

LinQ Resources Fund (ARSN 108 168 190)

## Tenth Deed of Variation

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LinQ Capital Limited

(ACN 098 197 258)

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## Tenth Deed of Variation

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Date ► 8 November 2010

This deed poll is made by

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Responsible Entity     **LinQ Capital Limited** as responsible entity the LinQ Resources Fund  
(ARSN 108 168 190) (**Trust**)  
ACN 098 197 258 of Level 1, 17 Ord St, West Perth 6005

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Background

- 1 The Trust was established under the Constitution.
- 2 The Trust is registered as a managed investment scheme under Chapter 5C of the *Corporations Act 2001* (Cth) (**Corporations Act**).
- 3 The Responsible Entity is the responsible entity of the Trust.
- 4 Pursuant to section 601GC(1)(a) of the Corporations Act, the Constitution of the Trust may be modified by special resolution of Unit Holders.
- 5 On 8 November 2010 the Unit Holders of the Trust resolved by special resolution to amend the Constitution of the Trust as set out in this deed.

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This deed poll witnesses that:

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### 1 Definitions and interpretation

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- (a) The term "**Constitution**" means the constitution of the Trust dated 8 March 2002 constituting the Trust, as amended from time to time.
- (b) Unless otherwise defined in this deed, a word or phrase defined in the Constitution has the same meaning when used in this deed.
- (c) Unless otherwise specified in this deed or the Constitution, a word or phrase defined in the Corporations Act has the same meaning when used in this deed.
- (d) Clause 1.2 of the Constitution applies to this deed as if set out in full in this deed.

## 2 Operation of this deed

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This deed takes effect on and from the date that a copy of it is lodged with the Australian Securities and Investments Commission.

## 3 Amendments to the Constitution

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The Constitution is amended in the manner set out in Schedule 1.

## 4 Amendments not to affect validity, rights, obligations

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- (a) An amendment to the Constitution does not affect the validity or enforceability of the Constitution.
- (b) Nothing in this deed:
  - (1) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Constitution before the execution date of this deed; or
  - (2) discharges, releases or otherwise affects any liability or obligation arising under the Constitution before the execution date of this deed.

## 5 Binding conditions

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This deed is binding on the Responsible Entity and each present and future Unit Holder and any person claiming through any of them as if each was a party to this deed.

## 6 Governing law and jurisdiction

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This deed is governed by the laws of Western Australia.

Executed as a deed poll

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Signed sealed and delivered by  
**LinQ Capital Limited** as responsible entity of the **LinQ Resources Fund** by

sign here ►   
Director

print name BRUNO CAMARRI

sign here ►   
Director/Company Secretary

print name SIMON DURACK

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## Amendments

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Clause 44 of the Constitution is amended by inserting those provisions underlined and deleting those provisions crossed out as marked up below:

### 44 Withdrawal from the Trust [s.601GA(4), Part 5C.6]

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#### **44.1 Withdrawing from the Trust [s.601GA(4); s.601KA]**

Whilst the Trust is a Liquid Scheme, a Unit Holder may withdraw from the Trust in accordance with this clause 44.

Whilst the Trust is a not a Liquid Scheme, a Unit Holder may withdraw from the Trust in accordance with:

- a) Part 5C.6 of the Corporations Act; and
- b) this clause 44 to the extent that this clause 44 is not inconsistent with Part 5C.6 of the Corporations Act.

#### **44.2 Withdrawal Offer Record Date and Offer Date**

- a) If the Responsible Entity wishes to make a withdrawal offer in accordance with clause 44.3 below, then the Responsible Entity must set, subject to paragraph b) below, a Withdrawal Offer Record Date for that withdrawal offer.
- b) The Responsible Entity must not set a Withdrawal Offer Record Date which is in the period 42 days or less before the last day of each Distribution Period.

#### **44.3 Responsible Entity may make withdrawal offer to all Unit Holders**

- a) In accordance with section 601KA(1) of the Corporations Act, the Responsible Entity may, in the exercise of Responsible Entity's absolute discretion, make a written withdrawal offer on the Withdrawal Offer Day to all Unit Holders who on the Withdrawal Offer Record Date are recorded in the Register as holding Units, giving those Unit Holders an opportunity to withdraw wholly or partly from the Trust.
- b) The number of Units available to be withdrawn under a withdrawal offer will be:
  - i) the number of Units for which assets are available and able to be converted to money in time to satisfy withdrawal requests which those Unit Holders may make in response to that withdrawal offer; or
  - ii) if the Responsible Entity is conducting the withdrawal offer by way of a Withdrawal Tender, the number of Units calculated in accordance with the

Withdrawal Tender process, which is between 25% and 35% of the Units on issue (excluding any Units held by LRF2) in the Trust.

- c) The withdrawal offer must be in writing and must contain all information required by Part 5C.6 of the Corporations Act, including the Withdrawal Offer Period.
- d) The Responsible Entity must make the withdrawal offer to the Unit Holder by sending on the Withdrawal Offer Day a written and dated offer to the address of the Unit Holder shown in the Register as at the Withdrawal Offer Record Date.

#### **44.4 Request by Unit Holder for redemption of Units**

- a) Following the receipt by a Unit Holder of a withdrawal offer made by the Responsible Entity in accordance with clause 44.3 above, a Unit Holder may during the Withdrawal Offer Period request that the Responsible Entity redeem all of the Units specified in the withdrawal offer in accordance with the terms of the withdrawal offer.

The request to the Responsible Entity must:

- i) be in a form or manner, and subject to such conditions, as are determined by the Responsible Entity when making the withdrawal offer; and
  - ii) be lodged or made at the place or address and in the manner determined by the Responsible Entity when making the withdrawal offer by no later than the last day of the Withdrawal Offer Period.
- b) A Unit Holder may:
    - i) request the redemption of all of the Units specified in the withdrawal offer; and
    - ii) request the redemption of its Units only in accordance with the terms of the withdrawal offer.
  - c) A Unit Holder may not withdraw a withdrawal request except with the prior written consent of the Responsible Entity.
  - d) Except as provided in this clause 44, the Responsible Entity has no obligation to redeem any Units or cause any Units to be redeemed.

#### **44.5 Redemption of Units**

- a) Other than where the Responsible Entity is conducting the withdrawal offer by way of a Withdrawal Tender under this clause 44 in which case ~~the Responsible Entity has no power to redeem Units under this clause 44~~ clause 44.5b) will apply, if:

- i) a Unit Holder makes a redemption request for Units which complies with clause 44.4 above; and
- ii) the Responsible Entity receives that request by no later than the last day of the Withdrawal Offer Period; and
- iii) the Responsible Entity accepts that request; and
- iv) the Unit Holder continues to hold during the Withdrawal Period the number of Units specified in the withdrawal offer,

then the Responsible Entity must within the Withdrawal Period redeem all of the Units held by the Unit Holder specified in the withdrawal offer.

- b) If:

- i) a Unit Holder makes a Withdrawal Tender for Units within the Withdrawal Offer Period which complies with clause 44.4; and

ii) the Responsible Entity receives that Withdrawal Tender by no later than the last day of the Withdrawal Offer Period; and

iii) that Withdrawal Tender is eligible; and

iv) unless in the case of a Foreign Unit Holder, the Responsible Entity has determined that it is unreasonable to accept the Withdrawal Tender having regard to:

A) the number of Unit Holders in the country the Foreign Unit Holder resides;

B) the number and value of Units that would be redeemed by the Foreign Unit Holders in that country; and

C) the cost of complying with the legal requirements and requirements of a regulatory authority in that country; and

v) the Unit Holder continues to hold during the Withdrawal Offer Period the number of Units specified in the Withdrawal Tender,

then the Responsible Entity must comply with paragraph e) below.

(a)c) On a redemption of Units the amount to be paid to the Unit Holder in respect of each Unit redeemed is the amount calculated as follows:

***(Withdrawal Price x Paid-up Proportion of the Unit) minus (Withdrawal Transaction Charge per Unit x Paid-up Proportion of the Unit)***

(b)d) On the redemption of Units other than where the Responsible Entity is conducting the withdrawal offer by way of a Withdrawal Tender, the Responsible Entity:

i) must calculate the total amount payable to the Unit Holder for the Units redeemed in accordance with paragraph c) above, less any amounts deducted in accordance with clause 44.6 below;

ii) must cancel the Units redeemed;

iii) must immediately remove the name of the Unit Holder from the Register in respect of the cancelled Units;

iv) must pay out of the Trust Fund to the Unit Holder the total net amount payable to the Unit Holder for the Units redeemed; and

v) may deliver to the Unit Holder a confirmation advice.

e) If the Responsible Entity is conducting the withdrawal offer by way of a Withdrawal Tender, within 5 days of the end of the Withdrawal Offer Period:

i) the Responsible Entity:

A) must calculate the total amount payable to the Unit Holder for the Units to be redeemed in accordance with paragraph c) above, less any amounts deducted in accordance with clause 44.6 below;

B) must cancel the Units to be redeemed;

C) must immediately remove the name of the Unit Holder from the Register in respect of the cancelled Units; and

D) may deliver to the Unit Holder a confirmation advice;



- ii) once the name of the Unit Holder has been removed from the Register in respect of the cancelled Units, that entity ceases to be a Unit Holder in respect of those cancelled Units and instead becomes a creditor of the Trust Fund who is owed the amount calculated in accordance with clause 44.5c) above, less any amount deducted under clause 44.6 below;
  - iii) once an entity ceases to be Unit Holder in respect of those cancelled Units and becomes a creditor of the Trust Fund, that entity has no rights in relation to, or interests in, the assets of the Trust Fund; and
  - iv) the Responsible Entity must pay out of the Trust Fund to the Unit Holder at the end of the Withdrawal Period the total net amount payable to the Unit Holder for the Units redeemed.
- (e)f) Unless Units are to be redeemed in fractions, the number of Units redeemed is to be rounded to the nearest whole number.
- (d)g) The Responsible Entity may determine whether any portion of the amount paid to a Unit Holder for the Units redeemed represents income or capital of the Trust. If the amount paid to a Unit Holder on redemption Units represents income or capital of the Trust then the Responsible Entity must notify the Unit Holder the extent to which that amount is composed of, and the types of, income and capital.

## **44.6 Deductions from amounts payable to Unit Holder**

On any redemption of Units, the Responsible Entity may, before paying the amount due to a Unit Holder, deduct from any amount to be paid to that Unit Holder any:

- a) Tax payable by the Responsible Entity in respect of the redemption of Units;
- b) unpaid amounts due by the Unit Holder to the Responsible Entity; and
- c) if the Responsible Entity is conducting the withdrawal offer by way of a Withdrawal Tender, an amount relating to the Unit Holder's share of the costs of selling assets to fund the withdrawal amount unless those costs have already been included in determining the Redemption NTA, as determined by the Responsible Entity.

## **44.7 Unit Holder approval of redemption under Withdrawal Tender**

~~The acceptance by Unit Holders of a withdrawal offer under this clause 44 by way of a Withdrawal Tender is subject to a special resolution of Unit Holders to amend the constitution to permit the redemption of Units in accordance with the Withdrawal Tender process under this clause 44.~~