manager	Nominee	Address
Matt Jensen (Jensen)	Jensen Nominee	11A Links Road Bowral NSW 2576

## Part C – Trustee Shareholder(s)

Trustee Shareholder	Address
Matt Jensen	11A Links Road Bowral NSW 2576

## Part D – Issued Units

Registered Unitholder	Units (Ordinary Units)
Jensen Nominee	589,364
Rogere	100,000
Cheesman	190,132
King	169,411
O'Connor	37,534
Nimmo	120,860
Braham	37,534
Stack	78,475
McLeod	75,066
Rogers FT	90,132
Jensen Trust	6,071
Livingstone	73,062
Lacey	58,222
Badja	372,299
RLG	422,789
Cordukes Superfund	29,326
Briskin	507,356

<b>Registered Unitholder</b>	<b>Units (Ordinary Units)</b>
Besen	157,682
Post	17,000
<b>Total</b>	<b>3,132,315</b>

# Schedule 2

## Key Business Decisions

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### Part A – Unitholder Decisions

1. **IPO** - Apply to a stock exchange for a listing or for quotation of any Units or appoint an underwriter in relation to an IPO, or both.
2. **Acquisitions and disposals** - Implement a Trade Sale or acquire or dispose of the Business.
3. **Units** - Issue or allot or grant any option or other right to issue or allot Units or other securities in the Trust, other than in accordance with clause 12.9.
4. **Trust Deed** - Amend or replace the Trust Deed.
5. **Variation of class rights** - Effect, or propose, a variance of the rights attaching to any class of Unit.
6. **Winding up** - Take a step to dissolve or wind up the Trust or any Subsidiary.
7. **Joint ventures and Mergers** – any joint venture or merger of the Company, any Subsidiary or the Business with another entity, or the acquisition by the Company or any Subsidiary of another entity of business.
8. **Capital reconstruction** – Effect, or propose, a buy back or redemption of Units and any reduction capital in respect of a Group Company.
9. **Reorganisation Event** – Undertake or undergo a Reorganisation Event.
10. **Incentive schemes** – Vary the terms of the Option Plan or the Exit Bonus Scheme, or adopt or vary the terms of any other employee share option plan, employee share purchase plan or any arrangement giving employees of the Group the right or entitlement to acquire Units, except that any variation to the Exit Bonus Scheme relating to the definitions of "Briskin Entitlement" and "Net Proceeds" will also require the prior written approval of Briskin.

### Part B –Board Decisions

#### General

1. **Distributions** - Declare, make or pay a distribution.
2. **Business Plan and budgets** - Adopt or vary any business plan, business financial plan or any operating, capital or cash budget.
3. **Senior management** - Appoint or remove the CEO, chief operating officer, chief financial officer or any other senior manager, or materially change or negotiate the terms of engagement, role, responsibilities, remuneration or bonus entitlements in respect of those positions.
4. **Remuneration** - Increase the remuneration per annum payable to a Director or pay any bonus to a Director.




5. **Encumbrances** - Create any mortgage, charge, pledge or other encumbrance that is not included in a business plan over an asset or undertaking.
6. **Related party transactions** - Enter into any contract or other arrangement with a Director or an associate of a Director.
7. **Non-arm's length transactions** - Enter into, terminate, amend or vary a contract, make a loan, give credit or other financial accommodation, or acquire assets, outside the ordinary course of business.
8. **Financial Assistance** - Give a loan or other financial assistance to a Director or an associate of a Director or vary the terms of a loan or other financial assistance previously given to a Director or an associate of a Director.
9. **Material contracts** - Enter into, terminate, amend or vary a material contract.
10. **Litigation** - commence or conduct any dispute or litigation, including with any Governmental authority, other than debt collection in the ordinary course of business (except for any disputes between the Company and the Unitholders or their related entities).
11. **Borrowings** – Borrow or accept a financial accommodation of more than \$105,000.
12. **Guarantees** - Give or enter into any guarantee, letter of comfort or performance bond.
13. **Leasing** - Enter into any finance or operating lease costing more than \$25,000 per annum.
14. **Capital expenditure** - Commit to or incur capital expenditure of more than \$25,000 in a Financial Year.
15. **Acquisition of assets** – Acquire any assets of more than \$25,000 other than in the ordinary course of business.
16. **Loans** - Make a loan, give credit or other financial accommodation to a person except in the ordinary course of business.
17. **Bankers, auditor and advisers** – Appoint or remove the auditor, banker or corporate finance advisers of a Group Company.
18. **Corporate expenses** – incur or reimburse any material travelling, accommodation or other expenses of Directors or senior managers incurred when travelling to or from meetings of the Board or when otherwise engaged in the Business.

**Specific**

19. **New stores** – Open any new stores in connection with the Business.

EXECUTED as an deed

EXECUTED by **NEWBALE CLOTHING  
NOMINEES PTY LIMITED ACN 138**  
591 401 in its capacity as trustee of  
the **Newbale Clothing Unit Trust** and  
in accordance with section 127 of the  
Corporations Act

  
\_\_\_\_\_  
Signature of Director

**DONALD M. ROGERS**  
\_\_\_\_\_  
Name of Director

  
\_\_\_\_\_  
Signature of Director/Secretary

**MATTHEW JENSEN**  
\_\_\_\_\_  
Name of Director/Secretary

EXECUTED by **ROGERE CAPITAL  
LIMITED** and in accordance with section  
127 of the Corporations Act

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director/Secretary

**SIGNED, SEALED AND DELIVERED**  
by **DONALD MICHAEL CHEESMAN**  
**AND SARAH MARJORIE ELSBIE** in  
their capacities as trustee of **THE  
DCSE2009 TRUST** in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

**Donald Michael Cheesman**  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

**Sarah Marjorie Elsby**  
\_\_\_\_\_

EXECUTED as an deed

**EXECUTED by NEWBALE CLOTHING  
NOMINEES PTY LIMITED ACN 138  
591 401 in its capacity as trustee of  
the Newbale Clothing Unit Trust and  
in accordance with section 127 of the  
Corporations Act** )  
)  
)  
)  
)

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

**EXECUTED by ROGERE CAPITAL  
LIMITED and in accordance with section  
127 of the Corporations Act** )  
)  
)  
)  
)

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

  
**MAURICE EMERY**

  
**NIGEL MIESUD**

\_\_\_\_\_  
Name of Director  
For and on behalf of Kestrel S.A.,  
acting in its capacity as corporate director

\_\_\_\_\_  
Name of Director/Secretary  
For and on behalf of Kestrel S.A.,  
acting in its capacity as corporate director

**SIGNED, SEALED AND DELIVERED** )  
**by DONALD MICHAEL CHEESMAN** )  
**AND SARAH MARJORIE ELSBIE in** )  
**their capacities as trustee of THE** )  
**DCSE2009 TRUST in the presence of:**

\_\_\_\_\_  
**Donald Michael Cheesman**

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
**Sarah Marjorie Elsby**

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

EXECUTED as an deed

**EXECUTED by NEWBALE CLOTHING  
NOMINEES PTY LIMITED ACN 138  
591 401 in its capacity as trustee of  
the Newbale Clothing Unit Trust and  
in accordance with section 127 of the  
Corporations Act**

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

**EXECUTED by ROGERE CAPITAL  
LIMITED and in accordance with section  
127 of the Corporations Act**

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

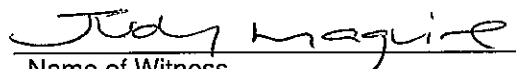
\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

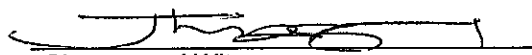
**SIGNED, SEALED AND DELIVERED  
by DONALD MICHAEL CHEESMAN  
AND SARAH MARJORIE ELSBIE in  
their capacities as trustee of THE  
DCSE2009 TRUST in the presence of:**

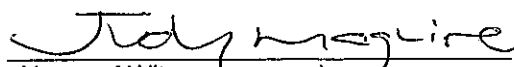
  
\_\_\_\_\_  
Donald Michael Cheesman

  
\_\_\_\_\_  
Signature of Witness

  
\_\_\_\_\_  
Name of Witness

  
\_\_\_\_\_  
Sarah Marjorie Elsby

  
\_\_\_\_\_  
Signature of Witness

  
\_\_\_\_\_  
Name of Witness

EXECUTED by BAZIAN PTY LIMITED )  
ACN 143 155 917 in its capacity as )  
trustee for the Pyrenees Super Trust )  
and in accordance with section 127 of )  
the Corporations Act )

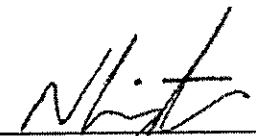
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Signature of Director

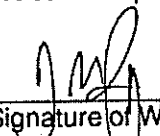
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Signature of Director/Secretary

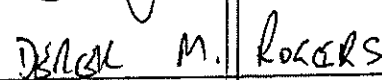
\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

SIGNED, SEALED AND DELIVERED )  
by NEIL LIVINGSTONE in his capacity )  
as trustee for the Livingstone Family )  
Trust in the presence of:

  
\_\_\_\_\_  
Neil Livingstone

  
\_\_\_\_\_  
Signature of Witness

  
\_\_\_\_\_  
Name of Witness

EXECUTED by BEGGARS BANQUET )  
PTY LIMITED ACN 123 248 000 in its )  
capacity as trustee for the Lacey )  
Family Trust and in accordance with )  
section 127 of the Corporations Act )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

EXECUTED by BADJA PTY LIMITED )  
ACN 159 401 204 in accordance with )  
section 127 of the Corporations Act )  
)  
)

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

**EXECUTED by BAZIAN PTY LIMITED )  
ACN 143 155 917 in its capacity as )  
trustee for the Pyrenee Super Trust )  
and in accordance with section 127 of )  
the Corporations Act )**

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

**SIGNED, SEALED AND DELIVERED )  
by NEIL LIVINGSTONE in his capacity )  
as trustee for the Livingstone Family )  
Trust in the presence of:**

\_\_\_\_\_  
**Neil Livingstone**

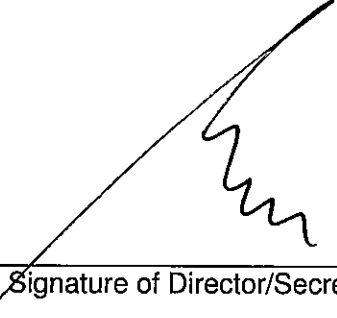
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Signature of Witness

\_\_\_\_\_  
Name of Witness

**EXECUTED by BEGGARS BANQUET )  
PTY LIMITED ACN 123 248 000 in its )  
capacity as trustee for the Lacey )  
Family Trust and in accordance with )  
section 127 of the Corporations Act )**

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary



\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

**ANDREW LACEY**

**EXECUTED by BADJA PTY LIMITED )  
ACN 159 401 204 in accordance with )  
section 127 of the Corporations Act )  
)  
)**

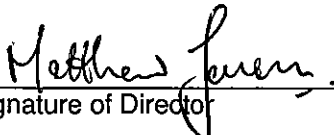
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Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

**EXECUTED by BAZIAN PTY LIMITED )  
ACN 143 155 917 in its capacity as )  
trustee for the Pyreness Super Trust )  
and in accordance with section 127 of )  
the Corporations Act )**

  
\_\_\_\_\_  
Signature of Director

**MATTHEW JENSEN**  
\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director/Secretary

**SIGNED, SEALED AND DELIVERED )  
by NEIL LIVINGSTONE in his capacity )  
as trustee for the Livingstone Family )  
Trust in the presence of:**

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

**Neil Livingstone**  
\_\_\_\_\_

**EXECUTED by BEGGARS BANQUET )  
PTY LIMITED ACN 123 248 000 in its )  
capacity as trustee for the Lacey )  
Family Trust and in accordance with )  
section 127 of the Corporations Act )**

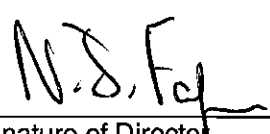
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Signature of Director

\_\_\_\_\_  
Name of Director


\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director/Secretary

**EXECUTED by BADJA PTY LIMITED )  
ACN 159 401 204 in accordance with )  
section 127 of the Corporations Act )  
)  
)**

  
\_\_\_\_\_  
Signature of Director

**NICK FAIRFAX**  
\_\_\_\_\_  
Name of Director

  
\_\_\_\_\_  
Signature of Director/Secretary

**ROB JACKSON**  
\_\_\_\_\_  
Name of Director/Secretary

**EXECUTED by RLG-MJB Pty Limited )  
ACN 152 228 192 in its capacity as )  
trustee for the RLG-MJB Trust and in )  
accordance with section 127 of the )  
Corporations Act )**

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Sole Director/Secretary

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Name of Sole Director/Secretary

**SIGNED, SEALED AND DELIVERED )  
by SARA LOUISE LANE AND )  
ROBERT PRESTON CORDUKES in )  
their capacities as trustee of THE R.P. )  
CORDUKES SUPERANNUATION )  
FUND in the presence of:**

  
\_\_\_\_\_  
**Sara Louise Lane**

  
\_\_\_\_\_  
Signature of Witness

  
\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
**Robert Preston Cordukes**

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

**EXECUTED by Briskin Investments )  
Pty Ltd ACN 115 717 998 in its )  
capacity as trustee of the D Briskin )  
Family Trust and in accordance with )  
section 127 of the Corporations Act )**

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary



EXECUTED by RLG-MJB Pty Limited )  
ACN 152 228 192 in its capacity as )  
trustee for the RLG-MJB Trust and in )  
accordance with section 127 of the )  
Corporations Act )

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Sole Director/Secretary

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Name of Sole Director/Secretary

**SIGNED, SEALED AND DELIVERED** )  
by **SARA LOUISE LANE AND** )  
**ROBERT PRESTON CORDUKES** in )  
their capacities as trustee of **THE R.P.** )  
**CORDUKES SUPERANNUATION** )  
**FUND** in the presence of:

\_\_\_\_\_  
**Sara Louise Lane**

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
**Robert Preston Cordukes**

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

EXECUTED by **Briskin Investments** )  
**Pty Ltd ACN 115 717 998** in its )  
**capacity as trustee of the D Briskin** )  
**Family Trust** and in accordance with )  
section 127 of the Corporations Act )



\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

**DAVID BRISKIN**  
\_\_\_\_\_  
Name of Director/Secretary

EXECUTED by RLG-MJB Pty Limited )  
ACN 152 228 192 in its capacity as )  
trustee for the RLG-MJB Trust and in )  
accordance with section 127 of the )  
Corporations Act )

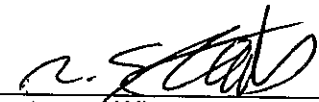
  
\_\_\_\_\_  
Signature of Witness

*Ronald Stubb*  
\_\_\_\_\_  
Name of Witness

SIGNED, SEALED AND DELIVERED )  
by SARA LOUISE LANE AND )  
ROBERT PRESTON CORDUKES in )  
their capacities as trustee of THE R.P. )  
CORDUKES SUPERANNUATION )  
FUND in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

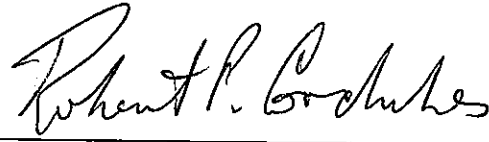
  
\_\_\_\_\_  
Signature of Witness

*Ronald Stubb*  
\_\_\_\_\_  
Name of Witness

EXECUTED by Briskin Investments )  
Pty Ltd ACN 115 717 998 in its )  
capacity as trustee of the D Briskin )  
Family Trust and in accordance with )  
section 127 of the Corporations Act )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director



\_\_\_\_\_  
Signature of Sole Director/Secretary

\_\_\_\_\_  
Name of Sole Director/Secretary

\_\_\_\_\_  
Sara Louise Lane



\_\_\_\_\_  
Robert Preston Cordukes

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director/Secretary

**EXECUTED** by **DENISON TRADING** )  
**ATF HOUGH KING UNIT TRUST** and in )  
accordance with section 127 of the )  
Corporations Act )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director

**SIGNED, SEALED AND DELIVERED** )  
by **GERARD O'CONNOR** in the )  
presence of: )

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

**SIGNED, SEALED AND DELIVERED** )  
by **MATTHEW NIMMO** in the presence )  
of: )

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

**SIGNED, SEALED AND DELIVERED** )  
by **JOHN BRAHAM** in the presence of: )  
)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

*Stuart King*

\_\_\_\_\_  
Signature of Director/Secretary

**STUART KING**

\_\_\_\_\_  
Name of Director/Secretary

\_\_\_\_\_  
**Gerard O'Connor**

\_\_\_\_\_  
**Matt Nimmo**

\_\_\_\_\_  
**John Braham**

EXECUTED by DENISON TRADING )  
ATF HOUGH KING UNIT TRUST and in )  
accordance with section 127 of the )  
Corporations Act )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

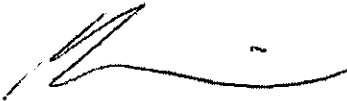
SIGNED, SEALED AND DELIVERED )  
by GERARD O'CONNOR in the presence of: )

\_\_\_\_\_  
Gerard O'Connor

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

SIGNED, SEALED AND DELIVERED )  
by MATTHEW NIMMO in the presence of: )



\_\_\_\_\_  
Matt Nimmo

\_\_\_\_\_  
Signature of Witness

*ESTELLE BLANC*  
\_\_\_\_\_  
Name of Witness

SIGNED, SEALED AND DELIVERED )  
by JOHN BRAHAM in the presence of: )

\_\_\_\_\_  
John Braham

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

EXECUTED by DENISON TRADING )  
ATF HOUGH KING UNIT TRUST and in )  
accordance with section 127 of the )  
Corporations Act )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

SIGNED, SEALED AND DELIVERED )  
by GERARD O'CONNOR in the )  
presence of: )

*Atto*

*[Handwritten Signature]*  
\_\_\_\_\_  
Gerard O'Connor

\_\_\_\_\_  
Signature of Witness

*Steve Stern H*  
\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Matt Nimmo

SIGNED, SEALED AND DELIVERED )  
by MATTHEW NIMMO in the presence )  
of: )

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

SIGNED, SEALED AND DELIVERED )  
by JOHN BRAHAM in the presence of: )  
)

\_\_\_\_\_  
John Braham

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

EXECUTED by DENISON TRADING )  
ATF HOUGH KING UNIT TRUST and in )  
accordance with section 127 of the )  
Corporations Act )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

SIGNED, SEALED AND DELIVERED )  
by GERARD O'CONNOR in the )  
presence of: )

\_\_\_\_\_  
Gerard O'Connor

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness


SIGNED, SEALED AND DELIVERED )  
by MATTHEW NIMMO in the presence )  
of: )

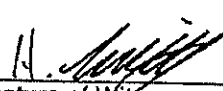
\_\_\_\_\_  
Matt Nimmo

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

SIGNED, SEALED AND DELIVERED )  
by JOHN BRAHAM in the presence of: )

  
\_\_\_\_\_  
John Braham


  
\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
HAYDEN SMITH  
Name of Witness

SIGNED, SEALED AND DELIVERED )  
by TIMOTHY STACK in the presence of: )



\_\_\_\_\_  
Timothy Stack

  
\_\_\_\_\_  
Signature of Witness

*Michael J. Yarian*  
\_\_\_\_\_  
Name of Witness

SIGNED, SEALED AND DELIVERED )  
by CHRISTOPHER MCLEOD in the )  
presence of: )

\_\_\_\_\_  
Christopher McLeod

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

EXECUTED by AKITA HOLDINGS PTY )  
LIMITED ACN 138 695 146 in its )  
capacity as trustee for AKITA )  
(INVESTMENTS) TRUST in accordance )  
with section 127 of the Corporations Act )

\_\_\_\_\_  
Signature of sole Director/Secretary

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of sole Director/Secretary

\_\_\_\_\_  
Name of Witness

EXECUTED by ROGERE INDUSTRIES )  
PTY LIMITED ACN 081 818 886 in its )  
capacity as trustee for the Rogers )  
Family Trust and in accordance with )  
section 127 of the Corporations Act )

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director/Secretary

\_\_\_\_\_  
Name of Director

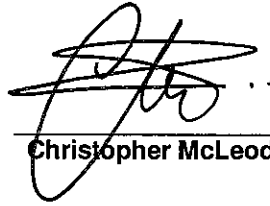
**SIGNED, SEALED AND DELIVERED** )  
by **TIMOTHY STACK** in the presence of: )  
)


\_\_\_\_\_  
Timothy Stack

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

**SIGNED, SEALED AND DELIVERED** )  
by **CHRISTOPHER MCLEOD** in the )  
presence of: )

  
\_\_\_\_\_  
Christopher McLeod

  
\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

**EXECUTED** by **AKITA HOLDINGS PTY** )  
**LIMITED ACN 138 695 146** in its )  
**capacity as trustee for AKITA** )  
**(INVESTMENTS) TRUST** in accordance )  
with section 127 of the Corporations Act )

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of sole Director/Secretary

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Name of sole Director/Secretary

**EXECUTED** by **ROGERE INDUSTRIES** )  
**PTY LIMITED ACN 081 818 886** in its )  
**capacity as trustee for the Rogers** )  
**Family Trust** and in accordance with )  
section 127 of the Corporations Act )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary



**SIGNED, SEALED AND DELIVERED** )  
by **TIMOTHY STACK** in the presence of: )  
)

\_\_\_\_\_  
**Timothy Stack**

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

**SIGNED, SEALED AND DELIVERED** )  
by **CHRISTOPHER MCLEOD** in the )  
presence of: )

\_\_\_\_\_  
**Christopher McLeod**

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

**EXECUTED** by **AKITA HOLDINGS PTY** )  
**LIMITED ACN 138 695 146** in its )  
**capacity as trustee for AKITA** )  
**(INVESTMENTS) TRUST** in accordance )  
with section 127 of the Corporations Act )

\_\_\_\_\_  
*Matthew Jensen*  
Signature of sole Director/Secretary

\_\_\_\_\_  
*Ronald Steub*  
Signature of Witness

\_\_\_\_\_  
**MATTHEW JENSEN**  
Name of sole Director/Secretary

\_\_\_\_\_  
**Ronald Steub**  
Name of Witness

**EXECUTED** by **ROGERE INDUSTRIES** )  
**PTY LIMITED ACN 081 818 886** in its )  
**capacity as trustee for the Rogers** )  
**Family Trust** and in accordance with )  
section 127 of the Corporations Act )

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
*Derek M. Lowers*  
Signature of Director

\_\_\_\_\_  
Name of Director/Secretary

\_\_\_\_\_  
**DEREK M. LOWERS**  
Name of Director

**EXECUTED by Besen Pty Ltd ACN  
071 960 720 in its capacity as trustee  
of the Besen Trust and in accordance  
with section 127 of the Corporations Act** )  
)  
)  
)

  
\_\_\_\_\_  
Signature of Director

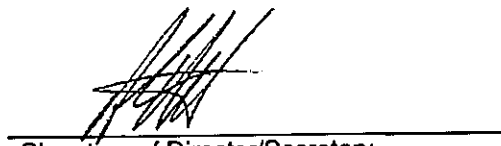
\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

**EXECUTED by Quill Post Investments  
Pty Ltd ACN 168 846 419 in its  
capacity as trustee of the Quill Post  
Family Trust and in accordance with  
section 127 of the Corporations Act** )  
)  
)  
)

  
\_\_\_\_\_  
Signature of Director

  
\_\_\_\_\_  
Signature of Director/Secretary

*SUSAN QUILL*  
\_\_\_\_\_  
Name of Director

*ANDREW POST*  
\_\_\_\_\_  
Name of Director/Secretary

**SIGNED, SEALED AND DELIVERED** )  
**by MATTHEW JENSEN in the presence** )  
**of:** )

\_\_\_\_\_  
**Matthew Jensen**

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

EXECUTED by Besen Pty Ltd ACN )  
071 960 720 in its capacity as trustee )  
of the Besen Trust and in accordance )  
with section 127 of the Corporations Act )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

EXECUTED by Quill Post Investments )  
Pty Ltd ACN 168 846 419 in its )  
capacity as trustee of the Quill Post )  
Family Trust and in accordance with )  
section 127 of the Corporations Act )

\_\_\_\_\_  
Signature of Director

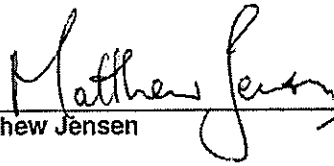
\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

SIGNED, SEALED AND DELIVERED )  
by MATTHEW JENSEN in the presence )  
of: )

  
\_\_\_\_\_  
Signature of Witness

  
\_\_\_\_\_  
Matthew Jensen

ANDREW CHOUDHURY  
\_\_\_\_\_  
Name of Witness

# Annexure A

## Exit Bonus Scheme

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Annexure A to the Third Amended and Restated  
Unitholders' Deed

# Amended MJ Bale Exit Bonus Scheme Rules

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**Newbale Clothing Nominees Pty Ltd**  
ACN 138 591 401  
in its capacity as trustee of the Newbale  
Clothing Unit Trust

# Table of Contents

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# 1. Defined terms & interpretation

## 1.1 Defined terms

In these Rules, unless the contrary intention appears, the following words have the following meanings:

<b>Term:</b>	<b>Definition:</b>
<b>Besen Entitlement</b>	the pro rata entitlement of Besen Pty Ltd in its capacity as trustee of the Besen Trust to the total value of all proceeds received in an Exit Event, being an entitlement to those proceeds prior to deducting the Entitlements of all Participants.
<b>Board</b>	all or some of the directors of Newbale Clothing Nominees Pty Ltd ACN 138 591 401 acting as a board.
<b>Briskin Entitlement</b>	the pro rata entitlement of Briskin Investments Pty Ltd in its capacity as trustee of the D Briskin Family Trust to the total value of all proceeds received in an Exit Event, being an entitlement to those proceeds prior to deducting the Entitlements of all Participants.
<b>Business Day</b>	a day that is not a Saturday, Sunday, bank holiday or public holiday in New South Wales, Australia.
<b>Conditions</b>	has the meaning given to that term in Rule 5.2.
<b>Corporations Act</b>	<i>Corporations Act 2001</i> (Cth).
<b>Cut-Off Date</b>	3 March 2014.
<b>Cut-Off Date Units</b>	Units issued or transferred to, or otherwise acquired by, a Unitholder on or after the Cut-Off Date.
<b>Dispose</b>	in relation to Units:  (a) to sell, assign, transfer, be subject to redemption or otherwise dispose of;  (b) to agree or offer to sell, assign, transfer, be subject to redemption or otherwise dispose of;  (c) to enter into any option which, if exercised, enables or requires the relevant Unitholder to sell, assign, transfer or otherwise dispose of; or  (d) to create or agree or offer to create or permit to be created any Encumbrance in,  some or all of those Units.
<b>Encumbrance</b>	any mortgage, lien, charge, pledge, assignment by way of security, security interest (as that term defined in the <i>Personal Property Securities Act 2009</i> (Cth)), title retention, preferential right or trust arrangement, claim, covenant, profit a prendre, easement or any other security arrangement or any other

	arrangement having the same effect.
<b>Entitlement</b>	an entitlement to receive a payment or distribution of a portion of the Net Proceeds, expressed in percentage of such proceeds, as determined by the Board.
<b>Exit Costs</b>	all costs and expenses of the Group associated with an Exit Event.
<b>Exit Event</b>	any of the following to occur in respect of a Unitholder, the Group or the Trust: <ul style="list-style-type: none"> <li>(a) a Unitholder Disposes of any or all of its Units ;</li> <li>(b) an initial public offering of securities by a Group Company and its admission to the official list of ASX Limited or another recognised stock exchange;</li> <li>(c) the completion of an agreement for the sale to a third party purchaser of all Units in the Trust;</li> <li>(d) the completion of a Trade Sale; and</li> <li>(e) any other event determined by the Board in its sole discretion to be an Exit Event for the purposes of the Plan.</li> </ul>
<b>Grant Date</b>	the date on which the Board grants a right to participate in the Plan to a Participant.
<b>Group</b>	Newbale Clothing Nominees Pty Ltd ACN 138 591 401 and all of its Subsidiaries from time to time, and a <b>Group Company</b> means any one of them.
<b>GST</b>	has the meaning given to that term in <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> .
<b>Net Proceeds</b>	in relation to an Exit Event, the total value of all proceeds received, whether in cash or otherwise, minus the Exit Costs and all Post Cut-Off Date Entitlements (including the Briskin Entitlement, the Besen Entitlement and the Post Entitlement).
<b>Nominee</b>	a trust of which that person is a trustee or a beneficiary or a superannuation fund of which that person is a trustee or a beneficiary that has been approved by the Board pursuant to Rule 6.2.
<b>Participant</b>	a full-time employee or officer of a Group Company or the Trust whom the Board determines is entitled to be granted the right to participate in the Plan.
<b>Performance Condition</b>	any condition(s) that must be satisfied, or circumstances which must exist, before a person becomes a Participant under these Rules.
<b>Plan</b>	has the meaning given to it in Rule 2.1.
<b>Post Cut-Off Date</b>	in respect of a Unitholder, the pro rata entitlement of that Unitholder's Cut-Off Date Units to the total value of all proceeds



<b>Entitlement</b>	received in an Exit Event, being an entitlement to those proceeds prior to deducting the Entitlements of all Participants.
<b>Post Entitlement</b>	the pro rata entitlement of Quill Post Investments Pty Ltd in its capacity as trustee of the Quill Post Family Trust to the total value of all proceeds received in an Exit Event, being an entitlement to those proceeds prior to deducting the Entitlements of all Participants.
<b>Rules</b>	the rules governing the operation of the Plan set out in this document, as amended from time to time.
<b>Subsidiary</b>	an entity controlled by the Trust.
<b>Trade Sale</b>	the sale of: <ul style="list-style-type: none"> <li>(a) the whole or a substantial part of the business conducted by the Group;</li> <li>(b) all or substantially all of the assets of the Group; or</li> <li>(c) all of the Subsidiaries.</li> </ul>
<b>Trust</b>	Newbale Clothing Unit Trust.
<b>Unitholder</b>	a holder of any Units.
<b>Unitholders' Deed</b>	the unitholders' deed governing the operation of the Trust between, among others, the unitholders of the Trust from time to time.
<b>Units</b>	ordinary units in the Trust.

## 1.2 Interpretation

Headings are for ease of reference only and do not affect interpretation. In this document, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a rule, paragraph or schedule is to a rule or paragraph of, or schedule to, this document, and a reference to this document includes any schedule;
- (d) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (e) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions; and

- (g) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

## **2. Introduction**

### **2.1 Name of Plan**

The plan is called the “MJ Bale Exit Bonus Scheme” (**Plan**).

### **2.2 Objects of Plan**

The objects of the Plan are to:

- (a) attract, reward, retain and incentivise key employees and officers of the Group; and
- (b) recognise the ongoing ability of those individuals and their expected efforts and contribution to the performance and success of the Group.

### **2.3 Commencement of Plan**

The Plan commences on the date it is formally adopted by the Board.

### **2.4 Advice**

Participants must obtain their own independent advice (at their own expense) on the financial, taxation and other consequences to them of, or relating to, participation in the Plan.

## **3. Operation and Administration of the Plan**

### **3.1 Plan operates in accordance with these Rules**

The Plan operates in accordance with these Rules which bind the Group, the Trust and each Participant.

### **3.2 Powers of Board**

The Board has full power to implement and administer the Plan. Without limitation, the Board will have power to:

- (a) determine appropriate procedures and make regulations consistent with these Rules for the administration and operation of the Plan;
- (b) construe and interpret the Plan and any other agreement or document executed pursuant to the Plan;
- (c) resolve conclusively all questions of fact or interpretation arising in connection with the Plan;
- (d) delegate any functions and powers it may consider appropriate, for the efficient administration of the Plan, to any person or persons (including a committee of directors) whom the Board reasonably believes to be capable of performing those functions and exercising those powers;

- (e) take and rely upon independent professional or expert advice in relation to the exercise of any of their powers or discretions under the Plan; and
- (f) correct any defect or reconcile any inconsistency in the Plan.

### **3.3 Determination**

- (a) Without prejudice to Rule 3.2, any power or discretion conferred on the Board by these Rules may be exercised by the Board in the interests or for the benefit of the Trust and the Group, and the Board has absolute discretion in any determination, decision, approval or opinion by it under these Rules. In exercising its power or discretion, the Board will act reasonably and in good faith.
- (b) Subject to Rule 3.3(a), every exercise of discretion by the Board (or its delegate) and every decision of the Board as to the interpretation, effect or application of these Rules is final, conclusive, and binding.

## **4. Rights of Participants**

### **4.1 No conferred rights**

These Rules:

- (a) do not confer on any person the right to participate in the Plan;
- (b) do not confer on a Participant the right to continue as an employee or to hold any particular office, as the case may be; and
- (c) do not affect any right the Trust or a Group Company (as applicable) may have to terminate the employment or appointment of a Participant.

### **4.2 Incorporation of Plan**

- (a) The Plan will not form part of, and are not incorporated into, any contract of engagement or employment of any Participant.
- (b) No Participant will have any rights to compensation or damages in consequence of the termination of his/her office or employment, for any reason whatsoever, in so far as those rights arise or may arise from his/her ceasing to have rights under the Plan as a result of such termination, unless the Board determines otherwise.

### **4.3 Other schemes**

- (a) Participation in the Plan does not affect, and is not affected by, participation in any other employee share or option scheme operated by the Group or the Trust from time to time unless the terms of the other scheme provide otherwise.
- (b) Neither the adoption of the Plan, the submission of the Plan to the Unitholders for approval, nor any provision of the Plan will be construed as creating any limitations on the power of the Board to adopt such additional remuneration arrangements as they may deem desirable, including the granting of unit options and bonuses otherwise than under the Plan, and such arrangements may be either generally applicable or applicable only in specific cases.

#### 4.4 General meetings

A Participant, as a Participant, may not attend or vote at general meetings of the Unitholders, and each Participant acknowledges that, as a Participant, he or she does not have the right to vote on the affairs of the Group or the Trust.

#### 4.5 Information

A Participant is not entitled to demand any financial or other information from the Group or the Trust and the Group or the Trust is not obliged to provide the Participant with any such information.

### 5. Principal conditions

#### 5.1 Right granted only to Participants

Only employees or officers of a Group Company or the Trust who are Participants at the Grant Date, or as the Board determines otherwise, may participate in the Plan.

#### 5.2 Conditions attached to Rights

In respect of an Exit Event occurring, a Participant will receive its Entitlement if and only if all of the following conditions are met:

- (a) an Exit Event occurs in relation to a Unitholder, the Group or the Trust on or prior to 30 June 2017;
- (b) the Exit Event occurs:
  - (i) at any time before 30 June 2015 (**Exit Period A**); or
  - (ii) between 1 July 2015 and 30 June 2017 (**Exit Period B**);
- (c) the imputed or actual value attributable to the Units (calculated on a per Unit basis) in connection with the relevant Exit Event is determined by the Board acting reasonably to be:
  - (i) in respect of an Exit Event occurring during Exit Period A, \$3.50 or more per Unit; or
  - (ii) in respect of an Exit Event occurring during Exit Period B, more than \$5 per Unit; and
- (d) the Participant is an employee or an officer of a Group Company or the Trust (or in the case of a Nominee, the person who nominated the Nominee) at the date the Exit Event occurs,

(each a **Conditions** and together, the **Conditions**).

#### 5.3 Entitlement

The Board will determine and notify each Participant of the Entitlement.

#### 5.4 Limitation on Entitlement

Notwithstanding anything under these Rules and provided that all Conditions are met, the total pool of Net Proceeds available in respect of all Entitlements in respect of each Exit Event must not exceed:

- (a) in respect of an Exit Event occurring during Exit Period A, 15% of the Net Proceeds; and
- (b) in respect of an Exit Event occurring during Exit Period B, 10% of the Net Proceeds.

## **5.5 Compliance with laws**

An Entitlement may not be granted to a Participant if to do so would contravene the Trust Deed or the Unitholders' Deed.

## **6. Grant of Entitlement**

### **6.1 Grant**

- (a) Subject to these Rules, the Board may, from time to time, in its absolute discretion:
  - (i) grant an Entitlement to any Participant; and
  - (ii) in relation to each Entitlement (which need not be the same for each Participant), specify the proportion of the Net Proceeds that the Participant will be entitled to, and any Performance Conditions that may apply.
- (b) The grant of the Entitlement must be in writing and a copy of the Plan must accompany and form a condition of such grant.
- (c) If a person ceases to satisfy the necessary eligibility requirements on or before the grant of the Entitlement, that person is not entitled to receive its share of the Net Proceeds in respect of that Entitlement.
- (d) Eligibility to participate in the Plan does not confer on any employee or officer of a Group Company or the Trust any right to participate in the Plan. Participation in the Plan will be solely determined by the Board.

### **6.2 Nominee**

- (a) A Participant to whom an Entitlement is granted may request such Entitlement to be granted personally or, subject to Rule 6.2(b), to a Nominee. Any such Nominee will, as the context requires, be the Participant for the purposes of these Rules.
- (b) A Group Company may require a Participant to deliver the trust deed, constituent documents or other relevant documentation in respect of the Nominee to the Trust for its prior approval before the nomination by the Participant is approved by the Board.

## **7. Payment**

- (a) If all the Conditions are satisfied and a Participant becomes entitled to be paid an Entitlement following an Exit Event, the payment or distribution of such portion of the Net Proceeds will be made as the Board determines, as soon as practicable after completion of the Exit Event.
- (b) The Participant acknowledges that any payment of the Net Proceeds to him or her under Rule 7(a) will be, if applicable:

- (i) inclusive of the minimum level of superannuation contributions which a Group Company or the Trust must make for the Participant;
- (ii) inclusive of any GST payable to the Participant; and
- (iii) subject to the deduction, or withholding of any amounts on account of, any applicable taxes.

## **8. Warranties**

Each Participant warrants that he or she has obtained his or her own independent advice on the legal, financial, taxation and other consequences to him or her of, or relating to, participation in the Plan, and is not relying on anything that a Group Company, the Trust, the Board or any member of the Board have said or done.

## **9. Duration of the Plan**

### **9.1 Termination**

The Plan may be terminated at any time by resolution of the Board.

### **9.2 Suspension**

The Board, by resolution, may decide to suspend the operation of the Plan either for a fixed period or indefinitely and may also decide to end any such period of suspension.

### **9.3 No prejudice**

If the Plan terminates or is discontinued or suspended for any reason, that does not prejudice the accrued rights of Participants.

## **10. Amendment**

Subject to the Trust Deed and the Unitholders' Deed, the Board may at any time amend any of these Rules, or waive or modify the application of any of these Rules in relation to a Participant.

## **11. Primary Instruments**

These Rules are to be interpreted subject to the Trust Deed and the Unitholders' Deed. Where there is any conflict between the provisions of these Rules, the Trust Deed and the Unitholders' Deed, then these Rules will be amended to give effect to the provisions of the Trust Deed and the Unitholders' Deed.

## **12. Trust Deed**

Each Participant acknowledges and agrees that the Trust Deed and the Unitholders' Deed may be amended, including amending the Entitlement and restrictions applying to the Entitlement.

## **13. General**

### **13.1 Tax**

Neither the Trust, the Group nor its directors, officers, employees, representatives or agents take any responsibility or assume any liability for the taxation liabilities of Participants.

### **13.2 Notices**

Notices may be given by a Group Company or the Trust to Participants in any manner as the Board may from time to time determine.

### **13.3 Governing law**

These Rules and the rights and obligations of Participants under the Plan are governed by the law of New South Wales and each Participant irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.

# Annexure B

## Option Plan

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Annexure B to the Third Amended and Restated  
Unitholders' Deed



# MJ Bale Option Plan Rules

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**Newbale Clothing Nominees Pty Ltd**  
ACN 138 591 401  
in its capacity as trustee of the Newbale  
Clothing Unit Trust

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# 1. Defined terms & interpretation

## 1.1 Defined terms

In these Rules, unless the contrary intention appears, the following words have the following meanings:

<b>Term:</b>	<b>Definition:</b>
<b>Board</b>	all or some of the directors of the Company acting as a board.
<b>Business</b>	has the meaning given to it in the Unitholders' Deed.
<b>Business Day</b>	a day that is not a Saturday, Sunday, bank holiday or public holiday in New South Wales, Australia.
<b>Company</b>	Newbale Clothing Nominees Pty Ltd ACN 138 591 401.
<b>Corporations Act</b>	<i>Corporations Act 2001</i> (Cth).
<b>Eligible Employee</b>	an Employee whom the Board determines is to receive an Offer under the Plan.
<b>Employee</b>	(a) an individual whom the Board determines to be in the full-time employment in the Business; (b) a director of the Company or its Related Body Corporate holding a salaried employment in the Trust; or (c) a director of the Company or its Related Body Corporate.
<b>Exercise Condition</b>	the Performance Conditions or other condition (if any) determined by the Board and specified in an Offer which are, subject to these Rules, required to be satisfied, reached or met before an Option can be exercised.
<b>Exercise Period</b>	in respect of any Option, the period designated by the Board commencing on the Vesting Date and notified in an Exit Event Notice to the Participant as being the period during which the Participant may exercise the Option.
<b>Exercise Price</b>	nil.
<b>Exit Event</b>	the first to occur of: (a) the date on which Units are allotted and/or transferred under a prospectus (or other relevant offer document) lodged with the Australian Securities and Investments Commission (or other relevant regulatory body) in relation to an IPO; (b) the date on which an agreement for the sale to a third party purchaser of all Units in the Trust is completed; (c) the date on which, following a Trade Sale and following the passing of a resolution of Unitholders to approve the distribution and payment to Unitholders of the proceeds of sale that are available for distribution or payment to Unitholders, whether in a winding up, by return of capital, unit

redemption or otherwise, those proceeds are paid to Unitholders; and

- (d) the date of any other event determined by the Board in its sole discretion to be an Exit Event for the purposes of the Plan.

<b>Exit Event Notice</b>	has the meaning given to it in Rule 8.2.
<b>Grant Date</b>	with respect to an Option, the date on which the Board grants an Option to an Eligible Employee.
<b>IPO</b>	an initial public offering of Units, securities in the Company or the Trust or securities in a company of which the Company is a wholly owned subsidiary (as the case may be) in conjunction with an application for quotation of those securities on a stock exchange approved by the Trust.
<b>Nominee</b>	a trust of which that person is a trustee or a beneficiary or a superannuation fund of which that person is a trustee or a beneficiary, and who has been accepted by the Trust pursuant to Rule 6.4.
<b>Offer</b>	an invitation to apply for Options under the Plan which must be in writing in a form determined by the Board.
<b>Option</b>	an option to subscribe for a Unit.
<b>Participant</b>	an Eligible Employee or his or her Nominee who has been granted an Option under the Plan.
<b>Performance Condition</b>	one or more conditions which must be satisfied or circumstances which must exist before an Option vests under these Rules.
<b>Plan</b>	has the meaning given to it in Rule 2.1.
<b>Related Body Corporate</b>	has the meaning given to it in the Corporations Act.
<b>Reorganisation Event</b>	(a) a bonus issue of Units; (b) a sub-division or consolidation of Units; or (c) any other reorganisation or reconstruction of share capital where the Company or the Trust neither pays nor receives cash.
<b>Rules</b>	the rules governing the operation of the Plan which are set out in this document, as amended from time to time.
<b>Security Interest</b>	includes a mortgage, charge, pledge, lien, encumbrance or other third party interest of any nature.
<b>Trade Sale</b>	the sale of the Trust or the whole, or 75% or more by value, of the assets of the Business.
<b>Trust</b>	Newbale Clothing Unit Trust.

<b>Unitholder</b>	a holder of any Units.
<b>Unitholders' Deed</b>	the unitholders deed governing the operation of the Trust made between, among others, the unitholders of the Trust from time to time.
<b>Units</b>	ordinary units in the Trust.
<b>Vesting Date</b>	the date the Board determines to be the first date on which an Option may be exercised.

## 1.2 Interpretation

Headings are for ease of reference only and do not affect interpretation. In this document, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a rule, paragraph or schedule is to a rule or paragraph of, or schedule to, this document, and a reference to this document includes any schedule;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (f) a reference to time is to time in New South Wales, Australia;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (j) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this document or any part of it; and
- (k) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

## 2. Introduction

### 2.1 Name of Plan

The plan is called the "MJ Bale Option Plan" (**Plan**).

## **2.2 Objects of Plan**

The objects of the Plan are to:

- (a) attract, reward, retain and incentivise Eligible Employees;
- (b) establish a method by which Eligible Employees can participate in the future growth and profitability of the Trust; and
- (c) recognise the ongoing ability of Eligible Employees and their expected efforts and contribution to the performance and success of the Trust.

## **2.3 Commencement of Plan**

The Plan commences on the date it is formally adopted by the Board.

## **2.4 Advice**

Eligible Employees should obtain their own independent advice (at their own expense) on the financial, taxation and other consequences to them of, or relating to, participation in the Plan.

# **3. Operation and Administration of the Plan**

## **3.1 Plan operates in accordance with these Rules**

The Plan operates in accordance with these Rules which bind the Company, the Trust and each Participant.

## **3.2 Powers of Board**

The Board has full power to implement and administer the Plan. Without limitation, the Board will have power to:

- (a) determine appropriate procedures and make regulations consistent with these Rules for the administration and operation of the Plan;
- (b) construe and interpret the Plan, Offer and any other agreement or document executed pursuant to the Plan;
- (c) determine the number of Options that are granted to a Participant;
- (d) resolve conclusively all questions of fact or interpretation arising in connection with the Plan;
- (e) delegate any functions and powers it may consider appropriate, for the efficient administration of the Plan, to any person or persons (including a committee of Directors) whom the Board reasonably believes to be capable of performing those functions and exercising those powers;
- (f) take and rely upon independent professional or expert advice in relation to the exercise of any of their powers or discretions under the Plan;
- (g) select persons to receive Offers as the Board thinks fit; and
- (h) correct any defect, supply any omission or reconcile any inconsistency in the Plan or Offer.

### **3.3 Determination**

- (a) Without prejudice to Rule 3.2, any power or discretion conferred on the Board by these Rules may be exercised by the Board in the interests or for the benefit of the Trust and the Board has absolute discretion in any determination, decision, approval or opinion by it under these Rules. In exercising its power or discretion, the Board will act reasonably and in good faith.
- (b) Subject to Rule 3.3(a), every exercise of discretion by the Board (or its delegate) and every decision of the Board as to the interpretation, effect or application of these Rules is final, conclusive, and binding.

### **3.4 Plan limits**

The maximum number of Options that may be granted under the Plan is 250,000 Options.

## **4. Rights of Participants**

### **4.1 No conferred rights**

These Rules:

- (a) do not confer on an Employee the right to receive an Offer;
- (b) do not confer on a Participant the right to continue as an Employee; and
- (c) do not affect any right the Trust may have to terminate the employment of a Participant.

### **4.2 Incorporation of Plan**

- (a) The Plan will not form part of, and are not incorporated into, any contract of engagement or employment of any Eligible Employee or Participant.
- (b) No Eligible Employee or Participant will have any rights to compensation or damages in consequence of the termination of his/her office or employment, for any reason whatsoever, in so far as those rights arise or may arise from his/her ceasing to have rights under the Plan as a result of such termination, unless the Board determines otherwise.

### **4.3 Other schemes**

- (a) Participation in the Plan does not affect, and is not affected by, participation in any other employee share or option scheme operated by the Company or the Trust from time to time unless the terms of the other scheme provide otherwise.
- (b) Neither the adoption of the Plan, the submission of the Plan to the unitholders of the Trust for approval, nor any provision of the Plan will be construed as creating any limitations on the power of the Board to adopt such additional remuneration arrangements as they may deem desirable, including the granting of unit options and bonuses otherwise than under the Plan, and such arrangements may be either generally applicable or applicable only in specific cases.

#### **4.4 General meetings**

A Participant, as a Participant, may not attend or vote at general meetings of the Unitholders, and each Participant acknowledges that, as a Participant, he or she does not have the right to vote on the affairs of the Company or the Trust.

#### **4.5 Information**

A Participant is not entitled to demand any financial or other information from the Company or the Trust and the Company or the Trust is not obliged to provide the Participant with any such information.

### **5. Principal conditions**

#### **5.1 Options issued only to Eligible Employees**

An Option may not be issued to a person under the Plan unless the person is an Employee as at the Grant Date, or the Board determines otherwise.

#### **5.2 Options exercised only by Eligible Employees**

An Option is exercisable only if the holder of the Option is an Employee as at the Exercise Date, or the Board determines otherwise.

#### **5.3 Compliance with laws**

An Option may not be offered or issued to, or exercised by, an Eligible Employee or Participant if to do so would contravene the Trust Deed or the Unitholders' Deed.

#### **5.4 Exercise conditions**

In its absolute discretion, the Board may specify, in the Offer, Exercise Conditions which need to be satisfied before the Options can be exercised.

### **6. Offers and Applications for Options**

#### **6.1 Board may make offers**

- (a) Subject to these Rules, the Board may, from time to time, in its absolute discretion:
  - (i) make an Offer to any Eligible Employee; and
  - (ii) in relation to each Offer (which need not be the same for each Participant), specify the maximum number of Options for which the Eligible Employee may apply, the Exercise Price, the dates on which the Options are to be granted, the time period by which the application form must be received by the Trust and all other terms and conditions of the Offer and the Options (including any Exercise Conditions applicable to the Offer).
- (b) A copy of the Plan must accompany each Offer.
- (c) If a person ceases to satisfy the necessary eligibility requirements on or before the allocation of the Options, that person is not entitled to receive the Options under the Plan.



- (d) Eligibility to participate in the Plan does not confer on any Employee any right to participate in the Plan. Participation in the Plan will be solely determined by the Board.

## **6.2 Acceptance of Offer**

An Eligible Employee may accept an Offer by giving to the Trust a duly completed and executed application form in his or her own name within the time specified in the Offer.

## **6.3 Application for all (and not some) of the Options**

An Offer may only be accepted in its entirety and not in part, unless the Board determines otherwise.

## **6.4 Nominee**

- (a) The Eligible Employee to whom an Offer is made may accept an Offer himself personally or, subject to Rule 6.4(c), accept an Offer and nominate a Nominee to be the Participant.
- (b) The Trust may only issue the Options referred to in the Offer to that Eligible Employee or the Nominee nominated by the Eligible Employee.
- (c) The Company has the right to require the Eligible Employee to deliver the trust deed or other relevant documentation in respect of the Nominee to the Trust for its prior approval before the nomination by the Eligible Employee is accepted by the Trust.

## **6.5 Lapse of Offer**

An Offer not accepted in accordance with Rule 6.2 lapses unless the Board determines otherwise.

# **7. Grant of Options**

## **7.1 Acceptance of application and issue**

Within ten Business Days after receiving a duly completed and executed application form from an Eligible Employee, the Trust may, subject to the conditions of the Offer (if any) being satisfied:

- (a) accept the application form; and
- (b) issue to the Eligible Employee who has returned the duly completed and executed application form all of the Options the subject of the application form.

## **7.2 Eligible Employees becomes Participants**

An Eligible Employee becomes a Participant and is bound by these Rules when the Trust grants Options to that Eligible Employee.

## **7.3 Certificates**

The Trust must give to each Participant a certificate in respect of the number of Options that Participant holds, in such form as is approved by the Board from time to time.

## **7.4 Register**

The Company as trustee of the Trust must set up and maintain a register of optionholders, and at the same time as giving a Participant a certificate in accordance with Rule 7.3, update the Trust's register of optionholders.

## **7.5 Nil cash consideration payable for grant of an Option**

The consideration for the grant of an Option to an Eligible Employee (or his Nominee) is the services expected of an Eligible Employee (or his Nominee) to or for the benefit of the Trust. An Eligible Employee (or his Nominee) does not have to pay money or give other consideration for the grant of an Option unless otherwise determined by the Board and specified in the Offer.

## **7.6 Interest in Units to which Options convert**

A Participant has no right to any Units unless and until a Unit is issued to that Participant in accordance with these Rules.

# **8. Exercise of Options**

## **8.1 Exercise during Exercise Period**

A Participant may only exercise an Option during the Exercise Period.

## **8.2 Notice of an expected Exit Event**

Before an Exit Event occurs, the Company must give each Participant a notice (**Exit Event Notice**) stating:

- (a) the date it expects the Exit Event to occur;
- (b) the number of the Participant's Options that may be exercised; and
- (c) the Exercise Period.

## **8.3 If Exit Event does not subsequently occur**

If an expected Exit Event prompting an Exit Event Notice does not occur, all Exit Event Notices and exercise notices given in response to those Exit Event Notices will lapse and the Options the subject of those notices survive.

## **8.4 Notice of lapse of Exit Event Notice**

If an Exit Event Notice lapses, the Company must give each Participant notice of the fact as soon as practicable following the date that the Company becomes aware that the expected Exit Event prompting an Exit Event Notice will not occur.

## **8.5 Exercise Conditions**

Subject to Rule 6.3:

- (a) an Option may be exercised only if the Performance Conditions (if any) relating to it have been satisfied or waived by the Board. A determination made by the Board that any Performance Conditions have or have not been satisfied is final and binding upon the Participant unless the Board in its absolute discretion decides to revise any determination;

- (b) unless the Board otherwise determines, an Option cannot be exercised before the Vesting Date (if any) for the Option; and
- (c) the Board may determine that one or more Options will be subject to additional conditions for exercise.

#### **8.6 Exercise**

- (a) A Participant may exercise an Option granted to the Participant during the Exercise Period for the relevant Option by giving a notice and doing all the other things required by Rule 8.8(a).
- (b) Any Options not exercised in accordance with Rule 8.5 within the Exercise Period will lapse.

#### **8.7 Entitlement**

Each Option entitles its holder to subscribe for and be allotted one Unit on the exercise of the Option in accordance with the Plan and the payment of the Exercise Price.

#### **8.8 Notice**

- (a) To exercise an Option, the Participant must give a notice to the Trust specifying that the Participant exercises the Option. The notice must be accompanied by:
  - (i) the relevant Option Certificate;
  - (ii) payment of the Exercise Price in accordance with Rule 8.9; and
  - (iii) a deed of accession, in a form acceptable to the Board, pursuant to which the Participant accedes to the Unitholders' Deed (unless the Participant is already a party to the Unitholders' Deed) or the Board otherwise waives this requirement in writing.
- (b) Exercise of an Option is only effective when the Trust receives the entire amount of the Exercise Price.

#### **8.9 Payments**

All payments of the Exercise Price for an Option must be made by cheque, bank draft or otherwise in immediately available funds in favour of the Trust.

#### **8.10 Allotment**

Subject to these Rules, on exercise of an Option the Trust must allot and issue to the Participant the Unit the subject of the Option.

#### **8.11 Unit allotted upon exercise of Option**

The Unit allotted and issued following exercise of an Option, upon allotment will rank equally in all respects with the existing issued Units.

#### **8.12 Interest in Units to which Options convert**

A Participant has no interest in the Unit the subject of an Option unless and until the Unit is issued to that Participant.

### **8.13 Unitholders' Deed**

Pursuant to Rule 8.8(a)(iii), a Participant will be required to execute a deed of accession, in a form acceptable to the Board, pursuant to which the Participant accedes to the Unitholders' Deed. Each Participant acknowledges that the Unitholders' Deed will contain drag along rights pursuant to which some Unitholders will have the right to compel other Unitholders (including the Participant) to sell his, her or its Units to a third party purchaser, restraints, confidentiality and other restrictions upon the Unitholders.

## **9. Lapse of Options**

### **9.1 Events causing Lapse of Options**

An Option issued pursuant to the Plan is issued on the condition that it lapses on the earlier of:

- (a) the date of an Exit Event in accordance with Rule 8.2(a);
- (b) the seventh anniversary of the Grant Date; and
- (c) the date the Board determines that the Option should lapse because the Participant (in the Board's opinion):
  - (i) has breached a material obligation under the Plan;
  - (ii) has committed any act of fraud or serious misconduct in relation to the affairs of the Company or the Trust (whether or not charged with an offence) or gross dereliction of duty;
  - (iii) has become insolvent, declared himself or become bankrupt or entered into administration or does something or has done something which prevents the Participant from or may result in the Participant being unable to properly perform his duties;
  - (iv) has done any act which brings the Company or the Trust into disrepute; or
  - (v) has breached any restrictive covenant or non-compete provision contained in the Participant's service contract with the Trust or a related entity of the Trust.

### **9.2 Rights cease**

If an Option lapses, all rights of a Participant under the Plan in respect of that Option cease, and no consideration will be payable for or in relation to that lapse.

## **10. Dealings with Options**

### **10.1 Options personal**

Except where Options have been transferred with the prior written consent of the Board, Options held by a Participant are personal to the Participant and may not be exercised by any other person.

## **10.2 No unauthorised disposal**

Except with the prior written consent of the Board, a Participant must not dispose of, deal with or grant any Security Interest over or otherwise deal with an Option or any interest in an Option (or purport to do any of those things), and any Security Interest or disposal or dealing will not be recognised in any manner by the Trust.

## **10.3 No transfers**

- (a) Subject to these Rules, a Participant may not dispose, distribute, deal with, assign or transfer an Option or any interest in an Option or change any trustee of a Nominee without the prior written consent of the Board. Any purported disposal or transfer not in accordance with this Rule 10 is void and of no effect and the Options will automatically lapse on the date of any such purported disposal or transfer.
- (b) In the event that any Nominee to whom Options are granted pursuant to these Rules ceases to be within the relationship to the Eligible Employee, such Nominee must transfer the Options back to the Eligible Employee within 14 days. If the Nominee fails to transfer the Options back to the Eligible Employee within the 14 day period, the Options will lapse at the expiry of such period.

## **11. Dealings with Units**

### **11.1 No disposal**

Without prejudice to the terms of the Trust Deed and the Unitholders' Deed, a Participant may not dispose of, deal with or grant any Security Interest over, any Units issued on exercise of the Options (or purport to do any of those things). Any purported disposal or transfer not in accordance with this Rule 11 is void and of no effect.

### **11.2 Refusal to register transfer**

Subject to any applicable securities laws, rules or regulations of any government body, the terms of the Trust Deed and the Unitholders' Deed, the Trust must, and each Participant instructs the Trust to:

- (a) refuse to register a purported transfer of any Units issued on exercise of the Options; and
- (b) if the Board instructs the Trust to do so, ensure a holding lock is applied to prevent a transfer.

## **12. Reorganisation of capital**

### **12.1 New issues**

Participants are not entitled to participate in any new issue of securities in the Trust to all existing Unitholders unless the Board determines otherwise.

### **12.2 Re-organisation of capital**

If there is a Reorganisation Event but excluding any issues of securities pursuant to acquisitions of companies or businesses by the Company or the Trust, then the rights of a Participant (including the number of Options to which each Participant is entitled or the amount of the Exercise Price) are changed to the extent necessary to comply with the

listing rules of the ASX applying to a reorganisation of capital of a company or trust with options on issue at the time of the reorganisation, whether or not the Trust is listed.

### **12.3 Calculations and adjustments**

Any calculation or adjustment required under this Rule 12 will be made by the Board and is, in the absence of manifest error, final and conclusive and binding on the Trust and the Participant.

### **12.4 Notice of change**

The Trust must within a reasonable period give each Participant notice of any change under these Rules to the number of Units that the Participant may subscribe for on exercise of an Option.

## **13. Warranties**

Each Participant warrants that he or she has obtained his or her own independent advice on the legal, financial, taxation and other consequences to him or her of, or relating to, participation in the Plan, and is not relying on anything that the Company, the Trust, the Board or any member of the Board have said or done.

## **14. Duration of the Plan**

### **14.1 Termination**

The Plan may be terminated at any time by resolution of the Board.

### **14.2 Suspension**

The Board, by resolution, may decide to suspend the operation of the Plan either for a fixed period or indefinitely and may also decide to end any such period of suspension.

### **14.3 No prejudice**

If the Plan terminates or is discontinued or suspended for any reason, that does not prejudice the accrued rights of the Participants.

## **15. Amendment**

### **15.1 Board may amend rules**

Subject to the Trust Deed and Unitholders' Deed, the Board may at any time amend any of these Rules, or waive or modify the application of any of these Rules in relation to a Participant.

### **15.2 Consent**

If an amendment to be made under Rule 15.1 would adversely affect the rights of any Participant in respect of any Option held by them, the Board must obtain the consent of Participants who between them hold not less than 75% of the total number of those Options held by all those Participants before making the amendment.

## **16. Primary Instruments**

These Rules are to be interpreted subject to the Trust Deed, Unitholders' Deed and the Corporations Act. Where there is any conflict between the provisions of these Rules and

the Trust Deed or the Unitholders' Deed then these Rules will be amended to give effect to the provisions of the Trust Deed and the Unitholders' Deed (as applicable).

## **17. Trust Deed and Unitholders' Deed**

Each Participant acknowledges and agrees that the Unitholders and the Company may amend the Trust Deed and the Unitholders' Deed, including amending the rights and restrictions applying to the Units to be issued on exercise of the Options.

## **18. General**

### **18.1 Tax**

Neither the Trust, the Company nor its directors, officers, employees, representatives or agents take any responsibility or assume any liability for the taxation liabilities of Participants or Eligible Persons.

### **18.2 Notices**

Notices may be given by the Company or the Trust to Participants in any manner as the Board may from time to time determine.

### **18.3 Governing law**

These Rules and the rights and obligations of Participants under the Plan are governed by the law of New South Wales and each Participant irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.