

ASX Announcement – Australian Unity Office Fund

4 October 2021

Merger Implementation Deed

Australian Unity Investment Real Estate Limited (**AUIREL**) as responsible entity of Australian Unity Office Fund (**ASX: AOF**) is pleased to announce that AOF has entered into a merger implementation deed (**MID**) with Australian Unity Property Limited (**AUPL**) as responsible entity for Australian Unity Diversified Property Fund (**DPF**) to create 'Australian Unity Property Fund' (**AUPF**) (the **Merger**).

Under the terms of the Merger, AOF will acquire all the units in DPF and issue new AOF units to DPF unitholders at the ratio of 0.455 AOF unit for every 1 DPF unit held. Post Merger, AOF unitholders will own approximately 54% of AUPF and DPF unitholders will own approximately 46% of AUPF. The terms agreed in the MID are consistent with the in principle terms announced to the ASX on 20 September 2021.

The Merger is to be implemented by way of a DPF trust scheme (**DPF Trust Scheme**) subject to judicial advice and obtaining various approvals at an AOF unitholder meeting that are required to facilitate the DPF Trust Scheme (**AOF Meeting**).

The AOF Meeting will require the approval by AOF unitholders by way of ordinary resolutions, being 50% of those AOF unitholders voting (in person or by proxy). The DPF Trust Scheme will require the approval by DPF unitholders by way of a special resolution, being 75% of those DPF unitholders voting (in person or by proxy).

A notice of meeting and accompanying explanatory memorandum (**Explanatory Memorandum**) for the AOF Meeting is expected to be sent to unitholders on, or around, 15 November 2021. It is expected that DPF unitholders will be sent an Explanatory Memorandum for the DPF Trust Scheme at the same time.

The Merger remains subject to certain conditions described in the MID, including the approval by both AOF and DPF unitholders at meetings of unitholders expected to occur on, or around, 10 December 2021. If all conditions are satisfied or waived, implementation of the Merger is expected to occur on, or around, 22 December 2021.

AOF Fund Manager, Nikki Panagopoulos, said:

“We are pleased to have reached this important milestone in the proposed merger of AOF and DPF. Since we first announced the intention to investigate the merger in July 2021, we have worked with DPF to develop a transaction structure that provides an opportunity for unitholders in both funds to benefit from the combined portfolio.”

“We believe exposure to a \$1.2 billion diversified portfolio with approximately 97% occupancy and 5 year weighted average lease expiry profile will provide unitholders with a superior investment proposition and sustainability of income.”

“The combined portfolio also offers value add opportunities across multiple asset classes and the ability to continue active asset management and enhance portfolio construction to maximise overall returns”.

“We look forward to continuing our engagement with unitholders and providing the Explanatory Memorandum for consideration in mid-November 2021.”

Issuer:

Australian Unity Investment Real Estate Limited
271 Spring Street
Melbourne VIC 3000
ABN 86 606 414 368
AFSL: 477434

Registry Enquiries:

Australian Unity Office Fund Investor Services
1300 737 760 or
+61 2 9290 9600
(outside Australia)

ASX Announcement – Australian Unity Office Fund

AOF distributions and portfolio management

As previously announced, AOF intends to pay the distribution for the quarter ended 30 September 2021 on 19 October 2021. During December and based on an expected implementation date of on, or around, 22 December 2021, AOF intends to declare a distribution for the period from 1 October 2021 until immediately prior to implementation.

AOF will also continue to progress ongoing active management initiatives across the portfolio.

Timetable and next steps

AOF expects to send an Explanatory Memorandum to AOF unitholders on, or around, 15 November 2021. A meeting of AOF unitholders is expected to be held on, or around, 10 December 2021 where unitholders will be able to vote on the Merger. It is expected that DPF will hold a unitholder meeting on the same day to consider the DPF Trust Scheme. These dates are indicative only and may be subject to change.

Further details on the terms of the Merger and the timetable is provided in the MID attached to this announcement.

Advisors

AUIREL is being advised by Highbury Partnership as financial adviser and MinterEllison as legal adviser.

Authorised by:

AUIREL Disclosure Committee

Contact information

Nikki Panagopoulos

Fund Manager – AOF

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About AOF

AOF is an ASX-listed REIT that wholly owns a diversified portfolio of office properties located across Australian metropolitan and CBD markets in Sydney, Adelaide, Melbourne, Brisbane and Canberra.

This announcement is issued by Australian Unity Investment Real Estate Limited ABN 86 606 414 368 AFSL 477434 (AUIREL). AUIREL is owned equally by subsidiaries of Australian Unity Limited ABN 23 087 648 888 and Keppel Capital Holdings Pte Ltd CRN 201302079N, the asset management arm of Singapore-based Keppel Corporation Limited CRN 196800351N.

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(outside Australia)

Merger Implementation Deed

Australian Unity Investment Real Estate Limited
as responsible entity for Australian Unity Office Fund
ARSN 113 369 627
(AOF)

Australian Unity Property Limited as responsible
entity for Australian Unity Diversified Property Fund
ARSN 106 724 038
(DPF)

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Details

Date

Parties

Name **Australian Unity Investment Real Estate Limited** ABN 86 606 414 368
as responsible entity for **Australian Unity Office Fund**

ARSN 113 369 627

Short form name **AOF RE**

Notice details Level 15
271 Spring Street
Melbourne VIC 3000
Email: aof@australianunity.com.au
Attention: Nikki Panagopoulos

Name **Australian Unity Property Limited** ABN 58 079 538 499
as responsible entity for **Australian Unity Diversified Property Fund**

ARSN 106 724 038

Short form name **DPF RE**

Notice details Level 15
271 Spring Street
Melbourne VIC 3000
Email: lcahillmulvogue@australianunity.com.au
Attention: Louise Cahill-Mulvogue

Background

- A AOF RE and DPF RE have agreed that AOF RE as responsible entity of AOF will acquire 100% of the Scheme Units pursuant to the Trust Scheme.
- B DPF RE has agreed to propose and implement the Trust Scheme on the terms and conditions of this deed.
- C AOF RE has agreed to assist DPF RE with the preparation of the DPF Explanatory Memorandum and assist with the implementation of the Trust Scheme on the terms and conditions of this deed.
- D DPF RE has agreed to assist AOF RE with the preparation of the AOF Explanatory Memorandum in connection with the merger contemplated by the Trust Scheme on the terms and conditions set out in this deed.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

Agreed Steps Plan means the steps plan agreed for the purposes of this definition by AOF RE and DPF RE setting out, amongst other matters, the process for the proposed refinancing of the Merged Group.

AOF means Australian Unity Office Fund ARSN 113 369 627.

AOF Announcement means an announcement to be made by AOF in a form agreed or to be agreed between the parties to this document in connection with:

- (a) the execution of this deed; and
- (b) the Trust Scheme.

AOF Group means AOF and each of its controlled entities.

AOF Competing Proposal means a proposed transaction or arrangement pursuant to which a person would, if the proposed transaction or arrangement is entered into or completed substantially in accordance with its terms:

- (a) directly or indirectly acquire, have a right to acquire or otherwise acquire an economic interest in, all or a substantial part of AOF;
- (b) acquire a Relevant Interest in 50% or more of the AOF Units or otherwise acquire Control of AOF; or
- (c) otherwise directly or indirectly acquire or merge with AOF or a substantial part of its assets or business, whether by way of takeover offer, scheme of arrangement, member approved acquisition, capital reduction, security buy back, sale or purchase of assets, joint venture, reverse takeover, dual-listed company structure or other synthetic merger or any other transaction or arrangement.

AOF Explanatory Memorandum means the explanatory memorandum to be prepared by AOF in respect of the AOF Unitholder Resolutions in accordance with the terms of this deed and dispatched to AOF Unitholders.

AOF Independent Expert means an independent expert to be engaged by AOF RE to express an opinion on whether the merger contemplated by the Trust Scheme is in the best interests of AOF Unitholders.

AOF Independent Expert's Report means the report from the AOF Independent Expert for inclusion in the AOF Explanatory Memorandum stating whether or not in the AOF Independent Expert's opinion the merger contemplated by the Trust Scheme is in the best interest of AOF Unitholders.

AOF Information means all information regarding AOF which AOF provides to DPF pursuant to clause 4.3(c) for inclusion in the DPF Explanatory Memorandum but excludes the Investigating Accountant's Report and the DPF Independent Expert's Report.

AOF Material Adverse Change means any matter, event or circumstance which individually, or when aggregated with any other matters, events or circumstances of a similar kind or category, has or is reasonably likely to have the effect of a diminution in:

- (a) the consolidated net assets of the AOF Group by an amount that is 5% or more of the value of the consolidated net assets of the AOF Group as at 30 June 2021; or
- (b) the FFO of the AOF Group by an amount that is 5% or more of the value of the FFO of the AOF Group for the financial year ended 30 June 2021 determined on the basis described

in the annual report of AOF for financial year ended 30 June 2021, but for the relevant matters, events or circumstances,

in each case other than an Excluded Event.

AOF Material Contract means a contract or commitment:

- (c) requiring total payments in excess of \$1,000,000, or, in the case of a number of related contracts or commitments, \$10,000,000 in aggregate, by AOF; and
- (d) entered into by AOF (acting through AOF RE) other than in the ordinary course of business and under which a person does not have an unconditional right to terminate within two years of entry into the contract or commitment,

but excludes this deed.

AOF Meeting means a meeting of AOF Unitholders to be held on 10 December 2021 or such other date as the parties agree in writing (including any adjournment of that meeting) to consider and, if thought fit, approve the AOF Unitholder Resolutions.

AOF Permitted Distributions means any cash distributions of income to AOF Unitholders contemplated under clause 5.3.

AOF Prescribed Occurrence means the occurrence of any of the following events on or after the date of this deed:

- (a) AOF (acting through AOF RE) will convert all or any of its securities into a larger or smaller number of securities;
- (b) AOF (acting through AOF RE) resolves to reduce its capital in any way;
- (c) AOF (acting through AOF RE):
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement,in relation to interests in AOF;
- (d) except the AOF Permitted Distributions as contemplated under clause 5.3, AOF (acting through AOF RE) declares, pays or makes, agrees to pay or make, or incurs a liability to pay or make, a distribution of income, profits, assets or capital;
- (e) AOF (acting through AOF RE) issues units, or grants an option over its units, or agrees to make such an issue or grant such an option;
- (f) AOF (acting through AOF RE) issues or agrees to issue, securities or other instruments convertible into units;
- (g) AOF (acting through AOF RE) makes any change or amendment to its constitution; or
- (h) except the acquisition of the York Street Property, AOF (acting through AOF RE):
 - (i) acquires or disposes of;
 - (ii) agrees to acquire or dispose of; or
 - (iii) offers, proposes, announces a bid or tenders for,other than in the ordinary course of business, any securities, business, assets, interests in a joint venture, entity or undertaking, whether in one or a number of related transactions, where the value involved in such transaction or transactions exceeds \$1,000,000 individually or \$10,000,000 in aggregate;
- (i) AOF (acting through AOF RE) incurs any additional borrowings or financial indebtedness or increases existing financial indebtedness, (other than in connection with budgeted capital expenditure or in the ordinary course of business) in excess of \$1,000,000 in a single transaction or \$10,000,000 in a series of transactions, or creates, or agrees to create, any mortgage, charge, lien or other encumbrance over the whole or a substantial part of its business or property;

- (j) AOF (acting through AOF RE) providing any financial accommodation other than in the ordinary course of business;
 - (k) AOF (acting through AOF RE):
 - (i) enters into or agrees to enter into an AOF Material Contract;
 - (ii) changes the terms of any AOF Material Contract;
 - (iii) pays, discharges or satisfies any Claims, Liabilities or obligations under any AOF Material Contract other than in accordance with its terms and consistently with past practice; or
 - (iv) waives any material Claims or rights under, or waives the benefit of, any provisions of any AOF Material Contract; or
 - (l) an Insolvency Event occurs in relation to AOF,
- provided that an AOF Prescribed Occurrence will not include a matter:
- (m) required to be done or procured by AOF or AOF RE pursuant to, or which is otherwise contemplated by, this deed or the Trust Scheme;
 - (n) which was disclosed to ASX before the date of this deed;
 - (o) which was fairly disclosed to DPF in the Disclosure Material; or
 - (p) the undertaking of which DPF RE has approved in writing.

AOF RE means Australian Unity Investment Real Estate Limited ABN 86 606 414 368 as responsible entity for AOF.

AOF RE Board means the board of directors of AOF RE as the responsible entity.

AOF Deed Poll means a deed poll to be executed by AOF RE in favour of Scheme Unitholders, substantially in the form set out in Annexure A or in such other form as the parties agree in writing.

AOF Unit means a fully paid ordinary unit in AOF.

AOF Unitholder Resolutions means the resolutions of AOF Unitholders to approve the Trust Scheme being:

- (a) an ordinary resolution approving the proposed issue of New AOF Units to Scheme Unitholders for the purposes of ASX Listing Rule 7.1;
- (b) an ordinary resolution approving the proposed issue of New AOF Units to certain Scheme Unitholders for the purposes of ASX Listing Rule 10.11; and
- (c) such other resolutions necessary to give effect to the Trust Scheme.

AOF Warranties means the representations and warranties made by AOF in clause 8.4.

ASIC means the Australian Securities and Investments Commission.

ASIC Modifications means:

- (a) a modification by ASIC of, or exemption by ASIC from, section 601FC(1)(d) of the Corporations Act to permit DPF RE to treat Ineligible Foreign Unitholders differently when implementing the Trust Scheme;
- (b) a modification by ASIC of, or exemption by ASIC from, Divisions 2 to 5A inclusive of Part 7.9 of the Corporations Act, and the requirement to hold an Australian financial services licence, in relation to the proposed offer to purchase Scheme Units under the Trust Scheme and the offer of New AOF Units under the Trust Scheme;
- (c) an exemption from the requirement to provide a financial services guide in relation to the DPF Explanatory Memorandum; and
- (d) any other modification or exemption from the Corporations Act or relief from ASIC that AOF RE and DPF RE agree is necessary to give effect to the Trust Scheme or to avoid a breach of law.

ASX means ASX Limited ABN 98 008 624 691 or, as the context requires, the financial market conducted by it.

ASX Confirmations means confirmation from the ASX in relation to the non-application of ASX Listing Rule 11.1 in connection with the Trust Scheme and such other confirmations and waivers from ASX as AOF RE considers necessary to give effect to the Trust Scheme or avoid a breach of the ASX Listing Rules.

ASX Listing Rules means the official listing rules of ASX.

ATO means the Australian Taxation Office.

Business Day has the meaning given in the ASX Listing Rules.

Capped Withdrawal Facility means the capped withdrawal facility to be offered by DPF RE to DPF Unitholders in accordance with clause 2.8, pursuant to which DPF Unitholders may request a redemption of DPF Units.

Change of Control Contract means each contract agreed in writing for the purpose of this definition by AOF RE and DPF RE.

Claim means any claim, notice, demand, action, proceeding, litigation, investigation, or judgment, however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort, statute or otherwise and whether involving a third party or a party to this deed.

Competing Proposal means DPF Competing Proposal in the case of DPF and AOF Competing Proposal in the case of AOF.

Conditions means the conditions to the implementation of the Trust Scheme set out in clause 3.1.

Confidentiality Deed means the confidentiality deed dated 30 August 2021 between DPF RE and AOF RE.

Constitutional Amendment Resolution means a special resolution of DPF Unitholders made in accordance with section 601GC of the Corporations Act and substantially in the form set out in Schedule 2.

Control has the meaning given to it in section 50AA of the Corporations Act.

Controlled Entity means, in relation to a person, any entity which the person Controls.

Corporations Act means the *Corporations Act 2001* (Cth), as may be modified in respect of a party or the Trust Scheme.

Court means the Supreme Court of New South Wales or another court of competent jurisdiction agreed in writing by AOF RE and DPF RE.

Disclosure Material means the due diligence information disclosed by or on behalf of one party to the other party or its Representatives through the online data room accessible to AOF or DPF (as the case may be), or through electronic mail, at the request of the other party or its Representatives or otherwise pursuant to the Confidentiality Deed, including responses to requests for information provided to the other party, prior to 1 October 2021.

DPF means Australian Unity Diversified Property Fund ARSN 106 724 038.

DPF Announcement means an announcement to be made by DPF in a form agreed or to be agreed between the parties to this deed in connection with:

- (a) the execution of this deed; and
- (b) the Trust Scheme.

DPF RE Board means the board of directors of DPF RE, as the responsible entity.

DPF Competing Proposal means any expression of interest, proposal, offer, transaction or arrangement by or with any person as a result of which, if the expression of interest, proposal, offer, transaction or arrangement is entered into or completed substantially in accordance with its terms:

- (a) a person other than AOF will:

- (i) directly or indirectly acquire, have a right to acquire or otherwise acquire an economic interest in, all or a substantial part of DPF;
 - (ii) acquire a Relevant Interest in 50% or more of the DPF Units or otherwise acquire Control of DPF; or
 - (iii) otherwise directly or indirectly acquire or merge with DPF or a substantial part of its assets or business, whether by way of takeover offer, trust scheme, unitholder approved acquisition, capital reduction, unit buy back, sale or purchase of assets, joint venture, reverse takeover, dual-listed company structure, recapitalisation, establishment of a new holding company or trust for DPF or other synthetic merger or any other transaction or arrangement; or
- (b) DPF would be required to abandon or otherwise fail to proceed with the Trust Scheme.

DPF Constitution means the constitution establishing DPF dated 13 October 2003 as amended by the DPF constitution dated 26 October 2006, supplemental deed dated 30 September 2010, supplemental deed dated 25 October 2010, supplemental deed dated 30 July 2015, supplemental deeds dated 2 September 2015, supplemental deed dated 13 June 2017, deed of amendment dated 23 October 2019, as further amended from time to time.

DPF Explanatory Memorandum means the explanatory memorandum to be prepared by DPF in respect of the Trust Scheme in accordance with the terms of this deed and dispatched to DPF Unitholders.

DPF Group means DPF and each of its controlled entities.

DPF Independent Expert means an independent expert to be engaged by DPF RE to express an opinion on whether the Trust Scheme is fair and reasonable for, and in the best interests of, Scheme Unitholders.

DPF Independent Expert's Report means the report from the DPF Independent Expert for inclusion in the DPF Explanatory Memorandum stating whether or not in the DPF Independent Expert's opinion the Trust Scheme is fair and reasonable for, and in the best interests of, Scheme Unitholders.

DPF Information means all information included in the DPF Explanatory Memorandum, other than the AOF Information, the DPF Independent Expert's Report and DPF Investigating Accountant's Report.

DPF Material Adverse Change means any matter, event or circumstance which individually, or when aggregated with any other matters, events or circumstances of a similar kind or category, has or is reasonably likely to have the effect of a diminution in:

- (a) the consolidated net assets of the DPF Group by an amount that is 5% or more of the value of the consolidated net assets of the DPF Group as at 30 June 2021; or
- (b) the FFO of the DPF Group by an amount that is 5% or more of the value of the FFO of the DPF Group for the financial year ended 30 June 2021 determined on the basis described in the annual report of DPF for financial year ended 30 June 2021, but for the relevant matters, events or circumstances,

in each case other than an Excluded Event.

DPF Material Contract means, a contract or commitment:

- (a) requiring total payments in excess of \$1,000,000 or, in the case of a number of related contracts or commitments, \$10,000,000 in aggregate, by DPF; and
- (b) entered into by DPF (acting through DPF RE), other than in the ordinary course of business and under which a person does not have an unconditional right to terminate within two years of entry into the contract or commitment,

but excludes this deed.

DPF Permitted Distributions means any cash distributions of income to DPF Unitholders contemplated under clause 5.4.

DPF Prescribed Occurrence means the occurrence of any of the following events on or after the date of this deed:

- (a) DPF (acting through DPF RE) converts all or any of its units into a larger or smaller number of units;
- (b) DPF (acting through DPF RE) resolves to reduce its capital in any way;
- (c) DPF (acting through DPF RE):
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement, in relation to interests in DPF;
- (d) except the DPF Permitted Distributions as contemplated under clause 5.4, DPF (acting through DPF RE) declares, pays or makes, agrees to pay or make, or incurs a liability to pay or make, a distribution of income, profits, assets or capital;
- (e) DPF (acting through DPF RE) issues units, or grants an option over its units, or agrees to make such an issue or grant such an option other than as required to facilitate the reinvestment of distributions by unitholders;
- (f) DPF (acting through DPF RE) issues or agrees to issue, securities or other instruments convertible into units;
- (g) DPF (acting through DPF RE) makes any change or amendment to its constitution;
- (h) DPF (acting through DPF RE):
 - (i) acquires or disposes of;
 - (ii) agrees to acquire or dispose of; or
 - (iii) offers, proposes, announces a bid or tenders for, other than in the ordinary course of business, any securities, business, assets, interests in a joint venture, entity or undertaking, whether in one or a number of related transactions, where the value involved in such transaction or transactions exceeds \$1,000,000 individually or \$10,000,000 in aggregate;
- (i) DPF (acting through DPF RE) incurs any additional borrowings or financial indebtedness or increases existing financial indebtedness (other than in the ordinary course of business) in excess of \$1,000,000 in a single transaction or \$10,000,000 in a series of transactions, or creates, or agrees to create, any mortgage, charge, lien or other encumbrance over the whole or a substantial part of its business or property;
- (j) DPF (acting through DPF RE) providing any financial accommodation other than in the ordinary course of business;
- (k) DPF (acting through DPF RE):
 - (i) enters into or agrees to enter into a DPF Material Contract;
 - (ii) changes the terms of any DPF Material Contract;
 - (iii) pays, discharges or satisfies any Claims, Liabilities or obligations under any DPF Material Contract other than in accordance with its terms and consistently with past practice; or
 - (iv) waives any material Claims or rights under, or waives the benefit of, any provisions of any DPF Material Contract,
- (l) an Insolvency Event occurs in relation to DPF,
provided that a DPF Prescribed Occurrence will not include a matter:
 - (m) required to be done or procured by DPF or DPF RE pursuant to, or which is otherwise contemplated by, this deed or the Trust Scheme;
 - (n) which was fairly disclosed to AOF in the Disclosure Material; or

(o) the undertaking of which AOF has approved in writing.

DPF RE means Australian Unity Property Limited ABN 58 079 538 499 as responsible entity for DPF.

DPF Unit Register means the register of DPF Unitholders from time to time, administered by DPF.

DPF Unitholder means a person who is registered in the DPF Unit Register as a holder of DPF Units.

DPF Units means fully paid ordinary units in DPF.

DPF Warranties means the representations and warranties made by DPF in clause 8.1.

Effective means the coming into effect of the Supplemental Deed pursuant to section 601GC(2) of the Corporations Act.

Effective Date means the date on which the DPF lodges the Supplemental Deed with ASIC, or such other date as the parties agree in writing.

End Date means 31 March 2022 or such later date agreed by the parties in writing.

Excluded Event means a matter, event or circumstance:

- (a) required or expressly contemplated by this deed or the transactions contemplated by it;
- (b) arising as a result of any change in applicable law or governmental policy;
- (c) resulting from a change in generally accepted accounting principles;
- (d) announced by AOF RE to ASX prior to the date of this deed; or
- (e) agreed in writing between AOF RE and DPF RE.

Exclusivity Period means the period from and including the date of this deed to the earlier of:

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

Explanatory Memorandum means the AOF Explanatory Memorandum or the DPF Explanatory Memorandum, as applicable.

FATA means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

FIRB means the Foreign Investment Review Board.

First Court Date means the first day of hearing of an application made to the Court by DPF RE for the First Judicial Advice or, if adjourned, the day of the adjourned hearing.

First Judicial Advice means confirmation from the Court that, among other things, DPF RE would be justified in convening the Scheme Meeting for the purposes of considering the Constitutional Amendment Resolution.

FFO is a Property Council of Australia definition which adjusts the statutory Australian Accounting Standards profit for the year for non-cash changes in investment properties, non-cash impairment of goodwill, non-cash fair value adjustments to financial instruments, amortisation of incentives and leasing costs, rental straight-line adjustments and other unrealised or one-off items.

Government Authority means any government or governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency or entity.

Implementation Date means the date which is two Business Days after the Record Date or such other date as the parties agree in writing.

Ineligible Foreign Unitholder means a Scheme Unitholder whose address as shown in the DPF Unit Register as at the Record Date is a place outside Australia and its external territories, New Zealand, and such other jurisdictions as DPF RE and AOF RE agree in writing or as may be required by any applicable ASIC Modification.

Insolvency Event means:

- (a) a 'controller' (as defined in section 9 of the Corporations Act), administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a person;
- (c) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraphs (a) or (b) of this definition;
 - (ii) winding up or deregistering a person; or
 - (iii) proposing or implementing a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act;
- (d) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
 - (i) a moratorium of any debts of a person;
 - (ii) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
 - (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,or any agreement or other arrangement of the type referred to in this paragraph (d) is ordered, declared or agreed to;
- (e) as a result of the operation of section 459F(1) of the Corporations Act, a person is taken to have failed to comply with a statutory demand (as defined in the Corporations Act);
- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a person;
- (g) the Commissioner of Taxation issues a notice to any creditor of a person under the *Taxation Administration Act 1953* (Cth) requiring that creditor to pay any money owing to that person to the Commissioner in respect of any tax or other amount required to be paid by that person to the Commissioner (whether or not due and payable) or the Commissioner advises that creditor that it intends to issue such a notice;
- (h) anything analogous to anything referred to in paragraphs (a) to (g) (inclusive) of this definition, or which has a substantially similar effect, occurs with respect to a person under any law of any jurisdiction; or
- (i) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

Investigating Accountant means PwC.

Investigating Accountant's Report means a report to be prepared by the Investigating Accountant:

- (a) in the case of AOF, addressed to AOF; and
- (b) in the case of DPF, addressed to DPF.

Liabilities means all liabilities, losses, damages, outgoings, costs (including legal costs on a full indemnity basis) and expenses of whatever description, however arising, and whether present, unascertained, immediate, future or contingent.

Merged Group means, if the Trust Scheme is implemented, the AOF Group and the DPF Group.

Net Assets means, in respect of a party, the excess of total assets over total liabilities of that party on a consolidated basis.

New AOF Unit means a fully paid ordinary unit in AOF to be issued to Scheme Unitholders under the Trust Scheme.

Nominee means a nominee appointed by AOF.

NTA means net tangible assets (being total assets less total liabilities).

RE Board means DPF RE Board in the case of DPF and AOF RE Board in the case of AOF.

Record Date means 7.00pm (Sydney time) on the day that is two Business Days after the Effective Date or such other date as the parties agree in writing.

Regulatory Guides means all applicable regulatory guides published by ASIC and in force at the date of this document.

Related Entity means, in relation to a party, any entity that is related to that party within the meaning of section 50 of the Corporations Act.

Relevant Interest has the meaning given in the Corporations Act.

Representative means, in respect of a party, a director, officer, employee, advisor, agent or representative of that party.

Revenue Authority means ATO or any State Revenue Authority.

Scheme Consideration means the consideration to be provided by AOF in consideration for the transfer to AOF of the Scheme Units, being an entitlement of a Scheme Unitholder to receive 0.455 New AOF Units for each Scheme Unit held by a Scheme Unitholder, subject to clause 2.

Scheme Meeting means a meeting of DPF Unitholders to be held on 10 December 2021 or such other date as the parties agree in writing (including any adjournment of that meeting) to consider and, if thought fit, approve the Constitutional Amendment Resolution.

Scheme Unitholder means each DPF Unitholder as at the Record Date.

Scheme Unit means a DPF Unit on issue as at the Record Date.

Second Court Date means the first day of hearing of an application made to the Court by DPF RE for the Second Judicial Advice or, if adjourned, the day of the adjourned hearing.

Second Judicial Advice means confirmation from the Court that DPF Unitholders having approved the Constitutional Amendment Resolution by the requisite majority, DPF would be justified in implementing the Trust Scheme, giving effect to the DPF Constitution (amended by the Supplemental Deed) and taking all steps to give effect to the Trust Scheme.

State Revenue Authority means a taxation authority of a State or Territory.

Superior Proposal means a Competing Proposal which:

- (a) is bona fide;
- (b) is proposed in writing by or on behalf of a person who the RE Board considers is of reputable commercial standing;
- (c) in the determination of the RE Board acting in good faith is reasonably capable of being valued and completed, taking into account both the nature of the Competing Proposal and the person or persons making it; and
- (d) in the determination of the RE Board acting in good faith and in order to satisfy what the RE Board considers to be its fiduciary or statutory duties (having taken appropriate legal advice) would, if completed substantially in accordance with its terms, result in a transaction more favourable to the Scheme Unitholders or AOF Unitholders (as the case may be) than the merger contemplated by the Trust Scheme.

Supplemental Deed means a deed poll under which DPF will amend the DPF Constitution, the form of which is contained in Annexure B, with any alterations or conditions approved in writing by AOF RE and DPF RE.

Timetable means the indicative timetable in relation to the Trust Scheme, as set out in Schedule 1, or such other indicative timetable as may be agreed in writing by the parties.

Trust Scheme means the arrangement under which AOF acquires all the DPF Units from DPF Unitholders facilitated by amendments to the DPF Constitution as set out in the Supplemental Deed, and subject to the Constitution Amendment Resolution being approved by the requisite majority of DPF Unitholders.

York Street Property means the property at 96 and 98 York Street, Beenleigh Queensland.

1.2 Interpretation

In this document headings and words in bold are for convenience only and do not affect the interpretation of this document and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (b) the word 'including' or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- (d) a reference to a 'person' includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document (including this document) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a party, clause, schedule, exhibit, attachment or Annexure is a reference to a party, clause, schedule, exhibit, attachment or Annexure to or of this document, and a reference to this document includes all schedules, exhibits, attachments and Annexures to it;
- (h) a reference to a statute includes any regulations or other instruments made under it and a reference to a statute or any regulation or other instrument made under it or a provision of any such statute, regulation or instrument includes consolidations, amendments, re-enactments and replacements;
- (i) a reference to a 'liability' incurred by any person includes any liability of that person arising from or in connection with any obligation (including indemnities and all other obligations owed as principal or guarantor) whether liquidated or not, whether present, prospective or contingent and whether owed, incurred or imposed by or to or on account of or for the account of that person alone, severally or jointly or jointly and severally with any other person;
- (j) a reference to a 'loss' incurred by any person includes any loss, liability, damage, cost, charge, expense which the person pays, incurs or is liable for and any other diminution of value of any description which the person suffers, including all liabilities on account of taxes or duties, all interest, penalties, fines and other amounts payable to third parties and all legal expenses (on a full indemnity basis without necessity of taxation) and other expenses in connection with investigating or defending any claim, action, demand or proceeding, whether or not resulting in any liability, and all amounts paid in settlement of any such claims;
- (k) a reference to '\$' or 'dollar' is to Australian currency; and
- (l) this document must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

1.3 Best and reasonable endeavours

Any provision of this document which requires a party to use best endeavours or reasonable endeavours to procure that something is performed or occurs does not include any obligation:

- (a) to pay any money or to provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person; or
- (b) to commence any legal action or proceeding against any person, to procure that that thing is done or happens, except for payment of any applicable fee for the lodgement or filing of any relevant application with any Government Authority,

except where that provision expressly specifies otherwise.

1.4 Business Day

Except where otherwise expressly provided, where under this document the day on which any act, matter or thing is to be done is a day other than a Business Day, such act matter or thing shall be done on the immediately preceding Business Day.

2. Trust Scheme

2.1 DPF to propose Trust Scheme

DPF RE agrees to propose and implement the Trust Scheme on and subject to the terms and conditions of this Deed, and to use all reasonable endeavours to do so in accordance with the Timetable and otherwise as soon as reasonably practicable.

2.2 AOF to assist

AOF RE agrees to assist DPF RE in proposing and implementing the Trust Scheme on and subject to the terms and conditions of this Deed, and to use all reasonable endeavours to do so in accordance with the Timetable and otherwise as soon as reasonably practicable.

2.3 Scheme Consideration

- (a) AOF covenants in favour of DPF in its capacity as trustee for each of the Scheme Unitholders that, subject to the terms and conditions of this document and to the Trust Scheme becoming Effective, in consideration for the performance of DPF RE's obligations under the Supplemental Deed, including the transfer to AOF RE of each Scheme Unit held by a Scheme Unitholder under the terms of the Trust Scheme, AOF RE will provide the Scheme Consideration for each Scheme Unit held by each Scheme Unitholder on the Implementation Date and otherwise in accordance with the terms of the Trust Scheme.
- (b) Subject to the Trust Scheme becoming Effective, on the Implementation Date, the transactions which form part of the Trust Scheme will be implemented in the following sequence:
 - (i) AOF RE will become the registered holder of all the DPF Units; and
 - (ii) each Scheme Unitholder will receive the Scheme Consideration for each Scheme Unit held by that Scheme Unitholder at the Record Date in accordance with the Trust Scheme.

2.4 Fractional entitlements

If the number of Scheme Units held by a Scheme Unitholder at the Record Date is such that the aggregate entitlement of the Scheme Unitholder to Scheme Consideration, comprising New AOF Units would result in a fractional entitlement to a New AOF Unit, then the entitlement of the Scheme Unitholder must be rounded down to the nearest whole number of New AOF Units (or cents, as applicable).

2.5 Ineligible Foreign Unitholders

- (a) AOF will be under no obligation under the Trust Scheme to issue, and will not issue, any New AOF Units to any Ineligible Foreign Unitholder, and instead will issue the New AOF Units to which the Ineligible Foreign Unitholder would otherwise have been entitled to the Nominee.
- (b) AOF will procure that, as soon as reasonably practicable and in any event not more than:

- (i) 20 Business Days after the Implementation Date (**Foreign Unitholder Sale Period**), the Nominee sells all the New AOF Units issued to the Nominee pursuant to clause 2.5(a) in such manner, at such price and on such other terms as the Nominee determines in good faith; and
- (ii) 5 Business Days after the expiry of the Foreign Unitholder Sale Period, the Nominee (or AOF registry) remits to the relevant Ineligible Foreign Unitholders the proportion of the net proceeds of sale (rounded to the nearest cent, after deducting any applicable brokerage and other selling costs, taxes and charges) to which that Ineligible Foreign Unitholder is entitled.

2.6 Ranking of New AOF Units

The New AOF Units issued as Scheme Consideration must, on their issue, rank equally in all respects with all other AOF Units then on issue.

2.7 No amendment to Trust Scheme without consent

DPF RE must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Trust Scheme without the prior written consent of AOF RE (not to be unreasonably withheld or delayed).

2.8 Capped Withdrawal Facility

- (a) The parties will take all reasonable steps necessary to provide existing DPF Unitholders, through the offer of a Capped Withdrawal Facility by the DPF RE, with the limited opportunity to elect to redeem all or part of their investment in DPF with effect prior to the Record Date for the Trust Scheme.
- (b) Immediately from execution of this agreement, AOF RE and DPF RE will consult in good faith with a view to determining the amount to be available under the Capped Withdrawal Facility, the manner in which the Capped Withdrawal Facility will be funded and other details of, and arrangements with respect to, the Capped Withdrawal Facility.

3. Conditions

3.1 Conditions

The obligations of DPF RE under clause 4.1 do not become binding on the parties and the Trust Scheme must not take place until each of the following conditions has been satisfied or waived in accordance with clause 3.4:

- (a) (**FIRB**) at 8.00am on the Second Court Date:
 - (i) AOF RE has received a written notice under the FATA, by or on behalf of the Treasurer of the Commonwealth of Australia stating, or stating to the effect (either unconditionally or on conditions acceptable to AOF RE in its absolute discretion) that there are no objections to AOF RE acquiring the Scheme Units, and that notice remains in full force and effect in all respects; or
 - (ii) the Treasurer of the Commonwealth of Australia is no longer empowered under the FATA to make an order prohibiting the acquisition due to the expiry of the decision period for the application made by AOF RE requesting the written decision outlined at (a)(i); or
 - (iii) the acquisition by AOF RE of the Scheme Units does not constitute a 'significant action', 'notifiable action' or 'notifiable national security action' as each of those terms are defined under the FATA;
- (b) (**ASIC Modifications**) before the commencement of the Scheme Meeting, ASIC has granted the ASIC Modifications and has not withdrawn or revoked any of the ASIC Modifications on or before 8.00am on the Effective Date or, in respect of any ASIC Modification which has not been granted, has indicated in writing that such ASIC Modification is not required;

- (c) **(ASX Confirmations)** before the commencement of the AOF Meeting, ASX has granted the ASX Confirmations or, in respect of any ASX Confirmation which has not been granted, has indicated in writing that such ASX Confirmation is not required;
- (d) **(AOF Unitholder Resolutions)** the AOF Unitholder Resolutions are approved at the AOF Meeting by the requisite majorities of AOF Unitholders in accordance with the ASX Listing Rules;
- (e) **(Constitutional Amendment Resolution)** the Constitutional Amendment Resolution is approved at the Scheme Meeting by the requisite majority of DPF Unitholders;
- (f) **(AOF Independent Expert)** the AOF Independent Expert issues the AOF Independent Expert's Report concluding that the merger contemplated by the Trust Scheme is in the best interests of AOF Unitholders and does not change or withdraw its conclusion before commencement of the AOF Meeting;
- (g) **(DPF Independent Expert)** the DPF Independent Expert issues the DPF Independent Expert's Report concluding that the Trust Scheme is fair and reasonable for, and in the best interests of, Scheme Unitholders and does not change or withdraw its conclusion before commencement of the Scheme Meeting;
- (h) **(Judicial Advice)** the Court grants the First Judicial Advice and the Second Judicial Advice which confirms that DPF RE would be justified in convening the Scheme Meeting and proceeding on the basis that amending the DPF Constitution as set out in the Supplemental Deed would be within the powers conferred by the DPF Constitution and section 601GC of the Corporations Act;
- (i) **(No restraints)** as at 8.00am on the Effective Date, no temporary restraining order, preliminary or permanent injunction or other legal restraint or prohibition restraining or prohibiting the Trust Scheme, which has been enacted, enforced or issued by a Government Authority, is in effect;
- (j) **(DPF Material Adverse Change)** no DPF Material Adverse Change occurs between and including the date of this deed and 8.00am on the Effective Date;
- (k) **(Change of Control)** each counterparty to a Change of Control Contract providing to DPF (or the relevant member of the DPF Group) all necessary consents, approvals, exemptions or waivers in respect of the Trust Scheme in a form satisfactory to AOF RE, and no such consents, approvals, exemptions or waivers have been withdrawn or revoked before 8.00am on the Effective Date;
- (l) **(AOF Material Adverse Change)** no AOF Material Adverse Change occurs between and including the date of this deed and 8.00am on the Effective Date;
- (m) **(DPF Prescribed Occurrence)** no DPF Prescribed Occurrence occurs between and including the date of this deed and 8.00am on the Effective Date;
- (n) **(AOF Prescribed Occurrence)** no AOF Prescribed Occurrence occurs between and including the date of this deed and 8.00am on the Effective Date;
- (o) **(ASX quotation)** the New AOF Units have been approved by ASX for official quotation on the ASX and trading on a normal settlement basis from the Business Day next following the Implementation Date;
- (p) **(DPF representations and warranties)** each of the representations and warranties given by DPF RE under clause 8.1 remains true and correct in all respects, in each case at the times set out in clause 8.1; and
- (q) **(AOF representations and warranties)** each of the representations and warranties given by AOF RE under clause 8.4 remains true and correct in all respects, in each case at the times set out in clause 8.4.

3.2 Obligations in relation to Conditions

- (a) DPF must use its reasonable endeavours to procure that:

- (i) each of the Conditions (other than clauses 3.1(a), 3.1(c), 3.1(d), 3.1(f), 3.1(l), 3.1(n), 3.1(o) and 3.1(q)) are satisfied as soon as practicable after the date of this deed or continue to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
 - (ii) there is no occurrence within the reasonable control of DPF or DPF RE that would prevent the Conditions (other than clauses 3.1(a), 3.1(c), 3.1(d), 3.1(f), 3.1(l), 3.1(n), and 3.1(q)) being satisfied.
- (b) AOF will use its reasonable endeavours to procure that:
- (i) each of the Conditions in clauses 3.1(a), 3.1(b), 3.1(c), 3.1(d), 3.1(f), 3.1(l), 3.1(n), 3.1(o) and 3.1(q) are satisfied as soon as practicable after the date of this deed or continue to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
 - (ii) there is no occurrence within the reasonable control of AOF or AOF RE that would prevent the Conditions in clauses 3.1(a), 3.1(b), 3.1(c), 3.1(d), 3.1(f), 3.1(l), 3.1(n), 3.1(o) and 3.1(q) being satisfied.

3.3 Notice in relation to satisfaction of Conditions

Each party must in relation to any Condition notify the other party in writing on becoming aware of:

- (a) keep the other party promptly informed of any material development of which it becomes aware in relation to the satisfaction of the Conditions;
- (b) promptly notify the other party in writing if the party becomes aware of:
 - (i) the satisfaction of that Condition, in which case the notifying party must, if requested, also provide reasonable evidence that the Condition has been satisfied; and
 - (ii) any breach or non-satisfaction of any Condition or any fact or circumstance which results in that Condition becoming incapable of satisfaction by the time or date specified in this deed.

3.4 Benefit and waiver of Conditions

- (a) The conditions in clauses 3.1(l), 3.1(n) and 3.1(q) are for the benefit of DPF and any breach or non-satisfaction of them may only be waived by DPF RE by notice in writing to AOF RE.
- (b) The conditions in clauses , 3.1(j), 3.1(k), 3.1(m) and 3.1(p) are for the benefit of AOF and any breach or non-satisfaction of them may only be waived by AOF RE by notice in writing to DPF RE.
- (c) The conditions in clauses 3.1(a), 3.1(d) and 3.1(e) are for the benefit of all parties and may not be waived.
- (d) The conditions in clauses 3.1(b), 3.1(c), 3.1(f), 3.1(g), 3.1(h), 3.1(i), and 3.1(o) are for the benefit of all parties and any breach or non-satisfaction of them may only be waived with the written consent of both parties.
- (e) A party entitled to waive the breach or non-satisfaction of a condition pursuant to this clause 3.4 (either individually or jointly) may do so in its absolute discretion.

3.5 Condition not met

- (a) If any of the Conditions contained in clause 3.1 is not satisfied or waived by the date specified in this deed for its satisfaction (or an event occurs which would prevent a Condition being satisfied by the date specified in this deed), or if the Trust Scheme has not been implemented by the End Date, then the parties will consult in good faith:
 - (i) with a view to determining whether the Trust Scheme, or a transaction which results in AOF acquiring all the DPF Units or a merger of AOF and DPF, may proceed by way of alternative means or methods; or

- (ii) to extend the date for satisfaction of the relevant Condition or to adjourn or change the date of an application to the Court; or
 - (iii) to extend the End Date.
- (b) If the parties are unable to reach agreement under clause 3.5(a) within 5 Business Days after the relevant date, then unless the relevant Condition is waived in accordance with clause 3.4, any party may terminate this deed without any liability to any other party by reason of that termination alone but without limiting either party's rights in respect of a breach of this deed prior to its termination.

4. Implementation of Trust Scheme

4.1 General obligations

- (a) Each of AOF RE and DPF RE must:
- (i) use all reasonable endeavours and commit necessary resources (including management resources and the resources of external advisers);
 - (ii) procure that its officers and advisers work in good faith and in a timely and co-operative manner with the other party (including by attending meetings and by providing information), to produce the Explanatory Memorandums and implement the Trust Scheme as soon as reasonably practicable and substantially in accordance with the Timetable; and
 - (iii) must use, and must ensure that each other AOF Group Member or DPF Group Member (as applicable) and each Representative of an AOF Group Member or DPF Group Member (as applicable) uses, its best endeavours to take each step in the Agreed Steps Plan.

4.2 DPF RE's obligations

DPF RE must take all steps reasonably necessary to implement the Trust Scheme as soon as is reasonably practicable after the date of this deed and substantially in accordance with the Timetable, and in particular DPF RE must:

- (a) **(announce directors' recommendation)** following execution of this deed, announce, in a form agreed between DPF RE and AOF RE (on the basis of statements made to DPF RE by each DPF RE Board Director) that the DPF RE Board intends to unanimously recommend that DPF Unitholders vote in favour of the Constitutional Amendment Resolution at the Scheme Meeting in the absence of a Superior Proposal and subject to the DPF Independent Expert concluding in the DPF Independent Expert's Report that the Trust Scheme is in the best interest of DPF Unitholders;
- (b) **(preparation of DPF Explanatory Memorandum)** prepare and verify the DPF Explanatory Memorandum in accordance with the requirements of the Corporations Act and the Regulatory Guides;
- (c) **(AOF Explanatory Memorandum)** provide to AOF the DPF Information in a form appropriate for inclusion in the AOF Explanatory Memorandum which information must contain all information regarding DPF necessary to ensure that the AOF Explanatory Memorandum complies with the Corporations Act and all other assistance with the preparation and verification of the AOF Explanatory Memorandum in accordance with clause 4.4;
- (d) **(DPF Independent Expert)** promptly appoint the DPF Independent Expert and provide all assistance and information reasonably requested by the DPF Independent Expert in connection with the preparation of the DPF Independent Expert's Report as soon as practicable for inclusion in the Explanatory Memorandum;
- (e) **(AOF Independent Expert's Report)** promptly provide all assistance and information reasonably requested by the AOF Independent Expert to enable it to prepare its report for inclusion in the AOF Explanatory Memorandum;

- (f) **(Investigating Accountant)** provide all assistance and information reasonably requested by the Investigating Accountant to enable it to prepare the Investigating Accountant's Report;
- (g) **(ASIC Modifications)** liaise with, and take all steps reasonably necessary to assist, AOF RE in preparing an application to ASIC and applying for the ASIC Modifications;
- (h) **(consultation with AOF RE)** consult with AOF RE as to the content and presentation of:
 - (i) the DPF Explanatory Memorandum which includes:
 - (A) allowing AOF RE a reasonable opportunity to review and make comments on successive drafts of the DPF Explanatory Memorandum (accepting that any review of the DPF Independent Expert's Report is limited to review for factual accuracy of those parts that include information relating to AOF;
 - (B) taking any reasonable comments made by AOF RE into account in good faith when producing a revised draft of the DPF Explanatory Memorandum;
 - (C) providing to AOF RE a revised draft of the DPF Explanatory Memorandum within a reasonable time before the draft of the DPF Explanatory Memorandum to be provided to ASIC is finalised;
 - (D) obtaining AOF RE's written consent to the inclusion of the AOF Information (including in respect of the form and context in which the AOF Information appears in the DPF Explanatory Memorandum); and
 - (ii) documents required for the purposes of the Court hearings held for the purposes of the First Judicial Advice and Second Judicial Advice in relation to the Trust Scheme (including originating processes, affidavits, submissions and draft minutes of Court orders), and consider in good faith any comments on, or suggested amendments to, those documents from AOF RE prior to filing those documents with the Court;
- (i) **(DPF RE Directors' recommendation)** include in the DPF Explanatory Memorandum the statement by the DPF RE Board contemplated under clause 6.1 unless there has been a withdrawal or change of recommendation permitted by clause 6.6;
- (j) **(ASIC lodgement)** provide an advanced draft of the DPF Explanatory Memorandum to ASIC for its review and to AOF RE and keep AOF RE informed of any matter raised by ASIC in relation to the DPF Explanatory Memorandum and, where practical to do so, consult with AOF RE in good faith prior to taking any steps or actions to address the matter (provided that, where the matter relates to AOF Information, DPF RE must not take any steps to address them without AOF RE's prior written consent, not to be unreasonably withheld);
- (k) **(DPF RE Board approval)** procure a meeting of the DPF RE Board to be convened to:
 - (i) approve the Explanatory Memorandum for despatch to the DPF Unitholders; and
 - (ii) consider those sections of the AOF Explanatory Memorandum that comprise DPF Information as being in a form appropriate to despatch to AOF Unitholders and issuing to AOF a written consent to the despatch of the DPF Information in that form to AOF Unitholders;
- (l) **(Scheme Meeting)** convene the Scheme Meeting, despatch the DPF Explanatory Memorandum to the DPF Unitholders and hold the Scheme Meeting, in each case taking all reasonable steps necessary to comply with the DPF Constitution and the Corporations Act;
- (m) **(proxy solicitation)** engage proxy solicitation entity to encourage DPF Unitholders to participate in the voting on the Constitutional Amendment Resolution at the Scheme Meeting;

- (n) **(implementation of Trust Scheme)** subject to receipt of the Second Judicial Advice, if the Constitutional Amendment Resolution is passed by the requisite majority of DPF Unitholders:
 - (i) lodge with ASIC as soon as practicable and by no later than 1 Business Day after the Scheme Meeting, a copy of the executed Supplemental Deed;
 - (ii) close the DPF Unit Register as at the Record Date and determine entitlements to the Scheme Consideration in accordance with the Trust Scheme;
 - (iii) promptly procure the registration of all transfers of Scheme Units to AOF RE in accordance with the Trust Scheme; and
 - (iv) promptly do all other things contemplated by or necessary to give effect to the Trust Scheme.

4.3 AOF RE's obligations

AOF RE must take all steps reasonably necessary to assist DPF to propose and implement the Trust Scheme as soon as reasonably practicable and substantially in accordance with the Timetable, and in particular AOF RE must:

- (a) **(announce directors' recommendation)** following execution of this deed, announce, in a form agreed between DPF RE and AOF RE (on the basis of statements made to AOF RE by each AOF RE Board Director) that the AOF RE Board intends to unanimously recommend that AOF Unitholders vote in favour of the AOF Unitholder Resolutions at the AOF Meeting in the absence of a Superior Proposal and subject to the AOF Independent Expert concluding in the AOF Independent Expert's Report that the AOF Unitholder Resolutions are in the best interests of AOF Unitholders;
- (b) **(preparation of AOF Explanatory Memorandum)** prepare and verify the AOF Explanatory Memorandum in accordance with the requirements of the Corporations Act, ASX Listing Rules and the Regulatory Guides;
- (c) **(DPF Explanatory Memorandum)** provide to DPF the AOF Information in a form appropriate for inclusion in the DPF Explanatory Memorandum which information must contain all information regarding AOF necessary to ensure that the DPF Explanatory Memorandum complies with the Corporations Act and all other assistance with the preparation and verification of the DPF Explanatory Memorandum in accordance with clause 4.4;
- (d) **(AOF Independent Expert)** promptly appoint the AOF Independent Expert and provide all assistance and information reasonably requested by the AOF Independent Expert in connection with the preparation of the AOF Independent Expert's Report as soon as practicable for inclusion in the AOF Explanatory Memorandum;
- (e) **(DPF Independent Expert's Report)** promptly provide all assistance and information reasonably requested by the DPF Independent Expert to enable it to prepare its report for inclusion in the DPF Explanatory Memorandum;
- (f) **(Investigating Accountant)** appoint the Investigating Accountant and provide any assistance and information reasonably requested by the Investigating Accountant to enable it to prepare the Investigating Accountant's Report;
- (g) **(ASIC Modifications)** apply for, and liaise with DPF RE in applying to ASIC for, the ASIC Modifications;
- (h) **(ASX Confirmations)** consult with ASX and make application to ASX for the ASX Confirmations and keep DPF RE informed of any material matter raised by ASX in relation to the Trust Scheme and where practical to do so, consult with DPF RE in good faith prior to taking any steps or actions to address the matter;
- (i) **(AOF RE Board approval)** procure a meeting of the AOF RE Board to be convened to:
 - (i) approve the AOF Explanatory Memorandum for despatch to the AOF Unitholders;

- (ii) consider those sections of the DPF Explanatory Memorandum that comprise AOF Information as being in a form appropriate to despatch to DPF Unitholders and issuing to DPF a written consent to the despatch of the AOF Information in that form to DPF Unitholders;
 - (iii) approve the issue of the Scheme Consideration in accordance with the Trust Scheme;
- (j) **(ASX application)** make application to ASX for the New AOF Units which are to be issued in accordance with the Trust Scheme to be quoted on the ASX;
- (k) **(AOF Deed Poll)** prior to the despatch of the DPF Explanatory Memorandum execute the AOF Deed Poll;
- (l) **(implementation of Trust Scheme)** if the Trust Scheme comes into effect, provide the Scheme Consideration on the Implementation Date in accordance with the Trust Scheme;
- (m) **(Taxation election)** if the Trust Scheme comes into effect, AOF RE must:
 - (i) not make an election under sub-section 124-795(4) of the Income Tax Assessment Act 1997 (Cth) preventing a roll over under subdivision 124-M from being available; and
 - (ii) make any elections under subdivision 124-M of the Income Tax Assessment Act 1997 (Cth) required to facilitate the availability of a roll over to the Scheme Unitholders who are eligible for the roll over.

4.4 Explanatory Memorandum preparation principles

- (a) DPF RE must take all reasonable steps (including appropriate due diligence and verification processes) to ensure that the DPF Information is not false, misleading or deceptive in any material respect (whether by omission or otherwise) as at the dates on which:
 - (i) the DPF Explanatory Memorandum is despatched to DPF Unitholders; and
 - (ii) the AOF Explanatory Memorandum is despatched to AOF Unitholders.
- (b) AOF RE must take all reasonable steps (including appropriate due diligence and verification processes) to ensure that the AOF Information is not false, misleading or deceptive in any material respect (whether by omission or otherwise) as at the dates on which:
 - (i) the AOF Explanatory Memorandum is despatched to AOF Unitholders; and
 - (ii) the DPF Explanatory Memorandum is dispatched to DPF Unitholders.
- (c) The DPF Explanatory Memorandum will include a statement in a form agreed by the parties that:
 - (i) AOF RE and its Representatives are not responsible for any information contained in the DPF Explanatory Memorandum other than the AOF Information; and
 - (ii) DPF RE and its Representatives do not assume any responsibility for the accuracy or completeness of the AOF Information;
- (d) AOF RE must provide its written consent to DPF RE in relation to the form and content in which any AOF Information appears in the DPF Explanatory Memorandum.
- (e) The AOF Explanatory Memorandum will include a statement in a form agreed by the parties that:
 - (i) DPF RE and its Representatives are not responsible for any information contained in the AOF Explanatory Memorandum other than the DPF Information; and
 - (ii) AOF RE and its Representatives do not assume any responsibility for the accuracy or completeness of the DPF Information.
- (f) DPF RE must provide its written consent to AOF RE in relation to the form and content in which any DPF Information is included in the AOF Explanatory Memorandum.

4.5 DPF Information

- (a) DPF RE must provide to AOF RE:
 - (i) the DPF Information and the Investigating Accountant's Report to AOF RE as soon as reasonably practicable in a form that includes all information regarding the DPF Group and Merged Group that is required by all applicable laws including the Corporations Act and is not misleading or deceptive in any material respect (whether by omission or otherwise); and
 - (ii) all such further or new information of which DPF RE becomes aware after the AOF Explanatory Memorandum has been despatched until the Effective Date where this may be necessary to ensure that the DPF Information is not false, misleading or deceptive in any material respect (whether by omission or otherwise).
- (b) If DPF RE provides any further or new information under this clause, the parties must consult in good faith to determine the form of any supplementary disclosure to DPF Unitholders and AOF Unitholders.
- (c) DPF RE must promptly inform AOF RE if it has any reason to believe that any information in the AOF Explanatory Memorandum is misleading or deceptive in any material respect (whether by omission or otherwise).
- (d) DPF RE must undertake appropriate verification processes in relation to the DPF Information included in the AOF Explanatory Memorandum.

4.6 AOF Information

- (a) AOF RE must provide to DPF RE:
 - (i) the AOF Information as soon as reasonably practicable in a form that includes all information regarding the AOF Group and Merged Group that is required by all applicable laws including the Corporations Act and is not misleading or deceptive in any material respect (whether by omission or otherwise);
 - (ii) all such further or new information of which AOF becomes aware after the DPF Explanatory Memorandum has been dispatched until the Effective Date where this may be necessary to ensure that the AOF Information is not false, misleading or deceptive in any material respect (whether by omission or otherwise).
- (b) If AOF RE provides any further or new information under this clause, the parties must consult in good faith to determine the form of any supplementary disclosure to AOF Unitholders and DPF Unitholders.
- (c) AOF RE must promptly inform DPF RE if it has any reason to believe that any information in the DPF Explanatory Memorandum is misleading or deceptive in any material respect (whether by omission or otherwise).
- (d) AOF RE must undertake appropriate verification processes in relation to the AOF Information included in the DPF Explanatory Memorandum.

4.7 Good faith co-operation

Each party must procure that its Representatives work (including by attending meetings and by providing information) in good faith and in a timely and co-operative manner with the other party to implement the Trust Scheme and to prepare all documents required relating to the Trust Scheme.

5. Conduct of business

5.1 General conduct

From the date of this deed until (and including) the Implementation Date, each party and its controlled entities must in all material respects conduct their businesses in the ordinary course except in relation to any matter required to be done or procured by a party pursuant to, or which is

otherwise permitted by, this deed or the Trust Scheme or with the written consent of the other party.

5.2 Specific conduct

- (a) From the date of this deed until (and including) the Implementation Date, DPF RE must procure that the DPF Group does not without the written consent of AOF:
 - (i) announce, pay or make any distribution (including by way of return of capital) other than the DPF Permitted Distributions; or
 - (ii) do any other act or thing which would result in a DPF Prescribed Occurrence, except as expressly permitted under this deed or the Trust Scheme.
- (b) From the date of this deed until (and including) the Implementation Date, AOF must procure that the AOF Group does not without the written consent of DPF:
 - (i) announce, pay or make any distribution (including by way of return of capital) other than the AOF Permitted Distributions; or
 - (ii) do any other act or thing which would result in an AOF Prescribed Occurrence, except as expressly permitted under this deed or the Trust Scheme.

5.3 AOF Permitted Distributions

- (a) Despite any other provision of this deed, unless otherwise agreed in writing between AOF RE and DPF RE, AOF may make interim distributions of income to AOF Unitholders in accordance with clause 18.11 of the AOF constitution:
 - (i) as announced by AOF RE to ASX prior to the date of this deed; and
 - (ii) by specifying one or more dates as Distribution Dates up to 31 December 2021, provided that the amount of all such distributions in respect of the period from 1 July 2021 to 31 December 2021 in aggregate does not exceed 7.6 cents per AOF Unit.
- (b) Subject to clause 5.3(a), AOF RE must not take any action which would result in any income tax being payable by an AOF Unitholder on the AOF Unit Register on or prior to the Implementation Date if the relevant AOF Unitholder has not received any distributions for the relevant financial year.

5.4 DPF Permitted Distributions

- (a) Despite any other provision of this deed, unless otherwise agreed in writing between AOF RE and DPF RE, DPF may make monthly distributions of income to DPF Unitholders in accordance with clause 11.11 of the DPF Constitution for the period from 1 July 2021 to 31 December 2021, provided that the amount of all such distributions in respect of the period up to 31 December 2021 in aggregate does not exceed 3 cents per DPF Unit.
- (b) Subject to clause 5.4(a), DPF RE must not take any action which would result in any income tax being payable by a DPF Unitholder on the DPF Unit Register on or prior to the Implementation Date if the relevant DPF Unitholder has not received any distributions for the relevant financial year.

5.5 Distributions if Implementation Date deferred

If the Implementation Date does not occur on or prior to 31 December 2021, AOF RE and DPF RE, AOF and DPF agree to consult in good faith to agree to permit the payment of additional distributions by AOF and DPF to their respective unitholders prior to the Implementation Date in accordance with each of their respective constitutions, historical practice, and having regard to their respective FFO for the relevant periods.

6. Recommendation, intentions and announcements

6.1 DPF RE Board recommendation

Subject to clause 6.6, DPF RE will procure that the DPF RE Board:

- (a) unanimously recommends that DPF Unitholders vote in favour of the Constitutional Amendment Resolution;
- (b) will not withdraw, modify or qualify that recommendation subject to:
 - (i) no Superior Proposal being made; and
 - (ii) the DPF Independent Expert concluding that the Trust Scheme is in the best interests of Scheme Unitholders; and
- (c) if the DPF Independent Expert concludes that the Trust Scheme is fair and reasonable for, and in the best interests of, DPF Unitholders, state in the DPF Explanatory Memorandum that the DPF RE Board unanimously recommends the Trust Scheme and that DPF Unitholders approve the Constitutional Amendment Resolution, in the absence of a Superior Proposal.

6.2 AOF RE Board recommendation

Subject to clause 6.7, AOF RE will procure that the AOF RE Board:

- (a) unanimously recommends that AOF Unitholders vote in favour of the AOF Unitholder Resolutions;
- (b) will not withdraw, modify or qualify that recommendation subject to:
 - (i) no Superior Proposal being made; and
 - (ii) the AOF Independent Expert concluding that the merger contemplated by the Trust Scheme is in the best interests of AOF Unitholders; and
- (c) if the AOF Independent Expert concludes that the merger contemplated by the Trust Scheme is in the best interests of AOF Unitholders, state in the AOF Explanatory Memorandum that the AOF RE Board unanimously recommends the AOF Unitholder Resolutions and that AOF Unitholders approve the AOF Unitholder Resolutions, in the absence of a Superior Proposal.

6.3 DPF Director intentions

Subject to clause 6.6, DPF RE must use all reasonable endeavours to procure that each DPF RE Director announces his or her intention to vote in favour of the Constitutional Amendment Resolution any Scheme Units in which they have a Relevant Interest and in respect of which they have power to vote subject to the circumstances set out in clause 6.1(b)(i) to 6.1(b)(ii).

6.4 AOF Director intentions

Subject to clause 6.7, AOF RE must use all reasonable endeavours to procure that each AOF RE Director announces his or her intention to vote in favour of the AOF Unitholder Resolutions any AOF Units in which they have a Relevant Interest and in respect of which they have power to vote subject to the circumstances set out in clause 6.2(b)(i) to 6.2(b)(ii).

6.5 Announcements

Immediately after the execution of this document:

- (a) AOF must issue the AOF Announcement to the ASX; and
- (b) DPF must issue the DPF Announcement.

6.6 DPF RE Board can withdraw recommendation

If after the execution of this deed and the issue of the Announcements in accordance with clause 6.5, the DPF RE Board (by majority) forms the view acting in good faith that, in order to

satisfy what it considers to be its or any DPF RE Director's fiduciary or statutory duties (having taken appropriate legal advice) it:

- (a) should not recommend that DPF Unitholders vote in favour of the Constitutional Amendment Resolution; or
- (b) should withdraw, modify or qualify any recommendation previously made,

then the DPF RE Board may refuse to recommend, or may withdraw, modify or qualify any recommendation that he or she has made.

6.7 AOF RE Board can withdraw recommendation

If after the execution of this deed and the issue of the Announcements in accordance with clause 6.5, the AOF RE Board (by majority) forms the view acting in good faith that, in order to satisfy what it considers to be its or any AOF RE Director's fiduciary or statutory duties (having taken appropriate legal advice) it:

- (a) should not recommend that AOF Unitholders vote in favour of the AOF Unitholder Resolutions; or
- (b) should withdraw, modify or qualify any recommendation previously made,

then the AOF RE Board may refuse to recommend, or may withdraw, modify or qualify any recommendation that he or she has made.

7. Exclusivity

7.1 No shop

During the Exclusivity Period, each party must not, and must ensure that each of their respective controlled entities and each of their Representatives does not, directly or indirectly:

- (a) solicit, invite, encourage or initiate any enquiries, expressions of interest, offers, proposals or discussions; or
- (b) communicate any intention to do any of these things,

in relation to, or that could reasonably be expected to encourage or lead to, or with a view to obtaining, an actual, proposed or potential Competing Proposal (being DPF Competing Proposal in the case of DPF and AOF Competing Proposal in the case of AOF) or which may otherwise lead to the Trust Scheme not completing.

7.2 No talk

Subject to clause 7.4, during the Exclusivity Period, each party must not, and must ensure that each of their respective controlled entities and each of their Representatives does not, directly or indirectly:

- (a) negotiate, enter into or participate in or continue any negotiations or discussions with any other person; or
- (b) communicate any intention to do any of these things,

in relation to, or that could reasonably be expected to encourage or lead to, the making of an actual, proposed or potential Competing Proposal, even if that person's Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by the party or any of its controlled entities or any of their Representatives or the person has publicly announced the Competing Proposal.

7.3 No due diligence

Subject to clause 7.4, during the Exclusivity Period, each party must not, and must ensure that each of their respective controlled entities and each of their Representatives does not, directly or indirectly, in relation to an actual, proposed or potential Competing Proposal:

- (a) solicit, invite, initiate, or encourage or facilitate or permit, or enable any other person other than the other party to this deed to undertake due diligence investigations in relation to the party, its controlled entities or any of their businesses or operations; or
- (b) disclose or make available to any other person, or permit any other person to receive, other than the other party to this deed (in the course of due diligence investigations or otherwise) any non-public information relating to the party, its controlled entities or any of their businesses or operations.

7.4 Fiduciary carve out

The restrictions in clauses 7.2 and 7.3 do not apply to the extent they restrict a party (**Relevant Party**) or any of its Representatives from taking or refusing to take any action (including responding to, entering into discussions and negotiations with, providing information to, or otherwise dealing with any third party) with respect to any proposal that is, or that the relevant board of directors of the responsible entity (**Relevant Board**) considers may reasonably be expected to lead to, a Competing Proposal if:

- (a) the relevant proposal is bona fide and made in writing by or on behalf of a person that each of the members of the Relevant Board reasonably considers is of reputable commercial standing;
- (b) the Relevant Board, acting in good faith and in order to satisfy what it reasonably considers to be its statutory or fiduciary duties, determines, after taking advice from its independent financial advisers and external legal advisers, that the relevant proposal;
 - (i) is capable of being valued and completed; and
 - (ii) would, if completed substantially in accordance with its terms, be more favourable to unitholders of the Relevant Party than the Trust Scheme,
 after taking into account all aspects of the relevant proposal (including its terms and conditions) and the person making it.

7.5 Notification

- (a) During the Exclusivity Period, each party must promptly, and in any event within 24 hours, notify the other party in writing if it or any of its Representatives becomes aware of:
 - (i) any negotiations or discussions or any approach, inquiry, request, or attempt to initiate any negotiations or discussions, or any intention to initiate any negotiations or discussions, in connection with or in respect of any actual, proposed or potential Competing Proposal;
 - (ii) any approach, enquiry or proposal in connection with or in respect of any actual, proposed or potential Competing Proposal; or
 - (iii) request for information relating to the party, or its businesses or operations, in connection with the formulation, development or finalisation of, or assisting in the formulation, development or finalisation of, an actual, proposed or potential Competing Proposal, or which the party has reasonable grounds to suspect may relate to an actual, proposed or potential Competing Proposal,
 whether direct or indirect, solicited or unsolicited, and in writing or otherwise.
- (b) A notification under clause 7.5(a) must include the identity of the relevant person making the relevant approach, inquiry, request, or attempt or proposing the relevant actual, proposed or potential Competing Proposal, together with all material terms and conditions of the actual, proposed or potential Competing Proposal. The notifying party must also notify the other party in writing as soon as possible after becoming aware of any material developments in relation to such actual, proposed or potential Competing Proposal.

7.6 Exceptions

- (a) Subject to the Confidentiality Deed and the other provisions of this deed, nothing in this clause 7 prevents a party from:

- (i) providing information:
 - (A) to its Representatives;
 - (B) to any Government Authority;
 - (C) to be provided by any applicable law, including to satisfy its obligations under the ASX Listing Rules or to any Government Authority; or
 - (D) to its auditors, customers, financiers, joint venturers and suppliers acting in that capacity in the ordinary course of business; or
- (ii) making presentations to, or responding to enquiries from, brokers, portfolio investors, analysts and other third parties, in the ordinary course of business.

8. Representations, warranties and indemnities

8.1 DPF RE representations and warranties

DPF RE represents and warrants to AOF RE (on its own behalf and separately as trustee or nominee for each of the AOF Indemnified Parties):

- (a) as at the date of this deed, the date of despatch of the Explanatory Memorandums, immediately before the commencement of the Scheme Meeting, the Effective Date and the Implementation Date, that:
 - (i) DPF RE is a validly existing corporation registered under the laws of its place of incorporation;
 - (ii) DPF is a validly established and registered as a 'registered scheme' under Chapter 5C of the Corporations Act;
 - (iii) the execution and delivery of this deed by DPF RE has been properly authorised by all necessary corporate action and DPF RE has full corporate power and lawful authority to execute and deliver this deed and, subject to the ASIC Modifications being made, to perform or cause to be performed its obligations under this deed;
 - (iv) subject to the ASIC Modifications being made, this deed constitutes legal, valid and binding obligations on DPF RE and this deed does not result in a breach of or default the constituent documents of DPF or DPF RE;
 - (v) DPF RE is aware that AOF RE and its Representatives will rely on the DPF Information for the purposes of preparing the AOF Explanatory Memorandum and proposing the AOF Unitholder Resolutions in accordance with the requirements of the Corporations Act;
 - (vi) the DPF Information is not false, misleading or deceptive in any material respect (whether by omission or otherwise);
 - (vii) to the extent DPF Information includes forward looking statements, those forward looking statements are based on assumptions which DPF RE believes, as at the date the information was provided and continues to believe, to be reasonable; and
 - (viii) DPF RE has taken all reasonable steps to ensure that all due diligence information provided by it or its Representatives to AOF RE or its Representatives in connection with the Trust Scheme and any other transactions contemplated by this deed is not false, misleading or deceptive in any material respect (whether by omission or otherwise).
- (b) as at the date of despatch of the Explanatory Memorandum and immediately before commencement of the Scheme Meeting, all DPF Information in the Explanatory Memorandums includes all information regarding the DPF Group that is required by all applicable laws and regulatory guidance and is not misleading or deceptive in any material respect (whether by omission or otherwise); and

- (c) as at the date of this deed and the date of despatch of the Explanatory Memorandum, DPF RE is not in breach of its continuous disclosure obligations under the Corporations Act.

8.2 DPF indemnity

Subject to clause 8.3, DPF RE indemnifies AOF RE and each director, officer and employee of AOF against all loss suffered or incurred by reason of any breach of any of the representations and warranties of DPF RE in clause 8.1.

8.3 Qualification

DPF RE is not liable in respect of any Claim for breach of a warranty in clause 8.1, if the fact, matter or circumstance giving rise to the Claim was:

- (a) disclosed by DPF RE to AOF RE or its Representatives; or
- (b) known to AOF RE or its Representatives,

prior to the execution of this deed.

8.4 AOF RE representations and warranties

AOF RE represent and warrant to DPF RE (on its own behalf and separately as trustee for each director, officer and employee of DPF RE):

- (a) as at the date of this deed, the date of dispatch of the Explanatory Memorandum and the Effective Date, that:
 - (i) AOF RE is a validly existing corporation registered under the laws of its place of incorporation;
 - (ii) AOF is validly established and registered as a 'registered scheme' under Chapter 5C of the Corporations Act;
 - (iii) the execution and delivery of this deed by AOF RE has been properly authorised by all necessary corporate action and AOF RE has full corporate power and lawful authority to execute and deliver this deed and subject to the satisfaction of the Condition in clause 3.1(a) (*FIRB*) and the ASIC Modifications and ASX Confirmations being made, to perform or cause to be performed its obligations under this deed;
 - (iv) subject to the satisfaction of the Condition in clause 3.1(a) (*FIRB*) and the ASIC Modifications being made, this deed constitutes legal, valid and binding obligations on AOF RE and this deed does not result in a breach of or default under the constitution of AOF or AOF RE;
 - (v) AOF RE is aware that DPF RE and its Representatives will rely on the AOF Information for the purposes of preparing the DPF Explanatory Memorandum and proposing the Trust Scheme in accordance with the requirements of the Corporations Act;
 - (vi) the AOF Information is not false, misleading or deceptive in any material respect (whether by omission or otherwise);
 - (vii) to the extent AOF Information includes forward looking statements, those forward looking statements are based on assumptions which AOF RE believes, as at the date the information was provided and continues to believe, to be reasonable; and
 - (viii) AOF RE has taken all reasonable steps to ensure that all due diligence information provided by it or its Representatives to DPF RE or its Representatives in connection with the Trust Scheme and any other transactions contemplated by this deed is not false, misleading or deceptive in any material respect (whether by omission or otherwise);
- (b) as at the date of despatch of the Explanatory Memorandum and immediately before commencement of the Scheme Meeting, all AOF Information in the Explanatory Memorandums includes all information regarding the AOF Group that is required by all

applicable laws and regulatory guidance and is not misleading or deceptive in any material respect (whether by omission or otherwise); and

- (c) as at the date of this deed and the date of despatch of the Explanatory Memorandum, AOF is not in breach of its continuous disclosure obligations under the ASX Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure.

8.5 AOF indemnity

Subject to clause 8.6, AOF RE indemnifies DPF RE and each director, officer and employee of DPF RE against all loss suffered or incurred by reason of any breach of any of the representations and warranties of AOF RE in clause 8.4.

8.6 Qualification

AOF RE is not liable in respect of any Claim for breach of a warranty in clause 8.4, if the fact, matter or circumstance giving rise to the Claim was:

- (a) disclosed by AOF RE to DPF RE or its Representatives or in an announcement by AOF RE on ASX within 3 years prior to the date of this deed; or
- (b) known to DPF RE or its Representatives,
prior to the execution of this deed.

8.7 Notifications

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 8.

8.8 Status of representations and warranties

Each representation and warranty in this clause 8:

- (a) is severable;
- (b) will survive the termination of this deed; and
- (c) is given with the intent that Liability under it will not be confined to breaches which are discovered prior to the date of termination of this deed.

8.9 Status and enforcement of indemnities

Each indemnity in this deed:

- (a) is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed;
- (b) is given to the party to which it is expressed to be given, and as trustee for each director, officer or employee of that party, and a reference to a loss in an indemnity given to a party includes a loss suffered or incurred by a director, officer or employee of that party.

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

9. Release

9.1 Release of officers

- (a) Subject to section 199A of the Corporations Act and clause 9.1(b) below, no Representative of AOF RE or DPF RE is liable for anything done or purported to be done in connection with the implementation of the Trust Scheme.
- (b) Clause 9.1(a) does not exclude a person from any Liability which may arise from wilful misconduct or a negligent act or omission or an absence of good faith on the part of the person.

- (c) Each party receives and holds the benefit of this clause 9 to the extent it relates to each of its Representatives as trustee for them.

9.2 Due diligence investigations

- (a) Without prejudice to AOF RE's rights, including in respect of any representations and warranties given to DPF RE and its Representatives under this deed, AOF RE acknowledges on its own behalf and on behalf of each of its Representatives that prior to entry into this deed, it and its Representatives have undertaken and concluded due diligence investigations in relation to DPF Group and have conducted discussions with DPF RE and certain of its Representatives.
- (b) Without prejudice to DPF RE's rights, including in respect of any representations and warranties given to AOF RE and its Representatives under this deed, DPF RE acknowledges on its own behalf and on behalf of each of its Representatives that prior to entry into this deed, it and its Representatives have undertaken and concluded due diligence investigations in relation to AOF Group and have conducted discussions with AOF RE and certain of its Representatives.

9.3 Forward looking information

- (a) AOF RE acknowledges on its own behalf and on behalf of each of its Representatives that each of DPF RE and its Representatives (unless otherwise agreed in writing with DPF RE and its Representatives) makes no representation or warranty in respect of any forward looking information, as to the reasonableness of any such information or the accuracy, completeness or relevance of any assumptions underlying any such information (and AOF RE expressly acknowledges that all such information is necessarily a matter of opinion, is inherently uncertain and subject to change and, when provided, did not take into account any investment criteria or other considerations that may have determined or influenced the decision of AOF RE to enter into this deed).
- (b) DPF RE acknowledges on its own behalf and on behalf of each of its Representatives that each of AOF RE and its Representatives (unless otherwise agreed in writing with AOF RE and its Representatives) makes no representation or warranty in respect of any forward looking information, as to the reasonableness of any such information or the accuracy, completeness or relevance of any assumptions underlying any such information (and DPF RE expressly acknowledges that all such information is necessarily a matter of opinion, is inherently uncertain and subject to change and, when provided, did not take into account any investment criteria or other considerations that may have determined or influenced the decision of DPF RE to enter into this deed).

9.4 Own enquiries

- (a) Without prejudice to AOF RE's rights, including in respect of any representations and warranties given to AOF Indemnified Parties under this deed, AOF RE acknowledges and agrees on its own behalf and on behalf of each of its Representatives, that:
 - (i) AOF RE has made its own independent assessment of all information it has received during due diligence;
 - (ii) in relation to forward looking information:
 - (A) there are uncertainties inherent in attempting to prepare the forward looking information and AOF RE is familiar with these uncertainties;
 - (B) AOF RE is taking full responsibility for making its own evaluation of the adequacy and accuracy of all forward looking information (including the reasonableness of any assumptions and contingencies which may affect the forward looking information); and
 - (C) neither DPF RE or any of its Representatives is liable under any Claim arising out of or in connection with any party's use or disclosure of any such forward looking information.

- (b) Without prejudice to DPF RE's rights, including in respect of any representations and warranties given to DPF Indemnified Parties under this deed, DPF RE acknowledges and agrees on its own behalf and on behalf of each of its Representatives, that:
 - (i) DPF RE has made its own independent assessment of all information it has received during due diligence;
 - (ii) in relation to forward looking information:
 - (A) there are uncertainties inherent in attempting to prepare the forward looking information and DPF RE is familiar with these uncertainties;
 - (B) DPF RE is taking full responsibility for making its own evaluation of the adequacy and accuracy of all forward looking information (including the reasonableness of any assumptions and contingencies which may affect the forward looking information); and
 - (C) neither AOF RE or any of its Representatives is liable under any Claim arising out of or in connection with any party's use or disclosure of any such forward looking information.

9.5 Acknowledgements

- (a) DPF RE acknowledges and agrees with AOF RE that:
 - (i) the warranties set out in clause 8.4 are the only warranties that DPF requires, and on which DPF RE has relied, in entering into this deed; and
 - (ii) to the extent permitted by law, all other warranties, representations and undertakings (whether express or implied and whether oral in writing) made or given by AOF RE or any of its Representatives are expressly excluded.
- (b) AOF RE acknowledges and agrees with DPF RE that:
 - (i) the warranties set out in clause 8.1 are the only warranties that AOF RE requires, and on which AOF RE has relied, in entering into this deed; and
 - (ii) to the extent permitted by law, all other warranties, representations and undertakings (whether express or implied and whether oral or in writing) made or given by DPF RE or any of its Representatives are expressly excluded.

9.6 Benefit

The acknowledgements, confirmations and agreements given and made by a party on its own behalf and on behalf of its Representatives in clause 9 are given to the other party on its own behalf and separately as trustee for each of its Representatives.

10. Termination

10.1 Termination by AOF

AOF RE may terminate this deed at any time before the scheduled time for implementation of the Scheme on the Implementation Deed by notice in writing to DPF RE:

- (a) in accordance with clause 3.5; or
- (b) if:
 - (i) DPF RE is in material breach of any clause of this deed;
 - (ii) AOF RE has given notice to DPF RE setting out the relevant breach and stating an intention to terminate; and
 - (iii) to the extent the breach is capable of remedy, DPF RE does not remedy the breach by the earlier of 5 Business Days after it receives the notice or the scheduled time for implementation of the Trust Scheme on the Implementation Date; or

- (c) there is a material breach of any of the DPF RE Warranties and clause 8.3 would not apply in respect of any Claim for that breach of the DPF RE Warranties;
- (d) the DPF RE Board (by majority) withdraws or adversely changes or modifies its recommendation that DPF Unitholders vote in favour of the Constitutional Amendment Resolution, or the DPF RE Board (by majority) makes a public statement to the effect that it no longer recommends that DPF Unitholders approve the Constitutional Amendment Resolution or that it supports a Superior Proposal;
- (e) the End Date has passed before the Trust Scheme has been implemented, other than as a result of a breach by AOF RE of its obligations under this deed;
- (f) the required majorities of AOF Unitholders do not approve the AOF Unitholder Resolutions at the AOF Meeting; or
- (g) the required majority of DPF Unitholders do not approve the Constitutional Amendment Resolution at the Scheme Meeting.

10.2 Termination by DPF

DPF RE may terminate this deed at any time before the scheduled time for implementation of the Scheme on the Implementation Date by notice in writing to AOF RE:

- (a) in accordance with clause 3.5; or
- (b) if:
 - (i) AOF RE is in material breach of any clause of this deed;
 - (ii) DPF RE has given notice to AOF RE setting out the relevant breach and stating an intention to terminate; and
 - (iii) to the extent the breach is capable of remedy, AOF RE does not remedy the breach by the earlier of 5 Business Days after it receives the notice or the scheduled time for implementation of the Trust Scheme on the Implementation Date;
- (c) there is material breach of any of the AOF RE Warranties and clause 8.6 would not apply in respect of any Claim for that breach of the AOF RE Warranties;
- (d) the AOF RE Board (by majority) withdraws or adversely changes or modifies its recommendation that AOF Unitholders vote in favour of the AOF Unitholder Resolutions, or the AOF RE Board (by majority) makes a public statement to the effect that it no longer recommends that AOF Unitholders approve the AOF Unitholder Resolutions or that it supports a Superior Proposal;
- (e) the End Date has passed before the Trust Scheme has been implemented, other than as a result of a breach by DPF RE of its obligations under this deed;
- (f) the required majority of DPF Unitholders do not approve the Constitutional Amendment Resolution at the Scheme Meeting; or
- (g) the required majorities of AOF Unitholders do not approve the AOF Unitholder Resolutions at the AOF Meeting.

10.3 Agreed Termination

The parties may agree in writing to terminate this deed at any time.

10.4 Effect of termination

If a party terminates this deed pursuant to this clause 10, this deed will become void and have no effect and all obligations of the parties under this deed immediately cease to be of further force or effect, other than:

- (a) clauses 1, 10, 11, 12, 13, 14, 15, 16 and 17 which will survive termination; and
- (b) in respect of any Liability for an antecedent breach of this deed.

11. Public announcements

11.1 Public announcement

AOF RE and DPF RE must both issue public announcements of the Trust Scheme in a form agreed in writing by the parties in accordance with clause 6.5.

11.2 Required disclosure

Where a party is required by any applicable law or any ASX Listing Rule to make any announcement or make any disclosure in connection with the Trust Scheme, it must use all reasonable endeavours, to the extent possible, to consult with the other party prior to making the relevant disclosure.

11.3 Other announcements

Subject to clauses 11.1 and 11.2, no party may make any public announcement or disclosure in connection with the Trust Scheme (including disclosure to a Regulatory Authority) other than in a form approved by each party (acting reasonably).

Each party will use all reasonable endeavours to provide such approval as soon as practicable. Nothing in this clause 11 requires the giving of prior notice or the taking of any action if doing so would lead to a party breaching an applicable law or the ASX Listing Rules.

12. Confidentiality

No party may disclose the existence or contents of this deed except:

- (a) in the AOF Announcement and the DPF Announcement, in accordance with clause 11.1;
- (b) in the Explanatory Memorandum;
- (c) to a party's professional advisers or financiers; or
- (d) to the extent required by law or the rules of any stock exchange (provided the disclosing party consults with the other party as to the form and content of any disclosure required and uses its best endeavours to minimise the extent of such disclosure).

13. Costs and stamp duties

13.1 Costs

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

13.2 Stamp duties

AOF RE:

- (a) must pay all stamp duties and any related fines and penalties in respect of this deed, the performance of this deed and each transaction effected by or made under this deed;
- (b) indemnify DPF RE against any liability arising from failure to comply with clause 13.2(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause 13.2.

14. Notices

14.1 How notice to be given

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as shown on the Details page (or as otherwise notified by that party to the other party from time to time); and
- (c) must be delivered by hand or posted by prepaid post to the address, or sent by electronic mail to the addressee, in accordance with clause 14.1(b).

14.2 When notice taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed is taken to be received by the addressee:

- (a) (in the case of prepaid post sent to an address in the same country) on the third Business Day after the date of posting;
- (b) (in the case of prepaid post sent to an address in another country) on the fifth Business Day after the date of posting by airmail;
- (c) (in the case of electronic mail) at the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been delivered; and
- (d) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a Business Day or after 5.00 pm on a Business Day, it is taken to be received at 9.00 am on the next Business Day.

15. AOF RE limitation of liability

- (a) AOF RE enters into this deed solely in its capacity as responsible entity of AOF.
- (b) In this deed:
 - (i) a reference to AOF RE is a reference to AOF RE in its capacity as responsible entity of AOF only and in no other capacity; and
 - (ii) a reference to the undertaking, assets, business, money or any other thing of or in relation to AOF RE is a reference to such undertaking, assets, business, money or other thing of or in relation to AOF RE in its capacity as responsible entity of AOF only and in no other capacity.
- (c) A Liability arising under or in connection with this deed is limited to and can be enforced against AOF RE only to the extent to which it can be and is in fact satisfied out of property of AOF out of which AOF RE is actually indemnified for the Liability. This limitation of AOF RE's Liability applies despite any other provision of this deed and extends to all Liabilities and obligations of AOF RE in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (d) No party may sue AOF RE in any capacity other than as responsible entity of AOF, including seeking the appointment of a receiver (except in relation to property of AOF) a liquidator, an administrator or any similar person to AOF or proving in any liquidation, administration or arrangement of or affecting AOF (except in relation to property of AOF).
- (e) These provisions do not apply to any obligation or Liability of AOF RE to the extent that it is not satisfied because under the constitution establishing AOF, or by operation of law, there is a reduction in the extent of AOF RE's indemnification out of the assets of AOF, as a result of AOF RE's failure to perform its duties as responsible entity of AOF.
- (f) Nothing in clause 15 will make AOF RE liable to any Claim for an amount greater than the amount which AOF RE would have been able to Claim and recover from the assets of AOF in relation to the relevant Liability if AOF RE's right of indemnification out of the assets of AOF had not been prejudiced by failure to properly perform its duties.
- (g) AOF RE is not obliged to do or refrain from doing anything under this deed (including incur any Liability) unless its Liability is limited in the same manner as set out in this clause 15.

16. DPF RE limitation of liability

- (a) DPF RE enters into this deed only in its capacity as responsible entity of DPF.
- (b) In this deed:
 - (i) a reference to DPF RE is a reference to DPF RE in its capacity as responsible entity of DPF only and in no other capacity; and
 - (ii) a reference to the undertaking, assets, business, money or any other thing of or in relation to DPF RE is a reference to such undertaking, assets, business, money or other thing of or in relation to DPF RE in its capacity as responsible entity of DPF only and in no other capacity.
- (c) A Liability arising under or in connection with this deed is limited to and can be enforced against DPF RE only to the extent to which it can be and is in fact satisfied out of property of DPF out of which DPF RE is actually indemnified for the Liability. This limitation of DPF RE's Liability applies despite any other provision of this deed and extends to all Liabilities and obligations of DPF RE in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (d) No party may sue DPF RE in any capacity other than as responsible entity of DPF, including seeking the appointment of a receiver (except in relation to property of DPF) a liquidator, an administrator or any similar person to DPF proving in any liquidation, administration or arrangement of or affecting DPF (except in relation to property of DPF).
- (e) These provisions do not apply to any obligation or Liability of DPF RE to the extent that it is not satisfied because under the constitution establishing DPF, or by operation of law, there is a reduction in the extent of DPF RE's indemnification out of the assets of DPF, as a result of DPF RE's failure to perform its duties as responsible entity of DPF.
- (f) Nothing in clause 16 will make DPF RE liable to any Claim for an amount greater than the amount which DPF RE would have been able to Claim and recover from the assets of DPF in relation to the relevant Liability if DPF RE's right of indemnification out of the assets of DPF had not been prejudiced by failure to properly perform its duties.
- (g) DPF RE is not obliged to do or refrain from doing anything under this deed (including incur any Liability) unless its Liability is limited in the same manner as set out in this clause 16.

17. General

17.1 Amendments

This deed may only be varied by a document signed by or on behalf of each party.

17.2 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

17.3 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

17.4 Consents

A consent required under this deed from a party may not be unreasonably withheld, unless this deed expressly provides otherwise.

17.5 GST

- (a) Any reference in this clause 17.5 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply under or in connection with this deed does not include GST.
- (c) To the extent that any supply made by a party (**Supplier**) to another party (**Recipient**) under or in connection with this deed is a taxable supply, the Recipient must pay to the Supplier, in addition to the consideration to be provided under this document but for the application of this clause 17.5(c) for that supply (**GST exclusive consideration**), an amount equal to the amount of the GST exclusive consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. This clause 17.5(c) does not apply to any taxable supply under or in connection with this deed that is expressly stated to include GST.
- (d) The amount on account of GST payable in accordance with this clause 17.5 will, subject to having received a valid tax invoice from the Supplier, be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.
- (e) Any reference in the calculation of any consideration or of any indemnity, reimbursement or similar amount to a cost, expense or liability incurred by a person (**Relevant Expense**) is a reference to the relevant expense reduced by an amount equal to any input tax credit entitlement of that person (or of the representative member of any GST group to which the person belongs) in relation to the Relevant Expense. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the relevant payment or consideration must be provided.

17.6 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this deed, and all together constitute one agreement.

17.7 Entire agreement

This deed embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties in relation to the subject matter of this document and together supersedes any prior written or other agreement between the parties in relation to that subject matter.

17.8 No assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party.

17.9 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed.
- (c) Each party acknowledges and confirms that paragraphs 17.9(a) and 17.9(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with the ASIC or the ASX.

17.10 Governing law

This deed is governed by and must be construed according to the law applying in the state of New South Wales, Australia.

17.11 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the state of New South Wales, Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 17.11(a).

Schedule 1 — Indicative Timetable

Event	Date
Trust Scheme announced	4 October 2021
Draft Explanatory Memorandum is provided to ASIC and ASX for review	19 October 2021
Lodge documents (including Explanatory Memorandum) with the Court	9 November 2021
First Court Date (Hearing for First Judicial Advice)	11 November 2021
AOF Explanatory Memorandum is lodged with ASX and despatched to AOF Unitholders.	15 November 2021
DPF Explanatory Memorandum despatched to DPF Unitholders	15 November 2021
Scheme Meeting	10 December 2021
AOF Meeting	10 December 2021
Second Court Date (Hearing for Second Judicial Advice)	15 December 2021
DPF RE to sign and lodge Supplemental Deed (to amend DPF Constitution) with ASIC	16 December 2021
Effective Date	16 December 2021
Record Date (date and time for determining entitlements to Scheme Consideration)	20 December 2021
Implementation Date (AOF RE issues New AOF Units)	22 December 2021

Schedule 2 — Constitutional Amendment Resolution

1. Resolution 1 - Constitutional Amendment Resolution

To consider and, if thought fit, to pass the following resolution as a special resolution of the unitholders of the Australian Unity Diversified Property Fund:

'That:

- (a) the Constitution of Australian Unity Diversified Property Fund be amended with effect on and from the Implementation Date as set out in the Supplemental Deed contained in Annexure 3 of the Explanatory Memorandum accompanying the notice convening this meeting; and*
- (b) Australian Unity Property Limited as the responsible entity of Australian Unity Diversified Property Fund be authorised to execute and lodge with the Australian Securities and Investments Commission the Supplemental Deed.'*

Capitalised terms used in the above resolutions have the meaning given to them in the Explanatory Memorandum accompanying the notice convening this meeting.

Signing page

EXECUTED as a deed.

Executed by Australian Unity Investment Real Estate Limited ABN 86 606 414 368 as responsible entity for Australian Unity Office Fund ARSN 113 369 627 in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Name of director (print)

Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

Executed by Australian Unity Property Limited ABN 58 079 538 499 as responsible entity for Australian Unity Diversified Property Fund ARSN 106 724 038 in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Name of director (print)

Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

Annexure A — AOF Deed Poll

Deed Poll

Australian Unity Investment Real Estate Limited as
responsible entity for Australian Unity Office Fund
ARSN 113 369 627 (**AOF**)

Deed Poll

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Details

Date

Parties

Name	Australian Unity Investment Real Estate Limited ABN 86 606 414 368 as responsible entity for Australian Unity Office Fund
ARSN	113 369 627
Short form name	AOF RE
Notice details	Level 15 271 Spring Street Melbourne VIC 3000 Email: aof@australianunity.com.au Attention: Company Secretary

In favour of **Each Scheme Unitholder**

Background

- A Australian Unity Investment Real Estate Limited ABN 86 606 414 368 as responsible entity of Australian Unity Office Fund ARSN 113 369 627 (**AOF**) (**AOF RE**) has entered into a Merger Implementation Deed dated [insert] with Australian Unity Property Limited ABN 58 079 538 499 in its capacity as responsible entity for Australian Unity Diversified Property Fund (**DPF RE**), (**MID**).
- B DPF RE has agreed in the MID to propose the Trust Scheme, pursuant to which, subject to the satisfaction or waiver of certain conditions, AOF RE will acquire all the Scheme Units from the Scheme Unitholders for the Scheme Consideration.
- C In accordance with the MID, AOF RE is entering into this Deed Poll for the purposes of covenanting in favour of the Scheme Unitholders that it will observe and perform the obligations contemplated of it under and in respect of the MID and Trust Scheme.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

- Terms defined in the MID have the same meaning in this Deed Poll, unless the context requires otherwise.

1.2 Interpretation

The provisions of clause 1.2 of the MID form part of this Deed Poll as if set out in full in this Deed Poll, and on the basis that references to 'this document' in that clause are references to 'this Deed Poll'.

2. Nature of Deed Poll

AOR RE acknowledges and agrees that:

- (a) this Deed Poll may be relied on and enforced by any Scheme Unitholder in accordance with its terms even though the Scheme Unitholders are not party to it; and
- (b) under the Trust Scheme, each Scheme Unitholder appoints DPF RE as its agent and attorney to enforce this Deed Poll against AOF RE on behalf of that Scheme Unitholder.

3. Condition precedent and termination

3.1 Condition precedent

AOF RE's obligations under this Deed Poll are subject to the Supplemental Deed becoming Effective.

3.2 Termination

The obligations of AOF RE under this Deed Poll will automatically terminate on termination of the MID.

3.3 Consequences of termination

If this Deed Poll is terminated under clause 3.2 then, in addition and without prejudice to any other rights, powers or remedies available to Scheme Unitholders:

- (a) AOF RE is released from its obligations under this Deed Poll, except those obligations under clause 9.6; and
- (b) each Scheme Unitholder retains any rights, powers or remedies that Scheme Unitholder has against AOF RE in respect of any breach by AOF RE of its obligations under this Deed Poll that occurred before termination of this Deed Poll.

4. Compliance with Trust Scheme Obligations

AOF RE covenants in favour of each Scheme Unitholder that it will observe and perform all obligations contemplated of it under the Trust Scheme including, without limitation, the obligation to provide the Scheme Consideration in accordance with the terms of the Trust Scheme.

5. Representations and warranties

AOF RE makes the following representations and warranties in favour of Scheme Unitholders:

- (a) **(company status)** it is validly incorporated as a company limited by shares under the Corporations Act;
- (b) **(MIS status)** AOF is validly established and registered as a 'registered scheme' under Chapter 5C of the Corporations Act;
- (c) **(capacity)** it has full legal capacity and power to:
 - (i) own its property and to carry on its business; and
 - (ii) enter into and perform its obligations under this Deed Poll and to carry out the transactions that this Deed Poll contemplates;
- (d) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this Deed Poll and, subject to the satisfaction of certain conditions in the MID, has taken or will take all necessary corporate action to authorise the performance of its obligations under this Deed Poll;
- (e) **(authorisations)** subject to the satisfaction of certain conditions in the MID, it holds or will hold each authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this Deed Poll and to carry out the transactions that this Deed Poll contemplates; and
 - (ii) ensure that this Deed Poll is legal, valid, binding and admissible in evidence, and will comply with any conditions to which any authorisation is subject;
- (f) **(document effective)** this Deed Poll constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms;
- (g) **(no contravention)** neither its execution of this Deed Poll nor the carrying out by it of the transactions that this Deed Poll contemplates does or will:
 - (i) contravene any law to which it or any of its property is subject or any order of any Government Authority that is binding on it or any of its property;
 - (ii) contravene any authorisation;
 - (iii) contravene any undertaking or instrument binding on it or any of its property; or
 - (iv) contravene the constitution of AOF; and
- (h) **(New AOF Units)** except as provided under the Trust Scheme, the New AOF Units issued as Scheme Consideration will, on their issue:
 - (i) be fully paid and free from any mortgages, charges, liens, encumbrances and other security interests;
 - (ii) have the rights set out in the constitution of AOF; and
 - (iii) rank equally in all respects with all existing AOF Units;
- (i) it is not insolvent; and
- (j) it is the responsible entity of Australian Unity Office Fund and no action has been taken or proposed to remove it as responsible entity of Australian Unity Office Fund.

6. Continuing obligations

This Deed Poll is irrevocable and remains in full force and effect until the earlier of:

- (a) AOF RE having fully performed its obligations under this Deed Poll; and
- (b) termination of this Deed Poll under clause 3.2.

7. Liability of responsible entity

- (a) AOF RE enters into this Deed Poll solely in its capacity as responsible entity of Australian Unity Office Fund.
- (b) A liability arising under or in connection with this Deed Poll is limited to and can be enforced against AOF RE only to the extent to which it can be and is in fact satisfied out of property of AOF out of which AOF RE is actually indemnified for the Liability. This limitation of AOF RE's Liability applies despite any other provision of this Deed Poll and extends to all Liabilities and obligations of AOF RE in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed Poll.
- (c) No party may sue AOF RE in any capacity other than as responsible entity of AOF, including seeking the appointment of a receiver (except in relation to property of AOF) a liquidator, an administrator or any similar person to AOF or proving in any liquidation, administration or arrangement of or affecting AOF (except in relation to property of AOF). These provisions do not apply to any obligation or liability of AOF RE to the extent that it is not satisfied because under the constitution establishing AOF, or by operation of law, there is a reduction in the extent of AOF RE's indemnification out of the assets of AOF, as a result of AOF RE's failure to perform its duties as responsible entity of AOF.
- (d) Nothing in clause 7 will make AOF RE liable to any claim for an amount greater than the amount which AOF RE would have been able to claim and recover from the assets of Australian Unity Office Fund in relation to the relevant liability if AOF RE's right of indemnification out of the assets of AOF had not been prejudiced by failure to properly perform its duties.
- (e) AOF RE is not obliged to do or refrain from doing anything under this Deed Poll (including incur any liability) unless its liability is limited in the same manner as set out in this clause 7.

8. Further assurances

AOF RE will, on its own behalf and, to the extent authorised by the Trust Scheme, on behalf of each Scheme Unitholder, do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Deed Poll and the transactions contemplated by it.

9. General

9.1 Notices

Any notice, demand, consent or other communication (a **Notice**) given or made to AOF RE under or in connection with this Deed Poll:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to AOF RE by pre-paid post (if posted to an address in another country, by registered airmail) or by hand or email to the address below or the address last requested by AOF RE in writing to the sender:

Address: Level 15, 271 Spring Street, Melbourne, VIC 3000

Email: aof@australianunity.com.au

Attention: Company Secretary; and
- (c) will be taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and

- (iii) in the case of email, at the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been delivered,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or is later than 5pm (local time) it will be taken to have been duly given or made at the commencement of business on the next business day in that place.

9.2 No waiver

No failure to exercise nor any delay in exercising any right, power or remedy by AOF RE or by any Scheme Unitholder operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver of any right, power or remedy on one or more occasions does not operate as a waiver of that right, power or remedy on any other occasion, or of any other right, power or remedy. A waiver is not valid or binding on the person granting that waiver unless made in writing.

9.3 Remedies cumulative

The rights, powers and remedies of AOF RE and of each Scheme Unitholder under this Deed Poll are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

9.4 Amendment

No amendment or variation of this Deed Poll is valid or binding unless:

- (a) the amendment or variation is agreed to in writing by DPF RE; and
- (b) AOF RE enters into a further deed poll in favour of the Scheme Unitholders giving effect to that amendment or variation.

9.5 Assignment

The rights and obligations of AOF RE and of each Scheme Unitholder under this Deed Poll are personal. They cannot be assigned, encumbered or otherwise dealt with and no person may attempt, or purport, to do so.

9.6 Costs and stamp duty

- (a) AOF RE must bear its own costs arising out of the negotiation, preparation and execution of this Deed Poll.
- (b) All stamp duty (including any related fines, penalties and interest) payable on or in connection with this Deed Poll and any instrument executed under or any transaction evidenced by this Deed Poll must be borne by AOF RE. AOF RE must indemnify each Scheme Unitholder on demand against any liability for that stamp duty (including any related fines, penalties and interest).

9.7 Governing law and jurisdiction

This Deed Poll is governed by the laws of New South Wales, Australia. AOF RE submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Deed Poll.

Signing page

EXECUTED and delivered as a deed in Melbourne.

Executed by Australian Unity Investment Real Estate Limited ABN 86 606 414 368 as responsible entity for **Australian Unity Office Fund** ARSN 113 369 627 in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Name of director (print)

Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

Annexure B — Supplemental Deed

Supplemental deed

Dated [insert]

Australian Unity Diversified Property Fund (ASRN 106 724 038)
("Fund")

Australian Unity Property Limited (ABN 58 079 538 499)
("Trustee")

King & Wood Mallesons

Level 27
Collins Arch
447 Collins Street
Melbourne VIC 3000
Australia
T +61 3 9643 4000
F +61 3 9643 5999
DX 101 Melbourne
www.kwm.com

Supplemental deed

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Supplemental deed

Details

Trustee	Name	Australian Unity Property Limited
	ABN	58 079 538 499
	Capacity	Responsible entity of the Australian Unity Diversified Property Fund
<hr/>		
Governing law	New South Wales	
<hr/>		
Recitals	A	The Australian Unity Diversified Property Fund is a registered scheme and was established under the Constitution.
	B	The Trustee is the responsible entity of the Fund.
	C	Under clause 18 of the Constitution, the Trustee, subject to the <i>Corporations Act 2001</i> (Cth), may by supplemental deed modify, repeal or replace the Constitution.
	D	Section 601GC(1)(a) of the <i>Corporations Act 2001</i> (Cth) allows for the Constitution of a registered scheme to be modified by special resolution of the members of the scheme.
	D	At a meeting of members on [insert], the members voted for the Fund's Constitution to be modified in accordance with this deed poll.
	E	The Constitution is accordingly modified as provided in this deed poll.

Supplemental deed

General terms

1 Interpretation

1.1 Definitions

In this deed poll, these words and phrases have the following meanings and any other words and phrases have the meaning given to them in the Constitution, unless the contrary intention appears:

Constitution means the document dated 13 October 2003, and amended on 26 October 2006, 30 September 2010, 25 October 2010, 30 July 2015, 2 September 2015, 13 June 2017 and 24 October 2019, under which the Fund was established, as amended from time to time.

Fund means the registered managed investment scheme currently named Australian Unity Diversified Property Fund (ASRN 106 724 038).

Merger Implementation Deed means the merger implementation deed dated on or about 4 October 2021 between the Trustee and Australian Unity Investment Real Estate Limited in its capacity as responsible entity of the Australian Unity Office Fund.

1.2 Deed poll supplemental to Constitution

This deed poll is supplemental to the Constitution.

1.3 Headings

Headings are inserted for convenience only and do not affect the interpretation of this deed poll.

1.4 Interpretation

Clauses 1.1 and 1.2 of the Constitution apply to this deed poll as if set out in full in this deed poll.

2 Operation of this deed poll

Subject to clause 4, this deed poll takes effect on and from the later of:

- (a) the date on which this deed poll is lodged with ASIC pursuant to section 601GC(2) of the Corporations Act; and
- (b) the date on which ASIC amends the record of registration of the Fund to include the Form 5101B – Notification of change to managed investment scheme's constitution.

3 Benefit of this deed poll

This deed poll is made by the Trustee so that it shall endure to the benefit of Members jointly and severally.

4 Conditions

Until each of the conditions precedent stipulated in clause 3 of the Merger Implementation Deed are satisfied, the parties agree that this deed poll:

- (c) will have no force and effect; and
- (d) will not be lodged with ASIC pursuant to section 601GC(2) of the Corporations Act.

5 Amendment to the Constitution

5.1 Amendment

The Constitution is amended by the insertion of a new clause 30:

30. DPF/AOF Trust Scheme Proposal

30.1 Defined terms

In this clause 30, these words and phrases have the following meaning unless the contrary intention appears:

AOF means Australian Unity Office Fund.

AOF Deed Poll has the same meaning as that term defined in the Merger Implementation Deed.

AOF Registry means the person appointed by AUIREL to maintain the AOF Register.

AUIREL means Australian Unity Investment Real Estate Limited in its capacity as responsible entity of AOF.

Conditions has the same meaning as that term defined in the Merger Implementation Deed.

DPF means Australian Unity Diversified Property Fund.

Effective means, in relation to the Trust Scheme, the supplemental deed poll making amendments to this Constitution to facilitate the Trust Scheme taking effect pursuant to section 601GC(2) of the Corporations Act.

Effective Date means the date on which the Trust Scheme becomes Effective.

Encumbrance means any mortgage, charge, lien, pledge, trust, power or title retention, flawed deposit arrangement, 'security interest' as defined in sections 12(1) or (2) of the Personal Property Securities Act 2009 (Cth), or interest of a third party of any kind, whether legal or otherwise, or any agreement to create any of them or allowing them to exist.

Explanatory Memorandum means the explanatory memorandum enclosed with the notice of meeting dated [insert] issued by the Entity to the Members in relation to the Trust Scheme.

Foreign Holder Units means New AOF Units referable to Foreign Unit Holders calculated in accordance with clause 30.7.

Foreign Sale Facility means the facility provided for in clause 30.10.

Foreign Sale Proceeds has the meaning given in clause 30.10(c)(ii).

Foreign Unitholders means each of the Scheme Unitholders whose address on the Register is located in a jurisdiction outside of Australia and its external territories and New Zealand.

Implementation Date means the date which is two Business Days following the Record Date or such other date as is agreed in writing by the parties to the Merger Implementation Deed.

Merger Implementation Deed means the Merger Implementation Deed dated on or about 4 October 2021 between the Entity and AUIREL.

New AOF Unit means an ordinary unit in AOF to be issued to Scheme Unitholders by AUIREL pursuant to the Trust Scheme.

Nominee means an entity or the entities appointed by AUIREL to sell the Foreign Holder Units pursuant to clause 30.10.

Record Date means 7:00 pm Sydney time on the date that is two Business Days after the Effective Date, or some other date after the Effective Date as may be agreed in writing between AUIREL and the Entity.

Register means the register of DPF unitholders maintained in accordance with the Corporations Act.

Registered Address means, in relation to a Trust Scheme Unitholder, the address shown in the Register.

Registry means the person appointed by the Entity to maintain the Register.

Regulatory Authority includes:

- (a) ASX;
- (b) ASIC;
- (c) Australian Taxation Office;
- (d) government or governmental, semi-governmental or judicial entity or authority;
- (e) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (f) any regulatory organisation established under statute.

Scheme Consideration means the consideration AUIREL provides to the Scheme Unitholders for the transfer to it of the Trust Scheme Units pursuant to clause 30.7 (being 0.455 New AOF Units for each Trust Scheme Unit held by a Scheme Unitholder).

Scheme Holder Custodian means a Scheme Unitholder that holds one or more parcels of Trust Scheme Units as trustee, custodian or nominee for, or otherwise on account of, another person.

Scheme Meeting means the meeting of Members held on [insert] for the purposes of, among other things, voting on the Scheme Resolution.

Scheme Resolution means the resolution of Members to approve the Trust Scheme being a special resolution to approve amendments to this constitution to facilitate the implementation of the Trust Scheme.

Scheme Unitholder means each DPF Unitholder as at the Record Date.

Separate Parcel means each:

- (a) parcel of Trust Scheme Units held by a Scheme Holder Custodian as trustee, custodian or nominee for, or otherwise on account of, another person; and
- (b) parcel of Trust Scheme Units held by the Scheme Holder Custodian in its own right.

Transfer Form means, for each Scheme Unitholder, a duly completed and executed proper instrument of transfer of the Units held by that Scheme Unitholder, which may be a master transfer of all Trust Scheme Units.

Trust Scheme means the proposal to transfer all of the Trust Scheme Units to AUIREL, in exchange for which the Scheme Unitholders will be issued the Scheme Consideration, as set out in the Explanatory Memorandum and Merger Implementation Deed.

Trust Scheme Units means the DPF Units on issue as at the Record Date.

30.2 Implementation of the Trust Scheme

- (a) Each Scheme Unitholder and the Entity must do all things and execute all deeds, instruments, transfers or other documents as the Entity considers are necessary or desirable to give full effect to the terms of the Trust Scheme and the transactions contemplated by it.
- (b) Subject to section 601FC of the Corporations Act, the Entity is empowered to do all things which it considers necessary, desirable or reasonably incidental for the purpose of implementing or effecting the Trust Scheme, and those powers apply notwithstanding, and are not limited by any other provision of this Constitution.
- (c) Each of the Entity and AUIREL may do anything that it is permitted to do under this clause 30, and may execute all deeds, instruments, transfers or other documents as the Entity or AUIREL considers necessary or desirable to do anything it is permitted to do under this clause 30.
- (d) Subject to the Corporations Act, the Entity and AUIREL or any of their respective directors, officers, employees or associates, may do any act, matter or thing described in or contemplated by this clause 30 even if they have an interest (financial or otherwise) in the outcome.

- (e) The Trust Scheme is intended to result in the transfer of the Trust Scheme Units to AUIREL in return for the Scheme Consideration being received by the Scheme Unitholders.

30.3 Transfer and registration of Trust Scheme Units

On the Implementation Date:

- (a) subject to, and after, the provision of the Scheme Consideration in the manner contemplated by clause 30.9, the Trust Scheme Units, together with all rights and entitlements attaching to the Trust Scheme Units, must be transferred to AUIREL without the need for any further act by any Scheme Unitholder (other than acts performed by the Entity as attorney and agent for Scheme Unitholders under clause 30.11) by:
 - (i) the delivery to AUIREL of a duly completed and executed Transfer Form(s) executed on behalf of the Scheme Unitholders; and
 - (ii) AUIREL duly executing the Transfer Form(s) and delivering them for registration; and
- (b) as soon as practicable after receipt of the duly executed Transfer Form(s) from AUIREL, the Entity must enter, or procure the entry of, the name of AUIREL in the Register in respect of all Trust Scheme Units transferred to AUIREL in accordance with the terms of the Trust Scheme.

30.4 Entitlement to receive Scheme Consideration

On the Implementation Date, in consideration for the transfer to AUIREL of the Trust Scheme Units, each Scheme Unitholder will, in accordance with clauses 30.7, 30.8, 30.9, 30.10 and 30.12, be entitled to receive the Scheme Consideration for each of their Trust Scheme Units that have been transferred to AUIREL pursuant to the Trust Scheme.

30.5 Title and rights in Trust Scheme Units

Subject to the provision of the Scheme Consideration for the Trust Scheme Units, AUIREL will be beneficially entitled to the Trust Scheme Units transferred to it under the Trust Scheme, pending its registration in the Register as the holder of Trust Scheme Units.

30.6 Transfer free of Encumbrances

To the extent permitted by law, all Trust Scheme Units (including any rights and entitlements attaching to those units) which are transferred to AUIREL under the Trust Scheme will, at the Implementation Date, vest in AUIREL free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind not referred to in the Trust Scheme.

30.7 Scheme Consideration

- (a) **(Consideration to be provided)** The Scheme Consideration to be provided to each Scheme Unitholder (having regard to clause 30.8) will be:

- (i) if paragraph (ii) does not apply, the number of New AOF Units calculated in accordance with clause 30.7(b) and 30.7(c) on the Record Date; and
 - (ii) if the Scheme Unitholder is a Foreign Unitholder, a proportion of the Foreign Sale Proceeds calculated in accordance with clause 30.10, derived from the sale of the number of the Foreign Holder Units referable to the Foreign Unitholder in accordance with clause 30.7(b).
- (b) **(Calculation of the number of New AOF Units)** The number of New AOF Units to be issued to a Scheme Unitholder (or, in relation to Foreign Unitholders, to the Nominee) will be calculated as follows, subject to clause 30.7(c):
- 1. Number of New AOF Units = 0.455 x Number of Scheme Unitholder's Trust Scheme Units at the Record Date*
- (c) **(Fractional entitlements)** Where the calculation of the number of New AOF Units to be issued to a Scheme Unitholder would result in the issue of a fraction of a New AOF Unit then the fractional entitlement will be rounded down to the nearest whole number of New AOF Units.

30.8 Treatment of Separate Parcels held by Scheme Holder Custodians

For the purpose of implementing the Trust Scheme (including for the purposes of calculating the Scheme Consideration, and the treatment of fractional entitlements), each Separate Parcel held by a Scheme Holder Custodian will be treated as though it were held by a separate Scheme Unitholder (except if it relates to a Foreign Unitholder).

30.9 Provision of Scheme Consideration

- (a) Subject to clauses 30.10(b) and 30.12, the obligation of AUIREL to issue or procure the issue of Scheme Consideration to each Scheme Unitholder (other than Foreign Unitholders) will be satisfied by AUIREL on the Implementation Date by:
- (i) issuing:
 - A) to each Scheme Unitholder (other than Foreign Unitholders) the number of New AOF Units determined in accordance with clause 30.7(b) and 30.7(c); and
 - B) to the Nominee the number of Foreign Holder Units referable to all Foreign Unitholders determined in accordance with clause 30.7(b) and 30.7(c);
 - (ii) entering each Scheme Unitholder (other than Foreign Unitholders) and the Nominee as holders of those New AOF Units in the unit register of AOF; and
 - (iii) providing the Entity with written confirmation that it has done so.
- (b) AUIREL must procure that, on or before the date 5 Business Days after the Implementation Date, a securities certificate,

holding statement or allotment confirmation advice is sent to each Scheme Unitholder (other than Foreign Unitholders) at their Registered Address, that sets out the number of New AOF Units issued to the Scheme Unitholder pursuant to the Trust Scheme.

30.10 Foreign Sale Facility

- (a) AUIREL must not issue any New AOF Units to a Foreign Unitholder.
- (b) Instead, any entitlement that a Foreign Unitholder would otherwise have to be issued New AOF Units will be satisfied by AUIREL, on the Implementation Date, issuing the Foreign Holder Units to the Nominee, and entering the Nominee on the register of AOF accordingly.
- (c) AUIREL must procure that within 20 Business Days after the Implementation Date, the Nominee:
 - (i) sells the Foreign Holder Units issued to it (which may be on an aggregated or partially aggregated basis), in the ordinary course of trading on the ASX, and at the risk of the Foreign Unitholders; and
 - (ii) remits to AOF Registry the proceeds of the sale after deduction of any applicable brokerage, stamp duty, taxes, duty or other costs and charges (the **Foreign Sale Proceeds**).
- (d) AUIREL must procure that, as soon as possible after the Implementation Date and in any event within 5 Business Days after receiving the Foreign Sale Proceeds, AOF Registry pays (or procures payment) to each Foreign Unitholder, in full satisfaction of AUIREL's obligations to them under the Trust Scheme, an amount calculated as follows:

2.
$$\text{Amount Due} = \frac{\text{Relevant Foreign Holder Units}}{\text{Total Foreign Holder Units}} \times \text{Foreign Sale Proceeds}$$

3. Where:

4. **Amount Due** means the amount to be paid to the Foreign Unitholder

Relevant Foreign Holder Units means the number of Foreign Holder Units attributable to, and that would otherwise have been issued to, that Foreign Unitholder had it not been a Foreign Unitholder

Total Foreign Holder Units means the total number of Foreign Holder Units issued to the Nominee

Foreign Sale Proceeds is as defined in clause 30.10(c)(ii).

The Amount Due must be rounded down to the nearest cent.

- (e) The obligation to pay the Amount Due to a Foreign Unit Holder under clause 30.10(d) will be satisfied by (at the discretion of AUIREL):
 - (i) if the Foreign Unitholder has, before the Record Date, made a valid election in accordance with the

requirements of the Entity and the Registry to receive distribution payments from the Entity by electronic funds transfer to a bank account nominated by the Foreign Unitholder, paying (or procuring payment) of the Amount Due in the same manner as that election;

- (ii) otherwise, whether or not the Foreign Unitholder has made an election referred to in clause 30.10(e)(i), by despatching by pre-paid post a cheque for the Amount Due made out to the Foreign Unitholder to its Registered Address as at the Record Date.
- (f) None of the Entity, AUIREL or the Nominee gives any assurance as to the price that will be achieved for the sale of Foreign Holder Units and the sale of those units will be at the risk of the Foreign Unitholder.
- (g) Each Foreign Unitholder appoints AUIREL as its agent to receive on its behalf any financial services guide or other notices (including any updates of those documents) that the Nominee is required by law to provide to the Foreign Unitholder.

30.11 Power of Attorney

- (a) The Entity is irrevocably appointed as the agent and attorney of each Scheme Unitholder to execute all documents and do all things which it reasonably considers necessary or desirable to be executed or done on behalf of the Scheme Unitholders to effect the Trust Scheme.
 - (b) The Entity is authorised to execute such documents and do such things without needing further authority or approval from any Scheme Unitholder.
 - (c) Subject to the satisfaction of the Conditions and without limiting clause 30.11(a), the Entity is irrevocably appointed as the agent and attorney of each Scheme Unitholder to:
 - (i) transfer each Scheme Unitholder's Units to the AOF responsible entity, AUIREL;
 - (ii) apply on behalf of each Scheme Unitholder for the issue of units by AUIREL in AOF;
 - (iii) agree on behalf of each Scheme Unitholder to be bound by the terms of the constitution for AOF; and
 - (iv) enforce the AOF Deed Poll against AUIREL,
5. and the Entity accepts such appointment.

30.12 Joint Holders

In the case of Units held in joint names:

- (a) any cheque required to be sent will be made payable to the joint holders and sent at the sole discretion of the Entity, to the Scheme Unitholder whose name appears first in the Register as at the Record Date or to the joint holders;

- (b) any document required to be sent under the Trust Scheme will be forwarded to either, at the sole discretion of the Entity, the Scheme Unitholder whose name appears first in the Register as at the Record Date or to the joint holders;
- (c) any New AOF Units to be issued under the Trust Scheme will be issued to the same joint holders; and
- (d) any amount of Foreign Sale Proceeds to be paid to Foreign Unitholders:
 - (i) by way of cheque, will be made payable in accordance with clause 30.12(a); or
 - (ii) by way of electronic funds transfer, the proceeds may be paid either, at the sole discretion of the Entity, to the account of the Scheme Unitholder whose name appears first in the Register as at the Record Date or to either of the account(s) nominated by the joint holders.

30.13 Unclaimed monies

- (a) AUIREL may cancel a cheque issued under this clause 30.13 if the cheque:
 - (i) is returned to AUIREL; or
 - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Unitholder to AUIREL (or AOF Registry) AUIREL must reissue a cheque that was previously cancelled under this clause 30.13.
- (c) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any amount payable to a Scheme Unitholder under the Trust Scheme which becomes 'unclaimed money' (as defined in section 7 of the *Unclaimed Money Act 1995* (NSW)).

30.14 Orders of a court or Regulatory Authority

- (a) Notwithstanding anything else in this clause 30, AUIREL may deduct and withhold from any consideration which would otherwise be payable by AUIREL to a Scheme Unitholder in accordance with this clause 30, any amount that it determines is required to be so deducted and withheld from that consideration under any applicable law, including any order, direction or notice made or given by a court of competent jurisdiction or by another Regulatory Authority.
- (b) To the extent that amounts are so deducted or withheld, such deducted or withheld amounts will be treated for all purposes under the Trust Scheme as having been paid to the Scheme Unitholder in respect of which such deduction and withholding was made, provided that such deducted or withheld amounts are actually remitted to the appropriate taxation office or other Regulatory Authority.

- (c) If requested in writing by the Scheme Unitholder, AUIREL must provide a receipt or other appropriate evidence of such payment to the taxation office or other Regulatory Authority.
- (d) If written notice is given to AUIREL (or the Registry or AOF Registry) of an order, direction or notice made or given by a court of competent jurisdiction or by another Regulatory Authority that requires that Scheme Consideration that would otherwise be provided to a Scheme Unitholder by AUIREL in accordance with this clause 30, must instead be paid or provided to a Regulatory Authority or other third party (either by payment of money or the issuance of New AOF Units), then:
 - (i) AUIREL is entitled to pay the relevant money or issue the relevant New AOF Units in accordance with that order, direction or notice; and
 - (ii) doing so will be treated for all purposes under the Trust Scheme as having been paid or provided to that Scheme Unitholder.
- (e) If written notice is given to AUIREL (or the Registry or AOF Registry) of an order, direction or notice made or given by a court of competent jurisdiction or by another Regulatory Authority that prevents AUIREL from providing consideration to a particular Scheme Unitholder in accordance with this clause 30, or if the payment or provision of any Scheme Consideration to a particular Scheme Unitholder is otherwise prohibited by applicable law, AUIREL will be entitled to (as applicable):
 - (i) refrain from issuing any New AOF Units that would otherwise be issued to the Scheme Unitholder; or
 - (ii) refrain from remitting any Foreign Sale Proceeds that would otherwise be payable to the Scheme Unitholder, until such time as the issue of New AOF Units or the of Foreign Sale Proceeds (as applicable) in accordance with this clause 30 is permitted by that order or direction or otherwise by law.

30.15 Determination of Trust Scheme Units

To establish the identity of the Scheme Unitholders, dealings in Trust Scheme Units will only be recognised by the Entity if registrable transmission applications or transfers in registrable form in respect of those dealings are received on or before the Record Date at the place where the Register is kept.

The Entity will register, or procure that the Registry registers, any registrable transmission applications or transfers in registrable form received as described in this clause 30.15 by or as soon as practicable after the Record Date. The persons shown in the Register, and the number of Units held by them, after the registration of those transmission applications or transfers will be taken to the Scheme Unitholders and Trust Scheme Units respectively.

30.16 Maintenance of Register

For the purpose of determining entitlements to the Scheme Consideration, the Entity will maintain the Register in accordance with the provisions of this Constitution including this clause 30, until the

Scheme Consideration has been provided to the Scheme Unitholders and AUIREL has been entered in the Register as the holder of all the Trust Scheme Units. The Register in this form will solely determine entitlements to the Scheme Consideration.

30.17 Effect of certificates (if any) and holding statements

Subject to provision of the Scheme Consideration and registration of the transfer of all of the Trust Scheme Units to AUIREL contemplated in clauses 30.3 and 30.9, any statements of holding in respect of Trust Scheme Units will cease to have effect after the Record Date as documents of title in respect of those units (other than those in favour of AUIREL or its successors in title). After the Record Date, each entry current on the Register as at the Record Date (other than entries in respect of AUIREL or its successors in title) will cease to have effect except as evidence of entitlement to the Scheme Consideration.

30.18 Instructions and elections to be applied to New AOF Units

If not prohibited by law (and including where permitted or facilitated by relief granted by a Regulatory Authority), all instructions, notifications, consents or elections by each Scheme Unitholder to the Entity binding or deemed binding between the Scheme Unitholder and the Entity relating to the Fund or the Trust Scheme Units, including instructions, notifications, consents or elections relating to:

- (a) the disclosure of the Scheme Unitholder's personal information (including tax file numbers and tax file number information, each as defined under the *Privacy Act 1988* (Cth) and information referred to in clause 30.18(b)) to, or collection of such personal information by, AUIREL;
- (b) the disclosure information pertaining to the Scheme Unitholder to Australian or foreign Government Agencies, including under the *Foreign Account Tax Compliance Act* of the United States of America and the Common Reporting Standard under the *Tax Laws Amendment (Implementation of the Common Reporting Standard) Act 2016* (Cth);
- (c) whether distributions or dividends are to be paid by cheque or into a specific account;
- (d) currency elections;
- (e) participation in distribution reinvestment plans; and
- (f) the receipt of notices or other communications from the Entity (including by email or other electronic platform),

will be deemed from the Implementation Date (except to the extent determined otherwise by AUIREL in its sole discretion), by reason of this Trust Scheme, to be made by the Scheme Unitholder to be made in relation to AOF, and to be a binding instruction, notification, consent or election to, and accepted by, AUIREL in relation to any New AOF Units held by the Scheme Unitholder, until that instruction, notification or election is revoked or amended in writing to AUIREL or the AOF Registry and actually received by it. An election to participate in a distribution reinvestment plan in respect of Trust Scheme Units will be treated as an election to participate in a distribution reinvestment plan in respect of New AOF Units.

30.19 Scheme Unitholders' agreements and warranties

Each Scheme Unitholder:

- (a) agrees to the transfer of their Units together with all rights and entitlements attaching to those Units in accordance with the Trust Scheme;
- (b) agrees to the variation, cancellation or modification of the rights attached to their Units constituted by or resulting from the Trust Scheme;
- (c) agrees to, on the direction of AUIREL, destroy any unit certificates relating to their Units;
- (d) agrees to provide the Entity with such information as it may reasonably require to comply with any law in respect of the Trust Scheme and the transactions contemplated by this clause 30;
- (e) consents to the Entity and AUIREL doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to this clause 30 and the transactions contemplated by it;
- (f) acknowledges that the Trust Scheme binds the Entity and all Scheme Unitholders;
- (g) warrants that all their Units (including any rights and entitlements attaching to their Units) which are transferred under the Trust Scheme will, at the Implementation Date, be fully paid and free from all Encumbrances; and
- (h) warrants that they have full power and capacity to transfer their Units together with any rights attaching to those Units.

30.20 Appointment of sole proxy

Subject to the provision of the Scheme Consideration, on and from the Implementation Date and until the Entity registers, or procures the registration of, AUIREL as the holder of all Units in the Register, each Scheme Unitholder:

- (a) is deemed to have appointed AUIREL as attorney and agent to appoint any director, officer, secretary or agent nominated by AUIREL as its sole proxy and, where applicable or appropriate, corporate representative to attend unitholders' meetings, exercise the votes attaching to the Units registered in their name and sign any unitholders' resolution whether in person, by proxy or by corporate representative;
- (b) must not attend or vote at any unitholder's meetings or sign any unitholder's resolutions, whether in person, by proxy or by corporate representative; and
- (c) must take all other actions in the capacity of a registered holder of Units as AUIREL reasonably directs.

The Entity undertakes in favour of each Scheme Unitholder that it will appoint AUIREL and each of its directors from time to time (jointly and each of them individually) as that Scheme Unitholder's proxy, or where

applicable, corporate representative, in accordance with this clause 30.20.

30.21 No disposals after the Effective Date

- (a) If the Trust Scheme becomes Effective, a Scheme Unitholder (and any person claiming through that holder) must not dispose of or purport or agree to dispose of any Trust Scheme Units, or any interest in them, after the Effective Date, except pursuant to the Merger Implementation Deed. Any such dealing will be void and of no legal effect whatsoever.
- (b) The Entity will not accept for registration or recognise for any purpose any transmission, application or transfer in respect of Trust Scheme Units received after the Record Date, except a transfer to AUIREL pursuant to the Merger Implementation Deed or any subsequent transfer by AUIREL or its successors in title.

30.22 Notices

- (a) If a notice, transfer, transmission application, direction or other communication referred to in the Trust Scheme is sent by post to the Entity, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at the Entity's registered office or at the Registry.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such a notice by any Member will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

30.23 Stamp duty

AUIREL will pay all stamp duty (including any fines, penalties and interest) payable in respect of the Trust Scheme.

30.24 Entity not liable

- (a) Notwithstanding any other provision of this Constitution but subject to law:
 - a. except to the extent that the loss or damage is caused by the actual fraud or gross negligence or wilful default of the Entity, the Entity is not liable to any Member for any loss or damage arising directly or indirectly from the Entity doing or refraining from doing any act (including the execution of documents) pursuant to or in connection with the Trust Scheme or its implementation; and
 - b. except to the extent that the loss or damage is caused by the actual fraud or gross negligence or wilful default of AUIREL, AUIREL will not be liable to any Scheme Unitholder in any way for any loss or damage arising directly or indirectly from AUIREL doing or refraining from doing any act (including the execution of documents) pursuant to or in connection with the Trust Scheme or its implementation beyond the extent to which AUIREL is actually indemnified out of the assets of the AOF.

- (b) To the maximum extent permitted by law, none of the Entity, AUIREL or AOF, nor any of their respective directors, officers, employees or associates will be liable for anything done or omitted to be done in the performance of the Trust Scheme in good faith.

30.25 Paramountcy

This clause 30 has effect irrespective of any other provision of this Constitution and any provision of this Constitution which is inconsistent with this clause 30 does not operate to the extent of the inconsistency.

30.26 Amendments to this Constitution

The amendments to this Constitution to give effect to the Trust Scheme are binding on the Entity and on all Members, including those Members who:

- (a) did not attend the meeting of the Members to consider the Trust Scheme;
- (b) attended the meeting of the Members, or whose proxy attended the meeting of Members of the Fund, to consider the Trust Scheme, but did not vote on the Trust Scheme;
- (c) attended the meeting of the Members, or whose proxy attended the meeting of Members of the Fund, to consider the Trust Scheme, but voted against the Trust Scheme; or
- (d) were not Members at the time of the meeting.

30.27 Cessation of operation

Clause 30 ceases to have any force or operation if the Merger Implementation Deed is terminated in accordance with its terms.

30.28 References to conduct of AUIREL

A reference to AUIREL doing or not doing something under clause 30 is a reference to the Entity procuring, so far as it is within its legal power to do so, that AUIREL does or does not do that thing, unless the context requires otherwise.

5.2 Provisions that have not been amended

- (a) This deed poll does not re-settle the Fund or declare a new fund and does not cause the transfer, vesting or accruing of property to any person.
- (b) Except as amended by this deed poll, all terms and conditions of the Constitution remain in full force and effect.

5.3 Acknowledgement

The Trustee acknowledges that this deed poll is issued in accordance with the Constitution. The provisions of this deed poll are binding on the Trustee, each Member and all persons claiming through them as if each party were a party to this deed poll.

6 Governing law

This deed poll is governed by the laws in force in the place specified in the Details. Each person affected by it must submit to the non-exclusive jurisdiction of the courts of that place and the courts of appeal from them.

EXECUTED as a deed poll

DATED: _____

EXECUTED by **Australian Unity
Property Limited** in accordance with
section 127 of the *Corporations Act
2001* (Cth) by authority of its directors:

Signature of director

Name of director (block letters)

Signature of director/company
secretary*

*delete whichever is not applicable

Name of director/company secretary*
(block letters)

*delete whichever is not applicable